

**IN THE OFFICE OF THE SECRETARY OF EDUCATION  
COMMONWEALTH OF PENNSYLVANIA**

DR. STEVEN GREENFIELD	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 01-18
	:	
HANOVER AREA SCHOOL DISTRICT	:	
Appellee	:	

**OPINION AND ORDER**

Dr. Steven Greenfield (Dr. Greenfield) has appealed to the Secretary of Education (Secretary) the decision of the Hanover Area School Board (Board) to suspend his employment as a professional employee with Hanover Area School District (District).

**FINDINGS OF FACT**

1. Dr. Greenfield was a tenured professional employee employed by the District from August 6, 2009, most recently as the Director of Pupil/Student Services.<sup>1</sup> (H.O. Ex. 7; N.T. 12, 34).
2. Dr. Greenfield's position was defined as being Category 1 Educational Administrative Staff in the District Administrators' Compensation Plan. (H.O. Ex. 1,4; N.T. 35).
3. At the time of his hire Dr. Greenfield was both the Director of Special Education and Pupil Services. (N.T. 20). He oversaw the guidance counselors, the school nurses, the truant officer, clerical staff, English language development, home instruction, home bound instruction, charter school students, and students with disabilities. (N.T. 18, 35, 37).

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<sup>1</sup> "N.T. \_\_\_\_" refers to Notes of Testimony recorded at the evidentiary hearing before Department of Education (PDE) in this matter. The Exhibits admitted into evidence at the hearing by the Hearing Officer are referred to as "H.O. Ex. \_\_\_\_."

4. Dr Greenfield did not provide instruction directly to students. (N.T. 18-19).
5. In summer of 2017, the Superintendent William Jones (Superintendent) divided Dr. Greenfield's job into two positions; the Director of Pupil Services and the Director of Special Education. (N.T. 21-22).
6. Dr. Greenfield remained employed as the Director of Pupil Services. (N.T. 21).
7. Shannon Bennett, (Bennett) was employed as the Director of Special Education. (N.T. 21).
8. Ms. Bennett had more seniority at the District than Dr. Greenfield. Dr. Greenfield had more seniority as an administrator than Ms. Bennett. (N.T. 21, 34).
9. After one year, the Superintendent decided that he no longer needed both a Director of Special Education and a Director of Pupil Services. (N.T. 23).
10. The Superintendent made the business decision to retain Ms. Bennett based on her job performance and her seniority. (N.T. 23).
11. Because of the business decision to have only one employee, the Superintendent was able to save money for the District. (N.T. 23).
12. The Superintendent took other cost saving measures by moving veteran teachers into federally funded programs and hiring new teachers at a lesser rate of pay at a substantial savings of \$100,000. (N.T. 23-24). Two teachers were moved into Title One programs for a savings of \$130,000 to 140,000. (N.T. 24).
13. The Superintendent also moved eight emotional support children from an Intermediate Unit (IU) program to the District. The IU charges \$40,000 for each emotional support child. The District hired a teacher and an aide to meet the needs of the emotional support children for a \$200,000 savings. (N.T. 24).

14. The IU was also charging \$139,000 for an English as a second language teacher. The teacher was transferred to the District for a savings of \$30,000 to 40,000. (N.T. 24-25).

15. The Superintendent removed the new business manager and was able to turn a profit with the cafeteria of \$150,000. (N.T. 25).

16. The Superintendent took Coke products out of the machines and put Pepsi products in the machines. (N.T. 25). Pepsi paid the District \$5,000 for the first year, \$4,000 for the second year, followed by a payment of \$1,000 for the remaining years plus 38 percent of the proceeds of anything that Pepsi sells in the machines. (N.T. 25, 26).

17. The Board also refinanced a long-term bond and a short-term tax anticipation note, avoiding a \$2.4 million payment this year. (N.T. 26).

18. At a properly noticed Board meeting on June 21, 2018, the Board voted, and the motion carried to eliminate the position of the Director of Pupil Services effective July 1, 2018. (H.O. Ex. 4; N.T. 27).

19. By letter dated June 21, 2018, Dr. Greenfield informed the Board of his belief that the proposed elimination of his position was not in accordance with to Section 1124(d) of the Public School Code of 1949 (School Code), *as amended*, 24 P.S. § 11-1124(d). (H.O. Ex. 7).

20. By letter dated June 22, 2018, the District informed Dr. Greenfield that his position was eliminated effective July 1, 2018. (H.O. Ex. 1).

21. Dr Greenfield was not offered a right of recall at the time of his suspension. (H.O. Ex. 1; N.T. 58).

22. Dr Greenfield was the only employee whose position was eliminated. (H.O. Ex. 4).

23. There were no professional employees assigned to provide instruction directly to

students who were suspended. (H.O. Ex. 4).

24. There were no administrative employees who were suspended. (H.O. Ex. 4).

25. Following his receipt of the letter date June 22, 2018, Dr. Greenfield requested a hearing before the Board. (H.O. Ex. 1). Dr. Greenfield also requested clarification as to whether he had been terminated or suspended. (H.O. Ex. 1).

26. The District did not respond to Dr. Greenfield's request for a hearing. (N.T. 28).

27. The District did not respond to Dr. Greenfield's request for clarification as to whether he had been terminated or suspended. (N.T. 28).

28. By letter dated July 6, 2018, the District paid Dr. Greenfield for his remaining illness/sick days and his earned vacation days. (H.O. Ex. 6).

29. Dr. Greenfield was not terminated for good or just cause pursuant to Section 1122 of the School Code, *as amended*, 24 P.S. § 11-1122. (N.T. 13, 28-29).

30. Dr. Greenfield was terminated for economic reasons. (N.T. 38).

31. Dr. Greenfield was not terminated due to a decrease in pupil enrolment, a curtailment of an educational program, the consolidation of schools, or the reorganization of a school district. (N.T. 38).

32. Sixty (60) days prior to the date of the adoption of a final budget, the Board did not adopt a resolution of intent to suspend professional employees in the following fiscal year pursuant to Section 1124(d) of the School Code, *as amended*, 24 P.S. § 11-1124(d). (H.O. Ex. 4).

33. Dr. Greenfield was suspended pursuant to Section 1125.1 of the School Code, *as amended*, 24 P.S. § 11-1125.1.

34. A decision to suspend in accordance with Section 1125.1 is an adjudication within

the meaning of the Local Agency Law pursuant to Section 1125.1(f), *as amended*, 24 P.S. § 11-1125.1(f).

35. Dr. Greenfield has not waived his rights pursuant to the Local Agency Law, 2 Pa. C.S. §§ 105, 551-555, 751-754.

36. Dr. Greenfield has also applied for relief in the Court of Common Pleas of Luzerne County. (N.T. 47-48).

37. By letter dated July 9, 2018, Dr. Greenfield filed a Petition for Appeal with the Secretary. (H.O. Ex. 1)

38. The Secretary sent a Sunshine Act Meeting Notice for the Hearing to be held on August 7, 2018. (H.O. Ex. 2)

39. By letter dated July 13, 2018, the Secretary appointed Maribeth Wilt-Seibert, Esquire as the Hearing Officer. (H.O. Ex. 3).

40. By letter dated July 20, 2018, the District submitted a copy of the Administrators Compensation Plan under Act 93. (H.O. Ex. 4).

41. By letter dated July 24, 2018, Dr. Greenfield informed the Hearing Officer that he intended to present his testimony at the hearing. (H.O. Ex. 5).

42. On July 24, 2018, Dr. Greenfield filed his Brief in Support of his Appeal. (H.O. Ex. 6)

43. On August 2, 2018, the District filed a Brief in Opposition to Dr. Greenfield's Appeal. (H.O. Ex. 7).

44. On August 3, 2018, Dr. Greenfield filed a Reply Brief in Support of his Appeal. (H.O. Ex. 8).

45. By letter dated August 6, 2018, the District's Superintendent indicated that he

would also be testifying at the hearing. (H.O. Ex. 9).

46. The hearing was scheduled and held on August 7, 2018, before Maribeth Wilt-Seibert, Esquire, Hearing Officer. (N.T. 4).

47. At the hearing, Dr. Greenfield testified in support of his Appeal. (N.T. 4).

48. Dr. Greenfield was represented by Kimberly K. Borland, Esquire. (N.T. 4).

49. At the hearing, Superintendent William Jones testified in support of the District. (N.T. 15).

50. The District was represented by John G. Dean, Esquire and David L. Scherer, Esquire. (N.T. 4-5).

51. All testimony was under oath (N.T. 9) and was transcribed. (N.T., generally).

### **LEGAL STANDARDS**

Section 1101(1) of the School Code provides that the term “professional employee” shall include those who are certificated as teachers, supervisors, supervising principals, principals, assistant principals, vice-principals, directors of vocational education, dental hygienists, visiting teachers, home and school visitors, school counselors, child nutrition program specialists, school librarians, school secretaries, (the selection of whom is on the basis of merit as determined by eligibility lists), and school nurses. 24 P.S. § 11-1101(1).

Section 1122 of the School Code governs the termination of tenured professional employees and sets forth the only valid causes for termination of a professional employee. 24 P.S. § 11-1122. The parties agree that Dr. Greenfield was not terminated for good or just cause pursuant to Section 1122 of the School Code.

Dr. Greenfield was suspended pursuant to Section 1124 of the School Code, which provides, in pertinent part:

(a) Any board of school directors may suspend the necessary number of professional employees, for any of the causes hereinafter enumerated:

\*\*\*\*

(5) economic reasons that require a reduction in professional employees.

24 P.S. § 11-1124(a)(5).

Section 1124 of the School Code enumerates the only reasons for non-disciplinary removal of a professional employee. *Somerset Area School District v. Starenchak*, 599 A.2d 252 (Pa. Cmwlth. 1991). The District asserts, and the Secretary agrees, that determination of this matter falls under Section 1124(a)(5) of the School Code as Dr. Greenfield was suspended for economic reasons.

Further, when suspending a professional employee pursuant to Section 1124(a)(5), the following applies:

(d) A board of school directors may suspend professional employees pursuant to subsection (a)(5) only if all of the following apply:

(1) The board of school directors approves the proposed suspensions by a majority vote of all school directors at a public meeting of the board of school directors.

(2) No later than sixty (60) days prior to the date of adoption of a final budget, the board of school directors has adopted a resolution of intent to suspend professional employees in the following fiscal year, which shall set forth the following:

(i) The economic conditions of the school district making the proposed suspensions necessary and how those economic conditions will be alleviated by the proposed suspensions, including:

(A) The total cost savings expected to result from the proposed suspensions.

(B) A description of other cost-saving actions taken by the board of school directors, if any.

(C) The projected expenditures of the school district for the following fiscal year with and without the proposed suspensions.

(D) The projected total revenues of the school district for the following fiscal year.

(ii) The number and percentage of employees to be suspended who are professional employees assigned to provide instruction directly to students.

(iii) The number and percentage of employees to be suspended who are administrative staff.

(iv) The number and percentage of employes to be suspended who are professional employes who are not assigned to provide instruction directly to students and who are not administrative staff.

(v) The impact of the proposed suspensions on academic programs to be offered to students following the proposed suspensions, as well as the impact on academic programs to be offered to students if the proposed suspensions are not undertaken, compared to the current school year, and the actions, if any, that will be taken to minimize the impact on student achievement.

24 P.S. § 11-1124(d).

Section 1125.1 of the School Code provides the procedures to be used in a suspension action. Subsection (f) of Section 1125.1 states specifically that, "A decision to suspend in accordance with this section shall be considered an adjudication within the meaning of the act known as the 'Local Agency Law.'" Local Agency Law (Law), therefore, governs how a suspended professional employee may appeal from the suspension action. Under Section 752 of the Law, 2 Pa. C.S. § 752, a suspended employee appeals to the Court of Common Pleas.

Section 1131 of the School Code, 24 P.S. § 11-1131, vests the Secretary with authority to hear appeals brought by professional employees from actions of school boards. The Secretary has the authority to review the school board's termination decision *de novo*. *Belasco v. Board of Public Educ. of the Sch. Dist. of Pittsburgh*, 510 A.2d 337, 343 (Pa. 1986). The credibility of witnesses and the weight to be accorded their testimony is within the exclusive province of the Secretary. *Rhodes v. Laurel Highlands Sch. Dist.*, 544 A.2d 562, 565 (Pa. Cmwlth. 1988). Additionally, the Secretary is not required to make specific findings as to the credibility of each witness where the decision itself reflects which witnesses were believed and upon whose testimony the Secretary relied. *Forrest Area Sch. Dist. v. Shoup*, 621 A.2d 1121, 1124 (Pa. Cmwlth. 1993). Furthermore, the Secretary is the ultimate fact finder when, as here, he decides to make findings of fact. *Belasco v. Board of Public Educ. of the Sch. Dist. of Pittsburgh*, 510 A.2d 337 (Pa. 1986). The Secretary makes findings of fact based on the preponderance of the

evidence. *See Fisler v. State System of Higher Educ.*, 78 A.3d 30, 47 (Pa. Cmwlth. 2013).

### **CONCLUSIONS OF LAW**

1. Dr. Greenfield has received due process of law in that he received notice of the hearing and an opportunity to be heard *de novo* before the Secretary. 2 Pa. C.S. § 504.
2. Dr. Greenfield is a professional employee pursuant to Section 1101(1) of the School Code. 24 P.S. § 11-1101(1).
3. Dr. Greenfield was not terminated for good or just cause pursuant to Section 1122 of the School Code. 24 P.S. § 11-1122.
4. Dr. Greenfield was suspended for economic reasons pursuant to Section 1124(a)(5) of the School Code. 24 P.S. § 11-1124(a)(5).
5. Recent statutory changes made to Section 1124 of the School Code by Act 2017-55 (H.B. 178) § 5 do not supersede Section 1125.1(f) of the School Code, 24 P.S. § 11-1125(f), which requires that Dr. Greenfield's remedy is to proceed with an appeal of his suspension under the Local Agency Law.
6. The Secretary lacks jurisdiction to reinstate Dr. Greenfield to his former position as Director of Student Services. Jurisdiction over a suspension for economic reasons lies within the Local Agency Law. 2 Pa. C.S. §§ 105, 551-555, 751-754.

### **DISCUSSION**

I find Dr. Greenfield's testimony to be credible and, I also accept as credible the letter of the District that indicates that the District eliminated Dr. Greenfield's position. I also find credible the parties' admission that Dr. Greenfield was not terminated for just or good cause, but for economic reasons.

**I. De novo review of the record by the Secretary insures that Dr Greenfield has received due process of law.**

Dr. Greenfield claims that because he did not receive a hearing before the Board, he has been denied due process of law. (N.T. 46). Due process requires that Dr. Greenfield be given notice of his charges against him and an opportunity to be heard. 2 Pa. C.S. § 504; *McCoy v. Lincoln Intermediate Unit No. 12*, 391 A.2d 1119 (Pa. Cmwlth. 1978). Due process also requires that a litigant have, at some stage of a proceeding, a neutral fact finder. *Katruska v. Bethlehem Center Sch. District*, 767 A.2d 1051, 1056 (Pa. 1997).

“A *de novo* review entails full consideration of the case another time; the Secretary, in effect, is substituted for the Board, the prior decision maker, and re-decides the case.” *Forest Area School District v. Shoup*, 621 A.2d 1121, 1125 (Pa. Cmwlth. 1993), citing *Civitello v. Department of Transportation, Bureau of Traffic Safety*, 315 A.2d 666 (Pa. Cmwlth. 1974). The *de novo* review conducted by the Secretary eliminates any alleged due process denial in the conduct of the hearing held locally. *Katruska*, 767 A.2d 1056. Specifically, “the Secretary of Education’s *de novo* review of the decision of a school board ensures that the requirements of due process are satisfied.” *Id.* at 1056.

Accordingly, following my *de novo* review, I conclude that Dr. Greenfield has received due process of law.

**II. The Secretary lacks jurisdiction to reinstate Dr. Greenfield to his former position as Director of Student Services as jurisdiction lies within the Local Agency Law.**

Section 1124 of the School Code provides grounds for the removal of a professional employee for economic reasons and refers to this removal as a “suspension.” A “suspension” in the context of Section 1124 of the School Code is actually a furlough. *Norwin School District v.*

*Chlodney*, 390 A.2d 328, 330 (Pa. Cmwlth. 1978). Moreover, the term "does not carry with it the connotation of a suspension for cause, but rather is a personnel action taken because of a lack of or a redistribution of work." *Northeastern Educational Intermediate Unit No. 19. v. Stephens*, 510 A.2d 1267, 1270 (Pa. Cmwlth. 1986).

Therefore, to properly suspend Dr. Greenfield for economic reasons, the District must bring this matter within the language of Section 1124. *Colonial Educ. Association v. Colonial Sch. Dist.*, 645 A.2d 336, 338, (Pa. Cmwlth. 1994). Additionally, the District has the burden to establish that a suspension is proper under Section 1124. *Somerset Area School Dist. v. Starenchak*, 599 A.2d 252, 254 (Pa. Cmwlth. 1991).

In *Krupinski v. Vocational Technical School*, 674 A.2d 683, 686 (Pa. Cmwlth. 1996), the Supreme Court of Pennsylvania held that when a teacher challenged her suspension pursuant to Section 1124 of the School Code, she had a right of appeal to the Court of Common Pleas pursuant to the Local Agency Law.

Dr. Greenfield has challenged his suspension pursuant to Section 1124 of the School Code. His right of appeal is to the Court of Common Pleas, not the Secretary. *Crestwood School District v. Redgate*, 508 A.2d 391, 392 (Pa. Cmwlth. 1986); *Central Westmoreland Area Vocational-Technical School v. Scanlon*, 421 A.2d 861 (1980). Because I am without jurisdiction to hear the appeal from the suspension, I dismiss Appellant's appeal. Accordingly, the following order is entered.

**IN THE OFFICE OF THE SECRETARY OF EDUCATION  
COMMONWEALTH OF PENNSYLVANIA**

DR. STEVEN GREENFIELD	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 01-18
	:	
HANOVER AREA SCHOOL DISTRICT	:	
Appellee	:	

**ORDER**

AND NOW this 14<sup>th</sup> day of May, 2019, the Secretary of Education dismisses Dr. Steven Greenfield's appeal from the decision of the Hanover Area School Board in accordance with the foregoing opinion due to lack of jurisdiction.

  
Pedro A. Rivera  
Secretary of Education

Date Mailed: May 14, 2019