

SUSPENSION OF PROFESSIONAL EMPLOYEES AS A RESULT OF AN ALTERATION AND/OR CURTAILMENT OF EDUCATIONAL PROGRAMS

Section 1124 of the Pennsylvania School Code specifically restricts the bases upon which professional positions may be eliminated and professional employees may be suspended (furloughed). In fact, section 1124 lists the only lawful bases upon which such professional employee suspensions may be made. As such, although economics may motivate a school board's decision to do so, professional employee suspensions will be overturned unless the school board determines that one of the reasons specified in section 1124 is present. For the purposes of this article, one of the four permitted reasons under section 1124 is the curtailment or alteration of educational programs.

Under section 1124, such a curtailment and/or alteration of school programs may only be the 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. (The Pennsylvania Department of Education or PDE) The "curtailment or alteration of educational program" can be the elimination of an entire course offering, or mere reduction in number of sections offered. A "substantial decline in class or course enrollments" can be a decline in students enrolling in a particular course such as German or in a particular grade level program such as Kindergarten. "Conforming to standards of organization or educational activities required by law or recommended by the PDE" may involve eliminating courses not otherwise required or recommended by PDE to be offered, in order to improve the efficiency and thoroughness of the educational program. For example, if school district offers three languages, it may eliminate one because PDE standards require only that two languages be offered. Another example of conformance to organization or educational activities is the elimination of programs due to reductions in state or federal funding, such as reduction in ESEA Title I funding.

Section 1124 requires that such curtailment or alteration must be recommended by the superintendent, concurred in by the board of school directors, and approved by the Department of Public Instruction. (The PDE) To that end, the PDE has issued a Basic Education Circular (BEC) on this subject: "Alteration and/or Curtailment of Programs," outlining the criteria to be utilized by the PDE when reviewing such requests.

Specifically, the PDE states that In order to establish that the curtailment or alteration is the result of a substantial decline in class/course enrollments, the school district must submit enrollment data, certified by the district superintendent, which demonstrates either that enrollment in the class or course has decreased at least 20% from the school year five years earlier, or that enrollment for the class or course is less than ten students.

The PDE sets forth that in order to establish that a curtailment or alteration is necessary to conform with standards of organization, a school district must provide information that the requested alteration or curtailment will effect a change in the school district's organization or curriculum that results in a more effective educational program. This information is probably more difficult to provide and quite subjective in nature. The statistical proof in this case is of utmost importance and most likely will be scrutinized very closely by PDE. Note that bald

assertions are not sufficient. Instead, it is suggested that adequate supporting data be provided in order to gain PDE's approval.

Finally, according to the PDE, if a school district wishes to curtail or alter an educational program to conform with recommendations by PDE or as required by law, the district must identify the specific PDE recommendation or law that serves as the basis for the curtailment or alteration. This would seem to be the easiest burden of proof for a school district. However, the school district should be sure to analyze whether the curtailment or alteration actually will succeed in allowing the district to conform to the PDE recommendation or law cited by the school district. It should be noted that the PDE BEC states, "...certification that the district will remain in compliance with minimum curriculum requirements is not adequate proof that curtailment or alteration is necessary to conform with educational activities required by law." This means that the school district must affirmatively state an appropriate basis for its curtailment or alteration of the program as expressed above, rather than merely state that the change will not impact the minimum compliance standards.

Finally, in addition to the School Code and the criteria established by the PDE, school districts also should review their board policies and professional employee collective bargaining agreements, for any provisions related to reductions in force. While the School Code may give a school district the right to suspend professional employees, a board policy or a collective bargaining agreement may significantly narrow the circumstances under which this can be accomplished. Additional provisions may include notification requirements to the Association or employees and limits on the number of professional employees that may be suspended based upon enrollment projections.

In conclusion, while budget problems or constraints sometimes make reductions in force and cuts in school programming necessary, when school boards look towards the curtailment and/or alteration of education programs as a means of reducing staff and saving money, it is important to be cautious and follow the law. Such changes are subject to a very narrow set of circumstances and criteria established by the School Code and the rules established by the PDE.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.