> "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.

* * * *

Appeal of Betty M. Higginbotham, a Professional Employe, 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:

"On motion of Mr. Pennline, and seconded by Mr. Raicos, it was resolved that Betty M. Higginbotham be employed as a professional employe, to serve as school psychologist starting with the 1970-71 school year at an annual salary of $10,500, on a ten month basis, her duties to be assigned by the administration."

The motion was carried unanimously. On August 5, 1970, the Appellant was issued a professional employe's contract with the Charleroi Area School District.

2. The Appellant served as school psychologist from July, 1970 through the end of the 1972-73 school term.

3. In June of 1973, the Board of School Directors abolished the position of school psychologist.

4. The Appellant was informed of the Board's action by a letter dated June 28, 1973, which was sent to her by Dr. Albert E. Ferrara, Superintendent of Schools of the Charleroi Area School District. The letter reads as follows:

"You are advised that the board of school directors of the Charleroi Area School District has abolished the position of school psychologist in which you were employed.

The position was abolished for reasons of policy and because of economic considerations. It was also determined that a more effective use of our facilities could be made in other fashions.

If you want an opportunity to be heard, please advise us within ten days of receipt of this notice. Your request for a hearing must be in writing."

5. By letter dated July 6, 1973, the Appellant informed Mr. Leonard L. Santini, President of the Charleroi Area School Board of Education, that she was requesting the hearing the School Board had offered.

6. On July 25, 1973, a "hearing" was held before the Board of School Directors of the Charleroi Area School District. The Appellant's counsel demanded a stenographer. He was informed by the co-solicitor for the School District that none was required and that none would be supplied.

7. The hearing began at 9:10 p.m. and ended at 9:30 p.m. The record of this hearing is summarized in a two page document signed by William Cominsky, Acting Secretary to the Board of School Directors of the Charleroi Area School District. That summary states in part that the attorney for the Appellant ". . . was continually given every opportunity to be heard. He did not choose to present any testimony but only argument."

8. On July 30, 1973, the Appellant's Petition of Appeal was received in the Office of the Secretary of Education. An Answer to that Petition was filed on behalf of the School District in the Office of the Secretary of Education on August 17, 1973.

9. A hearing in the Office of the Secretary of Education was held on August 20, 1973. No testimony was offered at that hearing. Briefs were requested and were filed by September 24, 1973.

10. The Appellant is certified in the following areas: elementary teacher; school psychologist; supervisor of special education; teacher for mentally retarded; teacher for the physically handicapped.

DISCUSSION

The position in this appeal of the Board of School Directors of the Charleroi Area School District was clearly stated by the Board's co-solicitor at the hearing before the Secretary of Education and in the brief submitted on behalf of the Board after that hearing. The Board contends that the Appellant is not a professional employe because the position of school psychologist

does not appear in the School Code as a mandated position. Since the Appellant is not a professional employe, she is not entitled to the type of hearing guaranteed by Sections 1127 and 1129 of the School Code to professional employes who are being dismissed. The School Board further contends that the Appellant was neither dismissed nor suspended. Instead, in the words of the co-solicitor for the School Board, "She had been terminated." These contentions are completely without merit.

The Appellant is a professional employe. Section 1101(1) of the Public School Code of 1949 defines a professional employe as including, ". . . those who are certificated as teachers, supervisors, . . .school counselors." We find that the position of school psychologist comes within the category of school counselors. Even persons serving in non-mandated positions may be professional employes. In **Streibert v. Board of Directors of School District of City of York,** 14 A. 2d 303 (1940), the Supreme Court of Pennsylvania held that a person serving as "Dean of Girls" was a professional employe; in its decision, the Court emphasized that "Dean of Girls" was a non-mandated office. In the **Appeal of Spano,** 267 A. 2d 848, 439 Pa. 256 (1970), the Supreme Court of Pennsylvania held that a person serving as a curriculum coordinator in a school district -- a non-mandated position -- was a professional employe within the meaning of the School Code. The Court said:

> "Construing Sections 1101 and 1141 together, an individual is a teacher for purposes of §1141 if he holds the necessary certificate and devotes at least half his time to teaching or direct educational activities, and he is a professional employe under §1101 if he is a teacher under §1141." **Appeal of Spano,** 267 A. 2d 848 850.

The Appellant is certified as a teacher and as a school psychologist; it is clear that she devoted virtually all of her time to educational activities, and therefore would be a professional employe in accordance with the holding of the Court in the **Spano Case.**

The School Code clearly states in Section 1142 that a psychologist is a professional employe. That section provides in part:

> "1142(a) Except as hereinafter otherwise provided, all school districts and vocational school districts shall pay all regular and temporary teachers, supervisors, directors and coordinators of vocational education, *psychologists,* teachers of classes for exceptional children, supervising principals, vocational teachers, and principals in the public schools of the district the minimum salaries and increments for the school year 1968-1969 and each school year thereafter, as provided in the following tabulation in accordance with the column in which the professional employe is grouped and the step which the professional employe has attained by years of experience within the school district each step after step 1 constituting one year of service.
>
> * * * * * *
>
> (b) Professional employes shall be grouped in the following columns:
>
> * * * * * *
>
> Class E. Supervisors, directors and coordinators of vocational education, who devote one-half or more of their time to supervision of instruction, and *psychologists,* holding a standard or college certificate." 24 P.S. §11-1142(a) and (b). (Emphasis added).

The School Code recognizes three ways by which a professional employe's services may be terminated: resignation, suspension, or dismissal. The Charleroi Area School District apparently seeks to add a fourth category -- namely, termination. Termination, the School Board contends, is what happens when a position is abolished. Termination is neither a dismissal nor a suspension, even though it has the effect of severing completely the relationship between the teacher and the school district.

It is apparent that in terminating her employment, the School Board dismissed the Appellant. Dismiss, as defined in the 4th edition of Black's Law Dictionary, means:

> "To send away; to discharge; to cause to be removed temporarily or permanently; to relieve from duty."

The Appellant was removed from her position as school psychologist without her consent, and, as far as the School Board is concerned, she does not have any rights to reinstatement, should the position of school psychologist be reestablished, or to appointment to any available positions for which she qualified.

The procedures required by the School Code before a professional employe can be dismissed were not complied with in this case, therefore, the Appellant must be reinstated, **In Re Swenk**, 200 A. 200, 132 Pa. Superior 107 (1938). Section 1127 of the Public School Code of 1949 provides as follows:

> "Before any professional employe having attained a status of permanent tenure is dismissed by the board of school directors, such board of school directors shall furnish such professional employe with a detailed written statement of the charges upon which his or her proposed dismissal is based and shall conduct a hearing. A written notice signed by the president and attested by the secretary of the board of school directors shall be forwarded by registered mail to the professional employe setting forth the time and place when and where such professional employe will be given an opportunity to be heard either in person or by counsel, or both, before the board of school directors and setting forth a detailed statement of the charges. Such hearing shall not be sooner than ten (10) days nor later than fifteen (15) days after such written notice. At such hearing all testimony offered, including that of complainants and their witnesses, as well as that of the accused professional employe and his or her witnesses, shall be recorded by a competent disinterested public stenographer whose services shall be furnished by the school district at its expense. Any such hearing may be postponed, continued or adjourned." 24 P.S. §11-1127.

No charges were filed against the Appellant. No written notice, signed by the president and attested to by the secretary of the Board, was sent to the Appellant setting forth a detailed statement of the charges.

At the "hearing" before the School Board in July, a competent disinterested public stenographer was not present. Section 1131 of the School Code provides that the Secretary of Education ". . . shall review the official transcript of the record of the hearing before the board ***." The summary prepared by the acting secretary to the Board is not a transcript prepared by a disinterested public stenographer and therefore is not a legally valid record; for that reason alone, the School Board's dismissal of the Appellant would have to be reversed.

We also note that the School Board failed to present any evidence at the "hearing" to justify its decision to terminate completely the Appellant's professional relationship with the School District. The School Board contends that the burden was on the Appellant to challenge the Board's

action. In a dismissal action, the burden is on the School Board, not the professional employe.

The reasons given by the Board of School Directors of the Charleroi Area School District for abolishing the position of school psychologist would, in our opinion, justify suspension of the Appellant. The School Board stated that it was obtaining psychological services from its intermediate unit and that it no longer needed its own school psychologist. Section 1124 of the School Code, on causes for suspension, provides in part that:

> "Any board of school directors may suspend the necessary number of professional employes, for any of the causes hereinafter enumerated:
>
> (2) Curtailment or alteration of the educational program on recommendation of the superintendent, concurred in by the board of school directors, approved by the Department of Public Instruction, as a result of substantial decline in class or course enrollments or to conform with standards of organization or educational activities required by law or recommended by the Department of Public Instruction;
>
> (3) Consolidation of schools, whether within a single district, through a merger of districts, or as a result of joint board agreements, when such consolidation makes it unnecessary to retain the full staff of professional employes." 24 P.S. §11-1124.

However, suspended professional employes are granted certain rights by the School Code which the Charleroi Area School Board did not afford to the Appellant. Section 1125 of the School Code, on suspensions and reinstatments, provides in part:

> "(c) No suspended employe shall be prevented from engaging in other occupation during the period of such suspension. Suspended professional employes shall be reinstated in the inverse order of their suspension. *No new appointment shall be made while there are suspended professional employes available, who are properly certified to fill such vacancies."* (Emphasis added). 24 P.S. §11-1125(c).

In **Bragg v. School District of Swarthmore**, 337 Pa. 363, 11 A. 2d 152 (1940), the school board attempted to terminate the teacher's employment by abolishing her position. The Supreme Court of Pennsylvania held that the teacher had a right to reinstatement. The Court said:

> "The appellant's contract assured her a permanent position, unless her employment was suspended or terminated in accordance with the provisions of the Tenure Act, as amended. Ibid. p. 154.
>
> * * * * * *
>
> "The attempt to suspend complainant was unlawful, since it was not prompted by any one of the causes specified in the Act. Furthermore, it is averred that four teachers of the same status as appellant were appointed subsequently to her and are still under contract with the District. Her alleged suspension, therefore, completely disregarded the seniority rights guaranteed her by the Act of 1939." Ibid p. 154.

"In the resolution dismissing appellant, none of the statutory grounds were mentioned as the reason for terminating her contract. Instead, the Board loosely characterized the move as being 'economical, efficient, productive ***.' This amounts to saying that whenever the Board deems a teacher unnecessary for any reason whatever, the contract may be successfully terminated. In **Langan v. Pittstown School District**, 335 Pa. 395, 399, 6 A. 2d 772, 774, we answered such a contention by saying: 'This, of course, was not the intention of the Act; it is directly opposed to it. The purpose of the Tenure Act, reiterated often in our opinions, was "the maintenance of an adequate and competent teaching staff, free from political [and personal] or arbitrary interference, whereby capable and competent teachers might feel secure, and more efficiently perform their duty of instruction."' " Ibid p. 155.

We find that the Appellant was dismissed, that she was, and is, a professional employe, and that the Charleroi Area Board of School Directors failed to follow the dismissal procedures mandated by the School Code:

Accordingly, we make the following

ORDER

AND NOW, to wit, this 29th day of May, 1974, it is ordered and decreed that the Appeal of Betty M. Higginbotham be and is hereby sustained and the Charleroi Area School District is hereby directed to reinstate Betty M. Higginbotham as a professional employe, without loss of pay, and to place her in a position for which she is qualified and certificated.

* * * *

Appeal of Eleanor McCormick, 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. 230

OPINION

John C. Pittenger
Secretary of Education

Eleanor McCormick, Appellant herein, has appealed from the action of the Board of School Directors of the Charleroi Area School District removing her from the position of Remedial Reading Supervisor and assigning her to regular classroom duties; which action she contends constitutes a demotion.

FINDINGS OF FACT

1. On September 5, 1961, the Appellant was issued a professional employee's contract by the Board of School Directors of the Charleroi Area School District. The Appellant served as an elementary teacher in the district for five years.
2. On August 26, 1966, the Charleroi Area School Board appointed the Appellant to the position of Reading Specialist and Remedial Reading Supervisor. At the same meeting of the School Board, two persons were appointed as E.S.E.A. Remedial Reading Substitute Teachers.
3. A portion of the Appellant's salary was paid for out of Federal funds received under the