

occupying a mandated or nonmandated position, must be reassigned to a teaching position for which he is certified. *Lakeland Joint School District vs. William R. Gilvary, Appellant*, 283 A. 2d 500 (Commonwealth Court).

The evidence in this case fails to establish any abuse of discretion by the School Board and the Appellant has failed to meet the burden of proof imposed upon him to establish the invalidity thereof.

In view of the foregoing, we make the following

ORDER

AND NOW, to wit, this 23rd day of July, 1972, it is ordered and decreed that the appeal of Frank Bilotta from the decision of demotion by the Board of School Directors of the Easton Area School District be and is hereby dismissed.

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Appeal of Marjorie S. Kauffman, a Professional Employee, from a decision of the Board of School Directors of the Tuscarora School District, Franklin County, Pennsylvania

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

No. 212

OPINION

John C. Pittenger
Secretary of Education

by David W. Hornbeck
Deputy Secretary

Marjorie S. Kauffman, Appellant herein, has appealed from a resolution of demotion by the Board of School Directors of the Tuscarora School District, Franklin County, Pennsylvania, and their refusal to grant her a hearing on her demotion pursuant to Section 1151 of the Public School Code.

FINDINGS OF FACT

1. The Appellant, Marjorie S. Kauffman, has been employed as a guidance counselor in the Tuscarora School District since 1961.
2. On April 10, 1972, the Board of School Directors of the Tuscarora School District granted a one year sabbatical leave to the Appellant for the purpose of pursuing graduate study, said leave beginning in September, 1972.
3. On June 10, 1972, the said Board of School Directors reassigned the Appellant to the position of eighth grade English teacher, and advised her thereof on July 14, 1972, the same to become effective upon her return from sabbatical leave.
4. The Petition of Appeal avers that at a conference held on June 16, 1972, between the Superintendent, the Appellant and her counsel, she was informed of the action of reassignment contemplated by the Board. Her counsel then requested that a hearing be held on said proposed demotion.
5. On August 11, 1972, the Appellant filed her Petition of Appeal with the Secretary of Education.
6. Hearing on said appeal was held on September 6, 1972.

DISCUSSION

The appeal in this case involves the refusal of the School Board to grant a hearing to the Appellant on her demotion by the Board.

Section 1151 of the School Code provides, inter alia:

"...but there shall be no demotion of any professional employe either in salary or in type of position without the consent of the employe, or, if such consent is not received, then such demotion shall be subject to the right to a hearing before the board of school directors and an appeal in the same manner as hereinbefore provided in the case of the dismissal of a professional employe."

In *Smith vs. Darby School District*, 388 Pa. 301, page 308, the Court stated:

"This provision of the School Code does not prohibit a school board from demoting a professional employe, but simply provides that a nonconsensual demotion shall be subject to a right to a hearing."

And at page 319:

"When a professional employe claims he has been demoted it is the school board's duty to grant him a hearing. At that hearing two questions are before the school board: (1) whether or not the professional employe has been demoted either in type of position or salary, and, (2) in the event that the professional employe has been demoted, the reason for such demotion must be made clear and apparent."

In view of the foregoing, we make the following

ORDER

AND NOW, this 25th day of September, 1972, the prayer of the Appellant for reinstatement is denied, without prejudice, and the Board of School Directors of the Tuscarora School District is hereby ordered to set a date for a hearing before it on the demotion as alleged by the Appellant.

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Appeal of Virginia Allen, A Professional
Employe, from a decision of the Board of
School Directors of the Northeastern Beaver
County School District, Beaver County,
Pennsylvania

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

No. 213

OPINION

John C. Pittenger
Secretary of Education

Virginia Allen, Appellant herein, has appealed from a decision of the Board of School Directors of the Northeastern Beaver County School District, terminating her contract, and dismissing her as a professional employe.