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

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

**DISSENTING OPINION**

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

In the instant matter, the School District of Philadelphia's (District) Board of Education (Board) dismissed Neal Follman (Follman), a tenured teacher, from his employment following a hearing that a Board-appointed hearing officer conducted without any of the Board members present. Today, the Majority holds that the hearing violated the Public School Code of 1949 (School Code)[1] because that statutory framework requires the presence of "at least some of the" Board members at the hearing. (Majority Op. at 15.) For the reasons that follow, I respectfully disagree.

As the issues presented require the Court to interpret various provisions of the School Code, the Statutory Construction Act of 1972 (Statutory Construction Act), 1 Pa. C.S. §§ 1501-1991, guides the analysis. The Statutory Construction Act "provides that

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

the object of all statutory interpretation 'is to ascertain and effectuate the intention of the General Assembly.'" *Interstate Gas Supply, Inc. v. Pub. Util. Comm'n*, 343 A.3d 1152, 1158 (Pa. 2025) (quoting 1 Pa. C.S. § 1921(a)). "The statute's plain language is the best indication of the legislature's intent, and to determine the statute's plain meaning, we consider its operative language in context and interpret words and phrases according to their common and approved usage." *Brown v. Gaydos*, 351 A.3d 669, 679 (Pa. 2026). "Where the language of a statute is 'not explicit,' a court may consider other factors, presumptions, and canons of construction in order to ascertain the General Assembly's intent." *Commonwealth v. Hardy*, 337 A.3d 385, 404 (Pa. 2025) (quoting 1 Pa. C.S. § 1921(c)).

The School Code contains "a comprehensive statutory procedure for the termination of a professional employee," including a teacher, that has obtained tenure.[2] *Jackson v. Centennial Sch. Dist.*, 501 A.2d 218, 219 (Pa. 1985). Most relevant here, Section 1127 provides that, prior to termination, a "board of school directors . . . shall conduct a hearing" at which the tenured professional employee "will be given an opportunity to be heard either in person or by counsel, or both, before the board of school directors." 24 P.S. § 11-1127. Section 1129 of the School Code also pertinently requires that,

> [a]fter fully hearing the charges or complaints and hearing all witnesses produced by the board and the person against whom the charges are pending, and after full, impartial and unbiased consideration thereof, the board of school directors shall by a two-thirds vote of all the members thereof, to be recorded by roll call, determine whether such charges or complaints have been sustained and whether the evidence substantiates such charges and complaints, and if so determined shall discharge such professional employe. If less than two-thirds of all of the members of the

[2] Section 1101 of the School Code defines "professional employe" to "include those who are certificated as teachers." 24 P.S. § 11-1101(1).

> board vote in favor of discharge, the professional employe shall be retained and the complaint shall be dismissed.

24 P.S. § 11-1129.

Preliminarily, I agree with the Majority that the terms "board" and "board of school directors," as used in the statutory provisions above, unambiguously refer to the governing body that is comprised of individual members and is tasked with overseeing a particular school district. (Majority Op. at 6.) Whereas the Majority focuses its analysis on those terms, however, I believe that the statutes at issue contain additional words that bear on the questions presented, namely, the words "conduct," "hearing," "heard," and "before."

Insofar as Section 1127 of the School Code requires the Board to "conduct" a "hearing," common definitions of the term "conduct" include "to have the direction of: run, manage, direct" and "to direct as leader the performance or execution of." *Conduct*, Webster's Third New International Dictionary 474 (1993) (capitalization omitted). Definitions of the term "hearing," used as a noun in Section 1127, include an "opportunity to be heard or to present one's side of a case" or "a session . . . in which witnesses are heard and testimony is taken." *Hearing*, Webster's Third New International Dictionary 1044 (1993); *see also Hearing*, Black's Law Dictionary 861 (12th ed. 2024) (defining "hearing" to include, *inter alia*, "[a] formal, scheduled setting in which an affected person presents arguments to a decision-maker"). Additionally, while Sections 1127 and 1129 further require that a tenured teacher be given an opportunity to be "heard . . . before" the board and that the board "hear" the charges and witnesses presented, the term "hear" can mean "to give a legal hearing to" and "to take testimony from." *Hear*, Webster's Third New International Dictionary 1044 (1993). Moreover, definitions of "before" include "to be judged or acted on by" and "under the official or formal consideration of." *Before*, Webster's Third New International Dictionary 197 (1993).

In my view, none of the above-defined terms require that members of a school board personally attend a termination hearing afforded to a tenured teacher prior to dismissal.[3] Nor do they prohibit a school board's appointment of a hearing officer to assist in carrying out the statutory dismissal procedure by presiding over the hearing and creating a record for the school board's review prior to the board's vote on dismissal. Stated another way, by appointing a hearing officer to preside over the termination hearing and to create a record for the school board's review, a school board "conducts," or "directs the performance of," the hearing, or "opportunity" for the tenured teacher "to be heard" or "present his or her side of the case." The termination hearing is still "before" the school board, or "under the school board's formal consideration," and the school board fully "hears," or "gives a legal hearing" with respect to the charges and witnesses involved. In short, an evidentiary hearing before a school board-appointed hearing officer learned in the law, followed by the school board's cold-record review of evidence and argument and then a decision rendered by the school board upon that review, satisfies the statutory requirements of the School Code.[4]

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[3] Section 1128 of the School Code, which is also implicated in this case, pertinently provides that "[a]ll testimony at any hearing shall be taken under oath, and any member of the board of school directors shall have power to administer oaths to such witnesses." 24 P.S. § 11-1128. This provision authorizes a school board member to administer oaths at termination hearings. It does not require school board members to administer oaths or preclude other individuals from doing so at termination hearings.

[4] In a sharply worded footnote, the Majority criticizes my use of the phrase "learned in the law" when referring to a hearing officer appointed by a school board as a "proposed restriction" that "appears nowhere in the School Code." (Majority Op. at 15 n.43.) The Majority goes on to claim that I "find[] it necessary to decree education and training requirements for hearing officers." (*Id.*) This criticism is unfounded. Indeed, I agree with the Majority that the School Code contains no requirement to appoint a hearing officer "learned in the law," much less a requirement to appoint a hearing officer at all, and my view likewise does no such thing. To my mind, the School Code *permits* the appointment of a hearing officer learned in the law, which is exactly what happened in this case. The Board appointed Attorney Rudolph Garcia—a former Chancellor of the Philadelphia Bar Association with decades of experience in alternative dispute resolution proceedings, (continued…)

Of further note, this Court has previously stated that the General Assembly "has vested wide powers in the [b]oard of school directors," that "[s]chool authorities must be given broad discretionary powers to ensure a better education for the children of this Commonwealth," and that "any restrictions on the exercise of these powers must be strictly construed on the basis that the public interest predominates and private interests are subordinate thereto." *Smith v. Sch. Dist. of Darby Twp.*, 130 A.2d 661, 668-69 (Pa. 1957); *see also Sch. Dist. of Phila. v. Twer*, 447 A.2d 222, 226-27 (Pa. 1982) (finding it "clear that the legislature, in protecting the security of the professional employees, did not intend to create restrictions upon the [school b]oard's discretion that would render it incapable of discharging its responsibility to administer an efficient system"). These broad powers include "all necessary power and authority to comply with and carry out any or all of the provisions of" the School Code, 24 P.S. § 5-507, including the authority to "appoint . . . employes as [the board of school directors] may deem proper." 24 P.S. § 4-406. *See also Burger v. Bd. of Sch. Dirs. of McGuffey Sch. Dist.*, 839 A.2d 1055, 1061-62 (Pa. 2003) (explaining that Section 211 of "the School Code vests school districts in this Commonwealth with 'all necessary powers to enable them to carry out the [School Code's] provisions'" and that, "[w]hile school districts are created by statute and, as such, have no power except that which is conferred by statutory grant and necessary implication, Section 211 of the School Code reflects the General Assembly's explicit and open-ended confirmation of implied powers in furtherance of school districts' essential functions" (internal citations omitted) (quoting 24 P.S. § 2-211)). The foregoing further

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including as a neutral hearing officer. *See* Rudolph Garcia, *Experience*, https://www.rudolphgarcia.com/experience.html (last visited Oct. 29, 2026); Rudolph Garcia, *Services*, https://www.rudolphgarcia.com/services.html (last visited Oct. 29, 2026). I suppose a school board could appoint as a hearing officer someone entirely inexperienced and ill-equipped to conduct a termination hearing. That would, however, be unwise, particularly if the school board wishes to avoid the issues that would invariably arise from a proceeding presided over by such an inexperienced person.

bolsters my interpretation of Sections 1127 and 1129 of the School Code as permitting the school board's appointment of a hearing officer learned in the law to preside over a teacher's termination hearing outside the presence of individual board members.

Moreover, it is a common practice for agencies to utilize hearing officers for the purpose of taking evidence and making a recommendation to the agency as a decision-making body. *See, e.g.*, *Pellizzeri v. Bureau of Pro. & Occupational Affs.*, 856 A.2d 297, 301 (Pa. Cmwlth. 2004) (observing that "[a]dministrative agencies often use a system of adjudication where a hearing examiner or presiding officer takes evidence and the ultimate fact finder is a board or commission, which has the power to make findings of fact based solely on a review of the record. Having a case adjudicated by a person who did not hear the testimony does not deny a litigant due process of law." (internal citation omitted)). Indeed, "due process is a flexible concept and, thus, requires procedural protections as each particular situation demands." *Burger*, 839 A.2d at 1062. In this vein, while noting the rule that "[t]he one who decides must hear," this Court has further explained that the rule

> does not preclude practicable administrative procedure in obtaining the aid of assistants in the department. Assistants may prosecute inquiries. Evidence may be taken by an examiner. Evidence thus taken may be sifted and analyzed by competent subordinates. Argument may be oral or written. The requirements are not technical. But there must be a hearing in a substantial sense. And to give the substance of a hearing which is for the purpose of making determinations upon evidence, the officer who makes the determinations must consider and appraise the evidence which justifies them.

*Foley Bros., Inc. v. Dep't of Highways*, 163 A.2d 80, 85 (Pa. 1960) (quoting *Morgan v. United States*, 298 U.S. 468, 481-82 (1936)); *see also id.* at 84 (explaining that arbitration board's power "'to hear and determine' after giving 'consideration' to the evidence presented" did not "require[] physical aural reception of every word spoken"); *Acitelli v. Westmont Hilltop Sch. Dist.*, 325 A.2d 490, 494 (Pa. Cmwlth. 1974) (relying on *Foley* to

conclude that, in case involving temporary professional employee under School Code, "[n]either 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" and that, "[a]bsent evidence to the contrary, the recording of the [school b]oard members' votes indicates that they gave full consideration to the testimony presented").[5]

Again, contrary to my conclusion, the Majority holds that the School Code provisions at issue require "at least some" members of a school board to be physically present during a tenured teacher's termination hearing. (Majority Op. at 15.) The Majority declines to address the issue of just how many members must be in attendance on the basis that the question is not presently before the Court. While I appreciate the reasoning behind the approach, this state of affairs will almost certainly result in future litigation concerning challenges to the number of school board members that must be present at termination hearings, as well as credibility disputes between school board members who hear live testimony and those who review the cold record—issues that my interpretation of the School Code avoids.[6]

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[5] It is also worth noting that tenured professional employes are entitled to *de novo* review of their termination by Pennsylvania's Secretary of Education. 24 P.S. § 11-1131; *Belasco v. Bd. of Pub. Educ. of Sch. Dist. of Pittsburgh*, 510 A.2d 337, 342-43 (Pa. 1986).

[6] The Majority disagrees with my "elastic understanding" of the School Code provisions at issue given that, *inter alia*, the General Assembly knows how "to state explicitly when it intended to permit authorized agents to take official action on behalf of the board." (Majority Op. at 14-15.) Just as well, the General Assembly also knows how to be explicit in requiring specific school board members, or a specific number of school board members, to act in performing functions under the School Code. *See, e.g.*, 24 P.S. § 11-1127 (providing that "[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"); 24 P.S. § 11-1129 (requiring "two-thirds vote of all the members" of school board for discharge determination). If the General Assembly intended to require "at least some" members of a school board to attend a termination hearing personally, it could have said so. (Majority Op. at 15.)

Based on the foregoing, I would hold that the Board conducted Follman's termination hearing in conformity with the School Code. Accordingly, I would reverse the Commonwealth Court's order and remand the matter for resolution of the remaining issues that Follman raised before that court.