

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.

## FINDINGS OF FACT

1. Virginia Allen began full-time employment as an elementary teacher with the Northeastern Beaver County School District in January 1966.
2. In September 1967, she received a professional employe contract, and taught at the elementary level until September 1970.
3. In mid-September 1970, she became sufficiently ill to require hospitalization and a leave of absence from her teaching duties for the remainder of the 1970-71 school year.
4. Appellant received a letter dated October 15, 1970 from the Superintendent of Schools, Kenneth H. Yonkee, informing her that a substitute teacher would handle her classes until she could return to work, and that the School Board had granted her a leave of absence for the 1970-71 school year.
5. On August 16, 1971, Mrs. Allen notified the School District that she would be available for substitute teaching for the 1971-72 school year. She was used as a substitute on thirteen occasions during that period.
6. On May 8, 1972, the Appellant attended a meeting of the School Board where she attempted to clarify her status with the School District.
7. On June 12, 1972, the School Board voted to officially terminate the professional services of the Appellant. Notice of this action was sent June 15, 1972.
8. On July 13, 1972, an appeal on behalf of the Appellant was filed with the Secretary of Education. This appeal was supplemented with additional needed information filed August 21, 1972.
9. A hearing on said appeal was scheduled for September 26, 1972 and, upon request of counsel, was continued until October 17, 1972 and a hearing was held on that date.

## TESTIMONY

The Northeastern Beaver County Board of School Directors did not hold a formal hearing when it met June 12, 1972 and officially terminated Mrs. Allen's professional services with the District. Therefore, testimony was taken at the October 17, 1972 hearing on the appeal to the Secretary of Education.

Mrs. Virginia Allen testified substantially as follows: She graduated from Geneva College in 1966, after completing practice teaching at the elementary school level. She began full-time teaching in elementary school at the beginning of 1966, and continued to do so up through September of 1970. In October of 1970, she became sufficiently ill to require hospitalization and a leave of absence from her duties for the remainder of the school year. She testified that her personal physician, Dr. Youngue, told her she could return to work beginning with the 1971-1972 school year.

Prior to the 1971-72 school year she had been requested by Mr. Kenneth H. Yonkee, Superintendent of Schools, to take a physical examination by Dr. Victor Markson. (Dr. Markson's report, dated July 31, 1971, was introduced into evidence by the School District. It stated that Mrs. Allen has no serious physical disabilities, but expressed a reservation on whether she would be able to withstand the stress of regular classes). Because certain classes were to be moved to another school, Mrs. Allen at sometime in the late summer of 1971, but prior to the beginning of the school term, went to collect her personal belongings. While at the school, she met with Mr. Yonkee and was informed that she did not have a job in the District. Mr. Yonkee's statement was apparently due to Dr. Markson's report.

On the advice of a former Superintendent of Schools, she informed the School Board she was available for substitute teaching. Her offer was accepted for she began substitute teaching in the fall of 1971 and continued to fulfill that role intermittently until March 1972.

Throughout the 1971-72 school year she requested clarification of her employment status. Finally, she and her husband attended the May 1972 Board meeting to raise the question, although nothing was decided at that time. Then, as a result of the June 12, 1972 meeting of the School

Board, she received notification that her professional services were terminated by the Board.

She testified that she had not received any statement from the School Board as to the reasons for her discharge. She also introduced a letter to her from Mr. Yonkee, dated October 15, 1970, in which she was informed that her position was being kept open for her until she recovered and that a substitute was teaching her classes.

Mr. Kenneth H. Yonkee, Superintendent of Schools, Northeastern Beaver County School District, testified on behalf of the School Board. His testimony was substantially as follows:

Mrs. Allen's teaching performance was satisfactory up until the time she became ill in the fall of 1970, although he noticed she had difficulty just prior to her leave of absence.

He next saw her in June of 1971 when he told her it would be necessary for her to receive a satisfactory health report from the doctor selected by the School District -- Dr. Markson -- before she would be put back to work. Dr. Markson's report, dated July 31, 1971, indicated to Mr. Yonkee that Mrs. Allen should be put on limited service -- possibly as a substitute. Upon receipt of Mrs. Allen's notice that she was available for substitute teaching, she was placed upon the substitute lists. She taught as a substitute on thirteen different occasions. He did not observe her on these occasions. She came to him in January 1972 to find out what her status was. The next time, to his knowledge, this question was raised by her was at the May 8, 1972 Board meeting.

At the May 1972 Board meeting, Mrs. Allen was requested to have an examination by another doctor.

Mr. Yonkee stated that he did not meet with Mrs. Allen prior to the 1971-72 school year and after his June 1971 meeting with her since he was recovering from an illness of his own.

On rebuttal, Mrs. Allen reiterated her testimony that she had met Mr. Yonkee prior to the 1971-72 school year; and that she was ready for full-time employment in September 1971.

No further witnesses were heard.

#### DISCUSSION

The Northeastern Beaver County School Board terminated Mrs. Allen's professional services on June 12, 1972, and she appealed that action to the Secretary of Education.

The Secretary of Education only has standing to hear appeals by professional employes, Section 1131 of the School Code, 24 P.S. 11-1131.

For the dismissal of a professional employe to be valid, the dismissal must comply with the procedures and requirements of the School Code. Numerous cases have held that the school board must follow the procedure prescribed by statute in terminating a teacher's contract, and failure to do so renders the attempted dismissal abortive. See *Jacobs v. School District of Wilkes-Barre*, 50 A. 2d 354, 355 Pa. 449 (1947).

In its brief, submitted after the hearing before the Secretary, the School Board argues that Mrs. Allen had never been more than a temporary professional employe and therefore was not entitled to the dismissal protections of the School Code afforded to professional employes. This issue was not timely raised. In any event, the record shows that Mrs. Allen was a professional employe with tenure. She had been issued a professional employe's contract by the School Board in September 1967, and had been teaching on a provisional certificate since August 1966. While the contract may have been prematurely issued, it is clear that Mrs. Allen has taught satisfactorily since the fall of 1966, and is therefore entitled to professional employe status by virtue of Sections 1108 and 1121 of the School Code, 24 P.S. §§11-1108 and 11-1121 respectively. The School Board cannot use its own failure to comply with the School Code to the detriment of its employes, *Mullen v. Board of School Directors of DuBois Area School District*, 436 Pa. 211, 259 A. 2d 877 (1970).

The School Board further contends that as of June 1972 Mrs. Allen was not a professional employe since she did not come under the position of teacher of Section 1101 of the School Code, 24 P.S. §11-1101, defining the term "professional employe". For the definition of "teacher", the School Board relied upon the definition provided in Section 1141 of the School Code, 24 P.S. §11-1141, which defines teachers as being those who devote 50% or more of their time

teaching. Mrs. Allen, it is contended, by being absent due to her illness, and by teaching only on a substitute basis, failed to spend more than half her time teaching and therefore was not a teacher which meant she could not be a professional employe.

This ingenious argument contravenes the intent and provisions of the School Code. The School Board's position would mean that teachers taking a leave of absence for any reason would automatically lose their professional employe status since they would not be spending more than half of their time teaching. Such an unreasonable interpretation of the School Code cannot be supported.

Of more weight is the School Board's contention that Mrs. Allen had accepted the status of a "substitute" as defined by Section 1101 of the School Code, in lieu of her status as a "professional employe". Section 1108(b) of the School Code, 24 P.S. §11-1108(b), provides in part:

"No professional employe who has attained tenure status in any school district of this Commonwealth shall thereafter be required to serve as a temporary professional employe before being tendered [a regular contract of employment] when employed by any other part of the public school system of the Commonwealth."

This section means that once professional employe status is attained, it remains with the employe no matter where that person is employed in the Commonwealth's school system. This section does not prevent a professional employe from seeking work with substitute status; entitled to only those rights pertaining to substitutes. Many teachers resign from full-time work, yet continue to be available as substitutes, and as such are not entitled to the rights of a professional employe, until they resume full-time status.

We do not find that such is the case in this appeal. The School Code provides the requirements for the termination of a professional employe's contract of employment with a school district. Section 1121 requires a written resignation or official action by the board, which must comply with the School Code's requirements for dismissal. It has been held that a professional employe can lose his status by abandonment of the employment, see *Narducci v. School District of City of Erie*, 54 Erie 34 (1971), affirmed 285 A. 2d 888. Mrs. Allen neither resigned nor abandoned her employment.

Her notice of August 16, 1971 that she was available for substitute teaching does not constitute a resignation. The record is clear that she desired full-time employment upon recovery from her illness. We find that the permission to teach on a substitute basis constituted a special leave of absence coming under Section 1154(e) of the School Code, 24 P.S. §11-1154(e), concerning "Payment of salaries in cases of sickness, injury or death." Section 1154(e) provides in part that:

"Any board of school directors may adopt rules or regulations pertaining to the payment of salaries of employes when absent from duty, extending the period of leave with or without pay in excess of that herein provided, or authorizing leaves with pay for other purposes." (Emphasis added)

The record shows that Mrs. Allen was given a medical leave without pay from September 1970 until the end of that school year, and that the school district was keeping her position open for her until she recovered. Prior to the 1971-72 school year, the district was not satisfied that Mrs. Allen was ready for full-time employment, primarily because of the recommendations of Dr. Markson. It is not clear what motivated Mrs. Allen's request for substitute teaching, whether she requested it on her own volition, or whether it was motivated by the knowledge that she would not be employed full-time due to Dr. Markson's letter. In any event, her request was granted for reasons clearly associated with Dr. Markson's recommendations.

We find that the period Mrs. Allen spent as a substitute teacher was a special leave of absence

for health reasons, authorized by Section 1154(e) of the School Code, that was given to her until such time as she was ready to resume a full schedule. As an authorized leave, Mrs. Allen did not lose her professional employe status with the right to reemployment upon recovery.

As a professional employe, Mrs. Allen's contract with the School District could be terminated by the School Board only by compliance with the procedures and reasons required by the School Code.

Section 1127 requires a hearing before the board where all testimony offered shall be recorded by a public stenographer; written notice of the charges against the employe furnished by the school board to be sent to the employe in advance of the hearing, such notice to be signed by the president and attested by the secretary of the board. The School Board argues that substantial compliance with this section was met by the attendance of the Appellant at the May 8, 1972 Board meeting. We do not agree.

According to the record, none of the requirements of Section 1127 were met at any time by the School Board. Therefore, we find that the termination of Mrs. Allen's professional services by the School Board on June 12, 1972 was null and void and Mrs. Allen is entitled to reinstatement, see *Jacobs v. School District of Wilkes-Barre Tp.* 50 A. 2d 354, 355 Pa. 449 (1947).

The School Board had a right to require an additional, reasonable medical examination for Mrs. Allen before reinstating her to a full-time position, and it had a right to terminate or refuse further employment if she failed to take such an examination. But the School District had no right to terminate her services without complying with the mandated provisions of the School Code for the termination of a professional employe's services.

It remains to be determined the amount of back wages Mrs. Allen is entitled to receive. In September of 1971 when she was ready to return to full-time employment, she could have requested a hearing before the School Board upon its refusal to provide such employment, on the basis that she had been improperly demoted or dismissed. Instead, she requested, and the School Board approved, substitute teaching, which request and approval were apparently motivated by Dr. Markson's recommendations. Mrs. Allen could not be expected to remain a substitute teacher indefinitely, nor was it her intention to do so. She had the right to demand full-time status when she felt she had recovered. The record fails to show that she ever did more than request a clarification of her status. We must assume that she acquiesced in her substitute teaching role up until she was dismissed.

Therefore, we find that the Appellant, Mrs. Allen, is entitled to the wages she would have received as a full-time employe, beginning from the time the School Board acted improperly in terminating her professional services, that is, as of June 12, 1972.

In view of the foregoing, we make the following

#### ORDER

AND NOW, to wit, this 2nd day of April, 1973, the Appeal of Virginia Allen from the decision of dismissal by the Board of School Directors of the Northeastern Beaver County School District is hereby sustained and the Board of School Directors is directed to reinstate Virginia Allen forthwith without loss of pay as of June 12, 1972.

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Appeal of Roslyn Grossman, a Professional Employe, from a decision of the Board of School Directors of the Allentown City School District, Lehigh County, Pennsylvania

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

No. 214