

School Code, and, therefore, he still has a right of appeal to the Secretary.

We are persuaded by the case of *Yeager v. United Natural Gas Company*, 197 Pa. Super. 25, 176 A. 2d 455 (1961), wherein notice of the referee's award in a Workmen's Compensation case was sent to the claimant's counsel. The Workmen's Compensation Board refused to hear the appeal from that award since it was filed after the time for such appeals had elapsed. The Superior Court held that:

"Under these circumstances, there can be no question that notice of the referee's award received by the claimant's counsel constitutes notice to the claimant. Even without the 'lack of proper address' and the 'arrangements . . . with the local Referee's office,' notice of an action by a court, board or commission given to the counsel of a party is considered notice to the party, except under a few rare circumstances not here present." *Ibid* p. 456.

It is a fundamental legal principle that notice to an attorney is notice to the client who employs him, *Pennsylvania Law Encyclopedia*, Vol. 3, Attorneys, Section 45. That practice has been followed by this office when the Secretary of Education renders his decision in an appeal by a professional employe.

The purpose in requiring notice of the Board's decision by registered mail is to fix the date when the statute of limitations for an appeal begins to run. We find that Mr. Gossy, through his attorney, received proper notice of the Board's decision on April 2, 1973. If he wished to appeal the Board's action, he should have done so within thirty days of that date.

We also note that there is no allegation that Mr. Gossy did not receive notice of the Board's decision. Notice was sent to him by regular mail. He argues that the Secretary of Education had jurisdiction because notice was not sent by registered mail. However, we find that notice in the proper manner was sent to Appellant's attorney.

The appeal being filed with the Secretary of Education more than thirty days after receipt of the School Board's decision, contrary to the mandatory provision of Section 1131 of the School Code, accordingly must be dismissed.

For the above reasons, we make the following

#### ORDER

AND NOW, this 13th day of September, 1973, the above appeal is hereby dismissed.

\* \* \* \*

Appeal of Marjorie S. Kauffman, a Professional Employe, 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. 228

#### OPINION

John C. Pittenger  
*Secretary of Education*

Marjorie S. Kauffman, Appellant herein, has appealed from the decision of the Board of School Directors of the Tuscarora School District, assigning her to a teaching position. The Appellant contends the assignment constitutes an improper demotion.

## FINDINGS OF FACT

1. The Appellant, Marjorie S. Kauffman, is a professional employe. From 1961 until June 1972 she was employed as a high school guidance counselor in the Tuscarora School District or its predecessors.
2. On April 10, 1972 the Appellant was granted a sabbatical leave of absence for the 1972-73 school year for study purposes.
3. The agenda for the June 12, 1972 meeting of the Board of School Directors of the Tuscarora School District contained the following recommendation, apparently made by the District Superintendent, Frederick K. Krauss, for reassigning the Appellant to a teaching position:

"It is recommended that the assignment of Mrs. Marjorie Kauffman be changed from Guidance Counselor at the high school to teacher of English with the eighth grade at the Middle School. She is certified for this position.

I believe that Mrs. Kauffman will be able to render her best service to our schools in this capacity where she can combine both her 'guidance' preparation with her certification in English. This would be a considerable asset in the 'team teaching' situation that exists on the Middle School level. The guidance position at the high school can then be filled with a 'permanent' counselor."

4. The Appellant is certified to teach English and Biological Sciences, and is also certified as a Guidance Counselor.
5. On June 16, 1972, at a meeting requested by the district Superintendent, Mr. Krauss discussed the proposed reassignment with the Appellant. Also attending were the Appellant's husband and her attorney. Appellant's attorney stated that the reassignment was a demotion and could not be effective until after a hearing. A request for such a hearing was apparently made at the meeting.
6. On July 10, 1972, the Tuscarora School Board voted to change the Appellant's assignment from Guidance Counselor at the high school to English teacher at the middle school.
7. On August 11, 1972, the Appellant appealed to this Office, and requested reinstatement to her former position of Guidance Counselor on the basis that no hearing had been held before the School Board.
8. In Teacher Tenure Appeal No. 212, decided September 25, 1972, we denied the Appellant's request for reinstatement, but ordered the Tuscarora School Board to provide a hearing on the demotion as alleged by the Appellant.
9. Arrangements for the hearing were not immediately made because the Appellant was on her sabbatical leave. During the Fall Semester she was studying in Georgia and during the Spring Semester she was in Arizona.
10. A hearing was scheduled for January 22, 1973, but was not held because the notice of the hearing was sent to the wrong address. The letter, which had been sent to the Appellant's Georgia address, was received by her in Arizona on January 16, 1973. By letter dated January 19, 1973, the Appellant informed the School Board she was not able to make satisfactory arrangements to attend the hearing because of the short notice. She requested that the hearing be held in June when she would be returning to Pennsylvania from her sabbatical leave.
11. Another hearing was scheduled for March 12, 1973. The Appellant came from Arizona to attend. The hearing began at 10:30 p.m., three hours late, apparently because the stenographer, who had mistakenly recorded the hearing date as March 21, 1973, was late in arriving after being informed of her error. The hearing was immediately adjourned by the School Board and was continued until June 11, 1973. Appellant's attorney strongly objected to the School Board's action, mentioning that the Appellant had come from Arizona at considerable expense.
12. The hearing scheduled for June 11, 1973 was continued until June 25, 1973, due to the illness of Appellant's counsel.
13. At the June 25, 1973 hearing, Appellant's counsel objected to any further proceedings before

the School Board. Appellant's counsel claimed the School Board had lost jurisdiction to take any further action, citing, among other reasons, the School Board's failure to hold a hearing within a reasonable time after being ordered to do so by the Secretary of Education. The School District then proceeded to introduce evidence on the various attempts to hold a hearing. No evidence was presented by either party that related to the Appellant's current or former position, job status, or salary, or the reason for the Appellant's resignation.

14. By letter dated June 27, 1973, the Appellant was notified of the School Board's decision, which was reported in the letter by the School Board Secretary as follows:

"That in view of the absence of any evidence that the assignment of Marjorie S. Kauffman as a teacher in English, with a guidance background, in a team in the Middle School results in any demotion in status or salary, the Board determines that such assignment is in the best interests of the School District and hence confirms the assignment of Marjorie S. Kauffman to teach English, with a guidance background, as a member of a team in the Middle School."

15. On July 20, 1973, the Appellant's petition appealing the decision of the Tuscarora School Board was received in this Office. A hearing on the appeal was scheduled for August 15, 1973, but, at the request of counsel for the School District, was continued until August 23, 1973. By letter dated August 17, 1973, counsel for the School District informed this Office that the appeal was being submitted by briefs, without oral argument, in accordance with a stipulation entered into with counsel for the Appellant.

#### DISCUSSION

This appeal is taken under §1151 of the School Code, which provides in part:

"...but there shall be no demotion of any professional employe either in salary or in type of position, except as otherwise provided in this act, 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." 24 P.S. §11-1151.

The Appellant served as a Guidance Counselor in the Tuscarora School District for approximately eleven years, up until June 1972. In the Summer of 1972 she was informed that she would be assigned to teach English in the eighth grade at the Middle School when she returned after her impending sabbatical leave. The Appellant objected to this assignment, which she considered to be a demotion, and requested a hearing before the Tuscarora School Board.

Because she did not receive a hearing, the Appellant appealed to this Office and requested reinstatement as a Guidance Counselor. Her request was denied; however, in our decision dated September 25, 1972, the Tuscarora Board of School Directors was ordered to provide "a hearing on the demotion as alleged by the Appellant."

A hearing was finally held on June 25, 1973. Neither the Appellant nor the School Board introduced any evidence at the hearing relevant to the Appellant's reassignment. After the hearing, the School Board decided that, in light of the fact that the Appellant had not submitted any evidence in support of her contention that she had been demoted, her assignment to teach English in the eighth grade would not be changed.

The Appellant has appealed from that decision. She requested reinstatement as a Guidance Counselor on the basis that she was demoted and the School Board failed to justify its action at the June 25, 1973 hearing. She cites *Tassone v. School District of Redstone Township*, 183 A. 2d 536, 408 Pa. 290 (1962), as authority supporting her claim to reinstatement.

If the Appellant was demoted, then the Tassone case is directly on point and the Appellant would be entitled to reinstatement as a Guidance Counselor. The school board in the Tassone case failed at its hearing to present any explanation or justification for demoting one of its professional employes from a supervisory to a teaching position at a reduced salary. The Pennsylvania Supreme Court ordered reinstatement to the supervisory position because the hearing requirements of §1151 of the School Code were not met. The Court said:

"At no time during the hearing did the board present its reasons for making the changes or attempt in any way to substantiate its action. The prime function of any hearing procedure is to require the official authority to explain its action to the professional employee affected and to afford him the opportunity to present his position in light of such explanation.

Here, the board complied with the form but not the substance of the hearing procedure. Nowhere on the record of the hearing does there appear any explanation or justification to appellants for the board's action. Nor could there be since the school authorities offered no testimony. To hold a hearing merely for the sake of having such a hearing accomplishes nothing. Accordingly, the hearing before the school board did not comply with the provisions of the School Code."

Tassone, *ibid*, 183 A. 2d 537, 538-39.

In the instant case, we have a hearing -- the one held on June 25, 1973 -- which accomplished nothing. Neither the School Board nor the Appellant bothered to present any evidence relevant to the Appellant's reassignment. Rather than explain its action, the School Board offered testimony about its attempts to hold a hearing at an earlier date. The Appellant did not offer any testimony. Thus, the record before us is substantially the same as it was when we ordered the School Board to give the Appellant a hearing, with one significant difference: A hearing has been held.

Where it is not apparent the school board's action constitutes a demotion, the professional employe claiming a demotion has the initial burden at the hearing to submit evidence supporting his claim. This burden can be met in a number of ways: The employe can testify on his own behalf, explaining why he feels the action which he objects to is a demotion; or he can question employes of the school district -- the Superintendent perhaps - and attempt to show through their testimony that he has been demoted.

There are a number of reasons why we believe a professional employe claiming a demotion has this burden. A school board has the power to assign or transfer its employes to particular positions in accordance with its judgment and discretion reasonably exercised, *Smith v. Darby School District*, 130 A. 2d 661, 388 Pa. 301 (1957). The school board is not required under the School Code to justify or explain the reasons for a transfer or assignment that does not result in a demotion. Neither the courts nor the Secretary of Education will review the merits of such an assignment or transfer unless there is a clear abuse of discretion, *Smith v. Darby* : the burden for showing such abuse is on the professional employe and it is a heavy one, *Omlorv v. Chester School District*, 37 D. & C. 2d 773 (1965). A professional employe is not entitled to a hearing under §1151 because he objects to an assignment. The right to a hearing is derived from the employe's *belief* that the assignment constitutes a demotion, *Smith v. Darby*, *supra*. There is a strong presumption that the school board is properly performing its functions and taking the steps necessary to give validity to its official acts, *Appeal of Wesenberg*, 31 A. 2d 151, 346 Pa. 438 (1943). Because it would be illegal for a school board to demote a professional employe against his consent without attempting to justify such action, *Tassone*, *supra*, a professional employe claiming a demotion has to overcome the presumption the board is acting properly.

The Pennsylvania Supreme Court gave the right to a hearing under §1151 in *Smith v. Darby*, supra, to professional employes who are not demoted in order to protect the statutory right to a hearing of those employes who were demoted by actions school boards were unwilling to recognize as such. An employe claiming a demotion must act in good faith; he should have a reasonable basis for believing he has been demoted, otherwise he is abusing his right to a hearing. These hearings necessarily consume considerable time and expense. The right to a hearing should not be used to harass, intimidate, or inconvenience the school board.

In the *Smith v. Darby*, case the Court stated the school board's responsibilities:

"When a professional employee claims that 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 the professional employe has been demoted, the reason for such demotion must be made clear and apparent." *Smith v. Darby*, supra, 130 A. 2d at 671.

A professional employe claiming a demotion should make his reasons known, otherwise the school board will have no cause to change its initial determination that its action was not a demotion.

There is precedent supporting our conclusion that a professional employe claiming a demotion has the burden to state his reasons for that claim. In *Santee Case*, 156 A. 2d 830, 397 Pa. 596 (1959), a professional employe requested a hearing on the basis that his assignment from a secondary to an elementary teaching position constituted a demotion. As is clear from the Supreme Court Paper Books, 397 Pa. State 562-606, at the hearing the school board did not introduce any evidence explaining its assignment; instead, the evidence was presented by the professional employe. The school board decided that its assignment was not a demotion, which decision was upheld on appeal by the Common Pleas Court, and the decision of that Court was affirmed in a per curiam opinion by the Supreme Court of Pennsylvania, *Santee Case*, *ibid*.

The forum for making these reasons known is before the school board, not the Secretary of Education. The school board has the right to any information privy to the employe which would enable the board to make an informed decision on whether a demotion occurred. As is clear from the *Smith* case, supra, if the board determines a demotion has occurred, it then has the duty to make the reason for the demotion clear and apparent. Failure to satisfy that duty will cause the demotion to be reversed. *Tassone*, op. cit. If the school board fails to recognize evidence presented to it proving a demotion has occurred, and does not explain its action, the board will have to accept the responsibility for its shortsightedness. But, when there is some question as to whether the board's action constituted a demotion, we will not hold the board responsible for the incorrect decision where the professional employe reveals to us on appeal important information or reasons which he withheld from the board.

The school board, if it wishes, can relieve the professional employe of the burden of going forward by opening the hearing with witnesses who testify why a demotion has not occurred. The professional employe would then have the opportunity, through cross-examination or the introduction of rebuttal evidence, to show that a demotion had occurred.

The school board could go further and introduce evidence explaining the reasons for the action objected to by the professional employe. We recommend that this be done, even though the school board believes its action was not a demotion. By explaining the reasons for the action, and giving the professional employe the opportunity to challenge those reasons, the school board, to a limited extent, makes academic the question of whether there was a demotion.

"[Section 1151] . . . of the School Code does not prohibit a school board from demoting a professional employee, but simply provides that a nonconsensual demotion shall be subject to a right to a hearing. \* \* \* Any professional employee may be demoted under the statute provided that such demotion takes place only after a hearing and that such demotion not be made in an arbitrary or discriminatory manner."

*Smith v. Darby*, supra, 130 A. 2d at 666.

The prime function of the hearing procedure is to require the official authority to explain its action to the professional employe affected and to afford him the opportunity to present his position in light of such explanation, *Tassone*, supra. If the school board's action is a demotion, the board has the duty to make clear and apparent the reason for the demotion, *Smith v. Darby*, supra; *Tassone*, supra. After the explanation for the demotion is given, the burden is on the professional employe to prove the impropriety of the board's action, *Smith v. Darby*, supra.

Determining whether there is or was a demotion is important for determining whether the school board has the *duty* to explain its action. If there is a demotion, the degree to which the professional employe is demoted has a direct bearing on the reasonableness of the board's action. (We feel a school board has a greater burden to justify a demotion in salary, for example, than a demotion in type of position where there is no reduction in salary).

The important issue, however, is whether the school board has acted in a proper manner. The criteria for determining whether the board has acted properly are whether the procedures required by the School Code for demotions have been followed, *Abington School District v. Pittenger*, 305 A. 2d 382, 9 Pa. Cmwlth. 62, and whether the merits of the action represent a proper and reasonable exercise of discretion, *Smith v. Darby*, supra.

Accordingly, we will not reverse a school board's action, even though the board had incorrectly determined that the professional employe was not demoted, where the school board has fully explained at the hearing how its action affects the professional employe and has given proper reasons for that action; reasons which the employe claiming a demotion has failed to discredit or rebut. This policy is subject to the following conditions:

1. The professional employe claiming a demotion must be allowed prior to the hearing the opportunity to learn the reasons for the board's action so that he can prepare to rebut those reasons at the hearing.
2. It is to be understood that a nonconsensual demotion cannot become effective until after the hearing. In our opinion, the hearing is concluded when the board renders its decision. Any salary or benefits lost by the employe prior to that decision will be restored to him.

In the instant case, it is not clear that an assignment from a counseling to a teaching position constitutes a demotion. Accordingly, because the Appellant failed to present any evidence supporting her claim at the June 25, 1973 hearing before the Board of School Directors of the Tuscarora School District, we must deny her request for reinstatement as a guidance counselor.

Throughout these proceedings, the Appellant has believed as fact what has yet to be established -- namely, that her assignment is a demotion. We fail to see any basis for the Appellant's strong convictions on this point. There is no precedent in this State that we have found supporting her contention. Previous cases involving demotions in type of position have concerned assignments from supervisory to teaching positions, or from one supervisory position to another with lesser authority. On occasion, the Courts have referred to the mandated minimum salary provisions of §1142 of the School Code for guidance on whether there is a demotion in type of position, *Smith v. Darby*, supra, 130 A. 2d at 665. Section 1142 does not support the Appellant's contention she has been demoted because teachers and guidance counselors are paid at the same scale and are included together under the generic term "teacher", as defined in §1141(1); that term is used for determining the proper salary step under §1142.

Admittedly, the Appellant has been assigned from one position - guidance counselor -- to a completely different type of position -- teacher. The fact that these are different positions does not mean the Appellant has been demoted. If this were a basis of distinction, it would lead to absurd results: A teacher assigned to a counseling position could claim that he was demoted; or, a counselor assigned to a teaching position, and then reassigned to a guidance position, could claim he was demoted twice. The term demotion was defined in *Smith v. Darby*, supra:

"A demotion of a professional employee is a removal from one position and an appointment to a lower position; it is a reduction in type of position as compared with other professional employees having the same status." *Smith v. Darby*, supra, 130 A. 2d at 664.

Under this definition, it is not apparent that the Appellant has been reduced to a lower status. It is possible that the position of guidance counselor in the Tuscarora School District is of a higher status than that of a teacher because of certain privileges associated with the position, but there is nothing in the record that would support such a conclusion on our part.

Even though we feel the Appellant had the duty to present evidence at the hearing to support her claim, we are not at all satisfied with the behavior of the School Board in this case. It would probably have taken the School Board no more than five minutes to explain the reasons for the Appellant's new assignment. What we can glean from the record indicates that the Board had legitimate reasons for its action. Had such an explanation been given, the question of whether the Appellant had been demoted might have been moot and this appeal, with all the time and effort it necessarily entails of all parties, might not have been taken. If demoted, the Appellant still must show that the reasons for the reassignment were arbitrary, discriminatory, or otherwise improper in order to have the Board's action reversed. This is a heavy burden. The Appellant might have realized that she could not meet this burden even if she were able to show she had been demoted. By not providing an explanation, the School Board left open the possibility its action could be reversed for procedural errors, depending upon whether we found that the assignment was a demotion.

Accordingly, we issue the following

#### ORDER

AND NOW, this 15th day of October, 1974, it is ordered and decreed that the Appeal of Marjorie S. Kauffman from the decision of the Board of School Directors of the School District of Tuscarora be and is hereby dismissed.

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Appeal of Betty M. Higginbotham, a Professional Employee, from a decision of the Board of School Directors of the Charleroi Area School District, Washington County, Pennsylvania.

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

No. 229

#### OPINION

John C. Pittenger  
*Secretary of Education*

Betty M. Higginbotham, Appellant herein, has appealed from the decision of the Charleroi Area School District, terminating her services as a school psychologist.

#### FINDINGS OF FACT

1. The Appellant was hired by the Board of School Directors of the Charleroi Area School District at its July, 1970 meeting, to serve as school psychologist. The minutes of the July, 1970 meeting read as follows: