duties, Mr. Croftcheck would not lose his tenure status.

It is our conclusion that Mr. Croftcheck is entitled to the salary he would have received based upon the school board's action of September 11, 1974 giving him the status and salary equivalent to that of the Director of Elementary Education. It is clear that the school board's action of October 9, 1974, rescinding its action of September 11th, is without valid justification. We reach no conclusion as to whether Mr. Croftcheck is entitled to receive the $100 per month increase, which it is alleged all administrators received sometime between the September 11th and October 9, 1974 meetings, as part of or in addition to his salary of $20,240; the record is not developed sufficiently for us to reach a conclusion on this issue.

It was indicated at the hearing in the Office of the Secretary of Education that subsequent to the November, 1974, hearing on the demotion before the school board, Mr. Croftcheck was given a salary increase of $1,200. Because it is not clear in the record whether that increase was given by the board to mitigate its damages should Mr. Croftcheck prevail in his appeal, to give him a raise over his salary at that time of $16,335, or to give him a general rasie over whatever salary he was entitled to receive at that time, we reach no conclusion as to whether that increase is part of or in addition to his salary of $20,240.

Accordingly, we make the following

ORDER

AND NOW, this 7th day of October 1976, it is hereby ordered and decreed that the appeal of Thomas Croftcheck be and hereby is sustained; and it is further ordered that the action of the Board of School Directors of the Laurel Highlands School District rescinding Mr. Croftcheck's salary increase be reversed. The school board shall restore to Mr. Croftcheck the salary he would have received if its action of September 11, 1974, increasing his salary to the status and level of that of the Director of Elementary Education, had been left undisturbed.

* * * *

Appeal of Jacqueline Barndt, a Professional Employee, from a decision of the Board of School Directors of the Wissahickon School District, Montgomery County, Pennsylvania

In the Office of the Secretary of Education, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania

No. 255

OPINION

John C. Pittenger
Secretary of Education

Jacqueline Barndt, Appellant herein, has appealed from the decision of the Board of Directors of the Wissahickon School District, terminating her contract and dismissing her as a professional employee on the grounds of incompetency, persistent negligence, and persistent and willful violation of the school laws.

FINDINGS OF FACT

1. The Appellant is a professional employee. She began her employment with the Wissahickon School District in June 1964 as a music teacher in the junior high school. She continued to be employed in that capacity until her contract was terminated in January, 1975.
2. On June 30, 1973, the Appellant was rated unsatisfactory for her performance during the preceding school year. The rating was reported on the official state rating form (DEBE-333). Dr.

William H. Stoutenburgh, District Superintendent, signed his name on that portion of the rating form reserved for the signature of the person conducting the rating if the rating is unsatisfactory. Attached to the rating was an extremely detailed anecdotal record outlining the reasons for the unsatisfactory rating. The rating and the anecdotal record were sent to the Appellant by Dr. Stoutenburgh on July 10, 1973. In his cover letter to the Appellant, Dr. Stoutenburgh emphasized it was essential she understand that improvement must be shown in order to justify continuance of her services as teacher in the school district.

3. On April 25, 2974 the Appellant served a complaint in assumpsit on the Wissahickon School District in which she claimed approximately $9,000 as back pay due and owing to her.

4. On April 30, 1974 the Appellant was rated unsatisfactory by Dr. Stoutenburgh for her service up to that date for that school year. The rating was signed in the same manner as that of the preceding year. Attached to the rating was a detailed anecdotal record prepared on April 8, 1974 by Mr. Henry F. Van de Water, Administrative Assistant, and Mr. Frederick G. Volp, Principal of the Shady Grove Junior High School, explaining the reasons for the unsatisfactory rating.

5. On June 27, 1974 the Board of Directors of the Wissahickon School District brought charges against the Appellant for her dismissal on the grounds of incompetency, persistent negligence and persistent and willful violation of the school laws. The school board thereafter held 14 evidentiary hearings. Hearings were held on the following dates: December 17, 24, 1974; October 1, 2, 9, 15, 22, 30, 31, 1974; November 23, 26, 1974; January 7, 8, 1975. On January 23, 1975 counsel for the school district and the Appellant made oral arguments before the school board. On January 27, 1975, the seven school board directors who had attended each one of the hearings voted unanimously that the charges had been sustained and accordingly, that the Appellant was dismissed. The Appellant received notice of this decision on January 29, 1975.

6. On February 27, 1975 the Appellant filed her petition of appeal in the Office of the Secretary of Education. A hearing on the appeal was held March 21, 1975, at which time the school district filed its preliminary brief. At the conclusion of the hearing, the hearing examiner requested the Appellant to file a brief, also. On October 24, 1975, the school district filed a Motion to Dismiss the appeal because the Appellant had not as yet filed her brief.

DISCUSSION

Having reviewed the petition of appeal and the record of the proceedings before the Wissahickon School Board, and having heard argument on behalf of the Appellant and the school board, it is our conclusion that the procedural requirements of the School Code for the dismissal of a professional employee have been satisfied and that the charges against the Appellant are supported by substantial evidence. Accordingly, we must dismiss the appeal and uphold the school board's action dismissing the Appellant.

We cannot accept the Appellant's arguments, made in her peititon of appeal, for reversing the school board's action. The Appellant contends that the school board lacked knowledge of the charges brought against her; that, instead, the administrative staff of the school district prepared the charges without the school board's approval. This contention is completely without merit. At its June 27, 1974 meeting, the school board had before it for action a draft of proposed charges which the administrative staff recommended the board adopt and file against the Appellant. In its resolution of that date, the board accepted that recommendation. The School Code does not forbid the administrative staff of a school district from preparing, at its own initiative, a statement of proposed charges seeking the dismissal of a particular professional employe. In fact, Section 1005 of the Public School Code, 24 P.S. Section 10-1005, imposes upon the district superintendent the duty to notify the school board if it is employing teachers who are not competent. We see the drafting of a statement of proposed charges as being nothing more than the superintendent's recommendation that a particular professional employee be dismissed. It is clear from the record that the administrative staff had not taken any action against the Appellant to dismiss her prior to June 27, 1974, except for recommending her dismissal. Had the school board rejected that recommednation, the Appellant's employment would have continued

uninterrupted.

The Appellant contends that there is no record in the school board minutes of any action bringing charges against the Appellant. We are not aware of any statute or court decision which would invalidate the dismissal of a teacher because the board's action bringing charges was not recorded in the board minutes. In any event, the Appellant's contention is without merit because the minutes of the June 27, 1974 board meeting clearly show that all the board members present voted to bring the charges against the Appellant.

The Appellant contends that she was deprived of due process and a fair and impartial hearing because of evidentiary rulings, exclusion of testimony, denial of access to pertinent records, arbitrary limitations on cross-examination, disregard of the burden of proof and an ex parte meeting of the board contrary to law. The Appellant has failed to substantiate any of these allegations. Our review of the record indicates that the Appellant was afforded liberal opportunity to cross-examine all witnesses. The only board restriction on testimony was the board's request that counsel keep their questions relevant to the charges; both counsel had ample opportunity to pursue any relevant line of questioning. The school board did deny the Appellant access to certain records about failing students which the Appellant requested during the initial hearings; however, the information the Appellant sought from those records was made available during the final hearings. The burden of proof is clearly on the school board to support the dismissal of Appellant; the record shows that the school board recognized this burden, accepted it, and met it. The ex parte meeting which the Appellant objects to was apparently the one where the board met in private to discuss ways of encouraging counsel to speed up the proceedings and to keep their questioning relevant. We find nothing wrong with a meeting of this type.

The Appellant contends that the unsatisfactory ratings issued to the Appellant were not in compliance with the Pennsylvania Public School Code and are, therefore, null and void and of no evidentiary value. The Superintendent did not sign his name on the rating form in the place reserved for the superintendent's signature; instead, he signed in the place reserved for the signature of the person conducting the rating. The Appelant contends that this omission makes the rating invalid. We disagree. Normally, the superintendent will designate someone to conduct the rating. If the rating is unsatisfactory, it is required by Section 1123 of the School Code, 24 P.S. Section 11-1123, that the superintendent approve that rating. In this case, because the superintendent had already signed his name on the rating card to designate that the Appellant had received an unsatisfactory rating, it is not necessary for him to sign again.

The Appellant appears to contend that the school board must issue a written decision with specific findings of the facts relied upon by the board in its adjudication. The dismissal procedures of the School Code do not require the school board to prepare a written decision. Instead, all that is required is a vote on whether or not the charges have been sustained, see Section 1129 of the School Code, 24 P.S. Section 11-1129

In a number of related contentions, the Appellant argues that the charges are not supported by sufficient evidence. We disagree.

The Appellant had the responsibility of teaching music at the Shady Grove Junior High School. She failed to carry out this responsibility in a efficient and competent manner. During the last two years of her employment, she became obsessed with discipline. Students were punished for the slightest infraction. During the last semester of her employment, from January to June 1974, the Appellant sent students to the school office one hundred sixty (160) times to be disciplined. Compared with other teachers in the district, this was an excessive amount. Some teachers during the course of a full year -- not just a semester -- might refer at most twenty students to be disciplined; most teachers, as a rule, would not refer more than a couple of students.

Students complained about the quality of the musical program. An excessive amount of classtime was spent by the Appellant lecturing the students on behavior. The Appellant gave what she though were disruptive students the choice of either staying in the classroom or leaving. Many chose the latter and would be found wandering the halls or sitting outside of her classroom unattended.

In the opinion of her supervisors, the Appellant did not have the proper attitude towards her students. She acted as if she were engaged in a struggle of wills with them; disciplinary actions were regarded by her as a victory, where she won and the students lost. On one occasion, when questioned about her refusal to submit final grades for certain students, she indicated that she wanted to withhold those grades to "retaliate" for the students' misbehavior in class. She was informed by her supervisor that she would have to find some other method to maintain discipline.

The Appellant would frequently become emotional when discussing her efforts to maintain order within the classroom. She often referred to students in a derogatory manner and called them names in class. Students who generally exhibited a good attitude towards school and teachers showed evidence of a negative attitude towards the Appellant and her music classes. She accused fellow teachers without basis of spying on her. In spite of her obsession with discipline, her classes were often out of order.

Based on the above, it is apparent that the Appellant was unable to maintain a proper learning atmosphere within her classroom and to provide an effective and meaningful education in music. Accordingly, we find that the evidence supports the charges that the Appellant was incompetent.

The Appellant was also charged with negligence and persistent and willful violation of the school laws. We find that these charges are supported, also. The Appellant was required to maintain seating charts and to keep lesson plans available for the use of substitutes in case she was absent. On occasion when substitues were needed, seating charts were either non-existent or impossible to read, lesson plans were missing. The school administration was aware of at least one occasion when the Appellant refused to teach her class; a supervisor walking by noticed that nothing was happening within the classroom. When pressed for an explanation, the Appellant stated that the students had been misbehaving and that she would not begin the class until their behavior had improved. On occasion she failed to submit daily attendance reports, contending that the students' misbehavior made taking attendance impossible.

We find no evidence of bias by the school board or its administrative staff against the Appellant because of her law suit for back wages. Her first unsatisfactory rating preceded the law suit by nearly a year. The anecdotal record supporting the second unsatisfactory rating was prepared two weeks before the suit was filed.

The school district's Motion to Dismiss the Appeal because the Appellant did not file a brief is dismissed. The filing of a brief is optional, not mandatory.

Accordingly, we make the following

ORDER

AND NOW, this 27th day of January, 1976, it is hereby Ordered and Decreed that the Appeal of Jacqueline G. Barndt be and hereby is dismissed, and that the decision of the Board of School Directors of the Wissahickon School District dismissing her as a professional employee on the grounds of incompetency, persistent negligence, and persistent and willful violation of the school laws be and hereby is sustained.