

In an alleged demotion, the professional employe is the moving party, not the school board. The board cannot be expected to provide reasons supporting a demotion when the board's position is that a demotion has not occurred. The other notice requirements of Section 1127 would only serve to delay a matter in which the school board has no discretion, except for setting the time and date of the hearing. All that is required is reasonable notice of the hearing, sent by someone who can speak for the board. In this case the school board offered the Appellant the opportunity to have a hearing at the first regularly scheduled board meeting to be held after the Appellant's request for a hearing was received. The Appellant failed to accept that offer.

The past practice by this office on appeals concerning alleged demotions where there has not been a hearing before the school board has been to remand the case to the school board and order it to provide a hearing. In many of those cases, the issue on the appeal has been the school board's refusal to provide a hearing when requested. That is not an issue in this case. The school board has made numerous efforts to provide a hearing. In our opinion, the record shows that the responsibility for the failure to hold a hearing must rest with the Appellant and not with the school board.

However, it is also our opinion that the Appellant would have attended the offered hearings had he not been misinformed. Section 1131 of the School Code permits the Secretary of Education to enter such an order as to him appears just and proper. The law clearly intends that a professional employe shall have the right to a hearing to challenge an alleged demotion. While the Appellant's failure to attend hearings offered by the school board might affect any future remedies he may seek, under the circumstances of this case, we do not find that he has lost his right to a hearing.

In view of the foregoing, we make the following

ORDER

AND NOW, to wit, this 29th day of June, 1973, the Appeal of Donald B. Irwin from the action of the Greater Johnstown School Board is sustained in part, and the said School Board is hereby ordered to set a date for a hearing before it on the claimed demotion of Donald B. Irwin.

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Appeal of Donald W. Kemmerer, a Professional Employe, from a decision of the Board of School Directors of the Pine Grove Area School District, Schuylkill County, Pennsylvania

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

No. 223

OPINION

John C. Pittenger
Secretary of Education

Donald W. Kemmerer, Appellant herein, has appealed from a decision of the Board of School Directors of the Pine Grove Area School District, Schuylkill County, Pennsylvania, terminating his contract and dismissing him as a professional employe.

FINDINGS OF FACT

1. Donald W. Kemmerer was employed in the Danville Area School District from September 1969 to June 1971, thereby earning professional employe status.
2. He was employed as a substitute in the Pine Grove Area School District for the 1971-72 school year.
3. He was hired as a professional employe with the Pine Grove Area School District in July 1972 as an instructor in music.

4. In September 1969, Donald W. Kemmerer was issued a Provisional I certificate in music, valid for three years.
5. Provisional I certificates may be renewed, according to State Board of Education Regulation 10-221, upon the completion of twelve semester credit hours of post-baccalaureate or graduate study at a regionally accredited institution.
6. As of September 1972, Mr. Kemmerer had completed ten of the required twelve additional credit hours of study.
7. In September 1972 his Provisional I certificate expired, and Mr. Kemmerer taught in the Pine Grove Area School District without a valid teaching certificate up until his dismissal.
8. By letter dated February 27, 1973, Mr. Kemmerer was informed that a hearing before the Board of School Directors would be held on March 12, 1973 on whether he should be dismissed for failing to maintain a valid teaching certificate. The hearing was held as scheduled, and by letter dated March 21, 1973 Mr. Kemmerer was informed of his dismissal.
9. On March 26, 1973 Mr. Kemmerer's petition for appeal from the School Board's decision was received by this office. A hearing was held on April 16, 1973 at the Department of Education.

DISCUSSION

The issue in this appeal is whether or not a professional employe can be dismissed for failure to hold a valid teaching certificate.

Section 1141 of the Public School Code of 1949 defines teacher as including:

"...all professional and temporary professional employes . . . certificated in accordance with the qualifications established by the State Board of Education." 24 P.S. 11-1141(1).

Section 1201 of the School Code provides:

"Only those persons holding one of the following certificates shall be qualified to teach in the public schools of this Commonwealth: -- (1) Permanent college certificate, (2) provisional college certificate, (3) normal school diploma, (4) normal school certificate, (5) special permanent certificate, (6) special temporary certificate, (7) permanent State certificate, (8) certificates which are permanent licenses to teach by virtue of the provisions of section one thousand three hundred eight of the act, approved the eighteenth day of May, one thousand nine hundred eleven (Pamphlet Laws 309), as amended, which is repealed hereby, or (9) such other kinds of certificates as are issued under the standards prescribed by the State Board of Education. The State Board of Education shall also provide for issuance of certificates by district superintendents to meet such emergencies or shortage of teachers as may occur." 24 P.S. 12-1201.

Section 1202 of the School Code provides in part:

"State certificates shall be issued as herein provided. Each such certificate shall set forth the branches which its holder is entitled to teach. No teacher shall teach, in any public school, any branch which he has not been properly certificated to teach." 24 P.S. 12-1202.

Section 2518 of the School Code provides in part:

"Any school district or intermediate unit with respect to area technical schools that now are hereafter employs any teacher, who does not hold any form of teacher certification to teach in the public schools of this Commonwealth, valid for the subjects or grades in which the teacher is given instruction, shall forfeit one reimbursement unit for each such teacher employed." 24 P.S. 25-2518.

And, Section 2838 of the School Laws provides in part:

"It is unlawful for any person within this Commonwealth to assume or use the professional title or other designation which any registrant may use in connection with his or her name in the practice of the art of teaching, which may be prescribed in accordance with this act, unless he or she has a legal and valid certificate of registration issued under this act, (providing for the registration of qualified teachers)...." 24 P.S. 1231.

Section 1122 of the Public School Code states in part:

"The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be ... persistent and wilful violation of the school laws of this Commonwealth on the part of the professional employe." 24 P.S. 11-1122.

Mr. Kemmerer held a Provisional I certificate in music which he failed to renew by completing the required twelve additional credits in education. As a result, he was teaching as of September 1972 without a valid teaching certificate. By the time of the hearing in April before the Board of School Directors, he still had not earned the required credits. By law, he has three years in which to earn them.

We could make considerably greater reference to the School Laws on this subject. However, the statutory provisions we already cited are more than sufficient authority to support our finding that teachers in the public schools are required to be properly certificated. Failure to maintain or hold such certification constitutes wilful violation of the School Laws and is therefore grounds for dismissal.

Accordingly, we make the following

ORDER

AND NCW, this 10th day of August, 1973, it is ordered and decreed that the Appeal of Donald W. Kemmerer from the decision of the Board of School Directors of the Pine Grove Area School District be and is hereby dismissed, and the action of the said Board dismissing him as a professional employe is hereby sustained on the ground of persistent and wilful violation of the School Laws of this Commonwealth.

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Appeal of Kenneth Smeltz, a substitute teacher, from a decision of the Board of School Directors of the Blue Mountain School District, Schuylkill County, Pennsylvania

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

No. 225