[J-4-2026] [MO: Wecht, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

NEAL FOLLMAN,	:	No. 7 EAP 2025
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court entered on
	:	July 17, 2024, at Docket No. 1323
v.	:	CD 2023, reversing the Order of
	:	the Commonwealth of
	:	Pennsylvania's Secretary of
SCHOOL DISTRICT OF PHILADELPHIA	:	Education entered on October 20,
(DEPARTMENT OF EDUCATION),	:	2023, at Teacher Tenure Appeal
	:	Docket No. 04-22.
Appellant	:	
	:	ARGUED: March 10, 2026

CONCURRING OPINION

JUSTICE McCAFFERY **DECIDED: November 17, 2026**

I agree with the Majority that the unambiguous language of the Public School Code of 1949 (School Code)[1] requires the presence of the board of school directors at a tenured professional employee's termination hearing. However, I write separately because I believe the Majority's holding stops short of providing clear guidance to the school districts that conduct these types of hearings. The Majority expressly declines to specify how many school board directors must attend a tenured professional employee's termination hearing, holding instead that "at least some of the school districts' elected school board directors" must attend in order to comply with the School Code's mandates. Majority Opinion at 15. Because I believe the plain language of the School Code requires the presence of the **full** board of school directors, I concur.

[1] Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §§ 1-101 to 27-2702.

Section 1127 of the School Code provides that "[b]efore any professional employe having attained a status of permanent tenure is dismissed by the board of school directors, **such board of school directors** … **shall conduct a hearing**." 24 P.S. § 11-1127 (emphasis added). Section 1128 also grants the "power to administer oaths to … witnesses" at a termination hearing to "any member of the board of school directors." 24 P.S. § 11-1128. Further, Section 1129 provides that **"[a]fter fully hearing the charges or complaints and hearing all witnesses**[,]" "the board of school directors shall by **a two-thirds vote of all the members thereof**[] … determine whether such charges or complaints" supporting the employee's proposed termination "have been sustained." 24 P.S. § 11-1129 (emphases added). Nothing in the language of these provisions suggests that anything less than the full school board must participate in the hearing and vote on the employee's proposed termination. *See* 1 Pa.C.S. § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.").

In my view, because the statute requires "a two-thirds vote of **all** the members" of the board of school directors after they "**fully hear**[] **the charges or complaints**" against a tenured professional employee and the testimony of "all witnesses," the logical interpretation is that **all** members of the school board must be present to fully hear the charges and evidence presented at such hearings. 24 P.S. § 11-1129 (emphases added). Indeed, the Majority concludes that giving the words of the statute "their literal meaning, 'the board of school directors' unambiguously refers to a governing body that is comprised of nine individual school board members" and holds "'the board of school directors' refers to the body of nine elected school directors." Majority Opinion at 6. Yet, inexplicably, the Majority goes on to state that "[t]he statutory right to a hearing 'before the board of school directors,' if given its literal meaning, [] contemplates a hearing before

some number of the constituent school board directors." *Id.* (emphasis added). These statements are not only contradictory, but I believe they will cause uncertainty and confusion for school districts moving forward.

I am also unpersuaded by prior case law indicating that fewer than all board members need be present at a tenured professional employee's termination hearing. In *Belasco v. Board of Public Education*, 510 A.2d 337, 342 (Pa. 1986), our Court, citing Commonwealth Court case law, stated: "[I]t has been held that a lawful and proper hearing may be conducted without all members of the [school b]oard present to hear the evidence." In reliance on that language, we also stated that "[b]oard members who do not attend the hearing and hear and observe the witnesses may nonetheless participate in the fact[-]finding and decision[-]making process by reviewing the hearing transcript." *Id.* at 342-343. However, these statements are clearly dicta. The question before us in *Belasco* involved the proper scope of the Secretary of Education's review of the school board's disciplinary action.[2] *Belasco* did not involve the number of school board members who must attend a tenured professional employee's termination hearing in order to comply with the School Code.

Furthermore, with regard to Commonwealth Court case law holding that fewer than all school board members may attend such hearings, I believe those cases misapplied the plain language of the School Code. *See Kaczmarcik v. Carbondale Area Sch. Dist.*, 625 A.2d 126 (Pa. Cmwlth. 1993); *Bd. of Pub. Educ. v. Pyle*, 390 A.2d 904 (Pa. Cmwlth. 1978); *Boehm v. Bd. of Educ.*, 373 A.2d 1372 (Pa. Cmwlth. 1977); *Acitelli v. Westmont*

[2] In *Belasco*, we observed that a school board adjudicating a case involving the dismissal of a professional employee is not an "independent body." *Belasco*, 510 A.2d at 342. That is because "the [school b]oard acts in a dual capacity, both as prosecutor and judge," which "creates a potential for prejudice." *Id.* at 340. Thus, we held the minimum requirements of due process demand that a professional employee have, at some stage of the proceeding, a neutral factfinder in the Secretary of Education. *See id.* at 343.

Hilltop Sch. Dist., 325 A.2d 490 (Pa. Cmwlth. 1974). In each of those cases, the Commonwealth Court held the school board complied with the School Code and due process because (1) a majority or quorum of school board members were present at the hearing and (2) all school board members subsequently voted on the matter after reviewing the complete record. In *Acitelli*, on which the later cases rely, the Commonwealth Court declared: "Neither due process nor the applicable statutes impel those who finally vote on the status of a teacher to have had direct aural reception of all the evidence. Absent evidence to the contrary, the recording of the [b]oard members' votes indicates that they gave full consideration to the testimony presented[,]" regardless of whether they attended the hearing. *Acitelli*, 325 A.2d at 494 (internal citation omitted). However, the Commonwealth Court did not engage in a statutory construction analysis of the School Code's text in *Acitelli* or any of the subsequent cases.

Moreover, the teacher tenure provisions were not even at issue in *Acitelli*, because the teacher in that case was **not** a tenured professional employee. Rather, the teacher in *Acitelli* was a **temporary** professional employee who was "denied the opportunity to gain tenure" status due to an unsatisfactory performance rating. *Acitelli*, 325 A.2d at 492. On appeal, the teacher challenged the school board's refusal to renew his contract under Section 508 of the School Code, which requires "an affirmative vote of a majority of all members of the [b]oard" to dismiss a non-tenured teacher after a hearing. *Id.* at 494; *see* 24 P.S. § 5-508 ("The affirmative vote of a majority of all the members of the board of school directors in every school district, duly recorded, showing how each member voted, shall be required in order to … [d]ismiss[] a teacher after a hearing."). This provision materially differs from Section 1129, which requires "a two-thirds vote of all the members" of the board of school directors in order to dismiss a **tenured** professional employee. 24

P.S. § 11-1129. For these reasons, I believe *Acitelli* and its progeny have no persuasive value in our consideration of the issue before us.

In drafting the School Code, the General Assembly knew how to, and did, specify the number of school board members required to take certain official actions. For example, Section 508 requires "[t]he affirmative vote of a **majority** of all the members of the board of school directors" to dismiss a non-tenured teacher. 24 P.S. § 5-508 (emphasis added). Section 1129 requires the vote of "**two-thirds** [] of all the members" of the board of school directors to dismiss a tenured teacher. 24 P.S. § 11-1129 (emphasis added). Section 1128 grants the power to administer oaths "at any hearing" to "**any member** of the board of school directors." 24 P.S. § 11-1128 (emphasis added). The General Assembly did not include any quantifying language in Section 1127, instead stating in clear terms that the "**board of school directors** … shall conduct a hearing" and "the professional employe[e] will be given an opportunity to be heard … before the **board of school directors**." 24 P.S. § 11-1127 (emphases added). Again, nothing in this language suggests that anything less than the full board of school directors must attend a tenured professional employee's termination hearing.

The purpose of the teacher tenure provisions is to provide "explicit procedural safeguards" to tenured professional employees facing possible termination of their employment. *Vladimirsky v. Sch. Dist. of Phila.,* 144 A.3d 986, 993 (Pa. Cmwlth. 2016) (citations omitted; emphasis removed); *see also Rike v. Sec'y of Educ.*, 494 A.2d 1388, 1391 (Pa. 1985) ("The teacher tenure provisions of the [] School Code were enacted to improve public education by protecting teachers from ouster without cause at the complete and unbridled discretion of school boards."). These procedural protections include written notice of the charges against the employee, an opportunity to present evidence and challenge the school district's evidence at a public hearing, and a vote by

the school board on the employee's termination based on the evidence presented at that hearing. The procedures outlined in the teacher tenure provisions are "mandatory" and require "strict compliance." *Vladimirsky*, 144 A.3d at 994 (citations omitted). Further, because "the procedure for the dismissal of a professional employee of a school district is established by statute[,] [t]here may be no material deviation from these procedural requirements…." *Id.* (citation omitted; emphasis removed); *see Rike*, 494 A.2d at 1391 (explaining the General Assembly intended that the "contracts of tenured teachers could only be terminated after observance of certain prescribed procedural safeguards"). Thus, "where a school board undertakes to terminate a contract, dismiss or demote a professional employe[e], **the procedure set forth in the School Code must be strictly followed**, and failure on the part of the [b]oard to comply therewith renders an attempted demotion [or dismissal] abortive." *Vladimirsky*, 144 A.3d at 994 (emphasis in original; citation omitted). These mandatory requirements are statutorily imposed to protect and preserve both the substantive and procedural due process rights of the tenured professional employee. As such, I believe the unambiguous language of Sections 1127-1129 of the School Code mandates the full school board's attendance at a professional employee's termination hearing.

In responding to the Dissent's position, the Majority declines to specifically address whether a hearing officer may ever be appointed to preside over a professional employee's termination hearing. *See* Majority Opinion at 13-15. While I believe a school board may not delegate to a hearing officer the responsibility for conducting a termination hearing **in the absence of the school board**, I would conclude that a hearing officer may lawfully preside over such a hearing only **where the full school board is present**. Although Sections 1127-1129 of the School Code do not mention hearing officers, only the "board of school directors," Section 507 vests school boards with "all necessary power

and authority to … carry out any or all of the provisions of [the School Code]," which necessarily includes the teacher tenure provisions. 24 P.S. § 5-507. Section 507 does not identify any exceptions to its broad grant of discretionary authority. In addition, Section 406 explicitly grants school boards the authority to appoint "such other appointees, clerks or employes as it may deem proper." 24 P.S. § 4-406. As this Court has recognized, "[t]he legislature has vested wide powers in the [b]oard of school directors," and "[o]ur appellate courts repeatedly have affirmed their exercise of this discretion." *Smith v. Sch. Dist. of Darby Twp.*, 130 A.2d 661, 669 (Pa. 1957) (citation omitted). I believe the unambiguous language of Sections 507 and 406 gives individual school boards the discretion to appoint hearing officers to preside over termination hearings as they deem necessary and proper under the circumstances. Therefore, reading Sections 507 and 406 together with the teacher tenure provisions, I would conclude that a school board may appoint a hearing officer to preside over a tenured professional employee's termination hearing, so long as (1) the employee receives the requisite due process protections outlined in Sections 1127-1129 **and** (2) the full school board is present at the hearing.

Rather than leave school districts to guess how many board members must attend a tenured professional employee's termination hearing, as the Majority does, I would hold that under the School Code, while a school board may, in its discretion, appoint a hearing officer to preside over such a hearing, **all members** of the school board must be present at that hearing in order to comply with the School Code's mandates. Here, because no member of the School District of Philadelphia's Board of Education attended Neal Follman's termination hearing, the Commonwealth Court correctly reversed the Secretary of Education's order discharging Follman and remanded the matter for reinstatement of

Follman's employment with back pay. Accordingly, I concur in the result reached by the Majority.