

# The Pennsylvania Supreme Court Expands Application of Transfer Between Entities Act

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Central Westmoreland Career and Technology Center Education Association v. Penn-Trafford School District (Pa. Supreme Court, decided February 16, 2016). The Pennsylvania Supreme Court held that paragraph (b.1) of the Transfer between Entities Act, 24 P.S. §11-1113, required the Penn-Trafford School District to fill a vacant math teaching position from a pool of suspended CWCTC math teachers, even though there had been no transfer of programs or classes, because Penn-Trafford had assumed “program responsibility” for students who had previously received math instruction at CWCTC.

## SUMMARY AND FACTUAL BACKGROUND

The Central Westmoreland Career and Technology Center (“CWCTC”) provides career and technical training to high school students from numerous sending districts in Westmoreland County including the Penn-Trafford School District. For a number of years, CWCTC taught math to students enrolled in career and technical programs at the school. In early 2010, eight member districts of the CWCTC jointure, including Penn-Trafford, advised CWCTC that they would no longer be sending their technical students to CWCTC for math instruction and instead would be providing math instruction to their vocational students at their home schools. Due to this change by the eight member districts, CWCTC curtailed its math offerings and suspended five math teachers.

Initially, CWCTC took the position that Section 1113 of the School Code, known as the Transfer between Entities Act (the “Act”), was not implicated because no transfer of programs or classes had occurred. However, in response to a grievance filed by the CWCTC Education Association (the “Association”), CWCTC subsequently created a pool of suspended employees pursuant to paragraph (b.1) of the Act. The pool was comprised of the five suspended math teachers.

The existing math classes at Penn-Trafford had enough capacity to accommodate the vocational students and therefore no new math classes were added for the 2010-2011 school year. In March 2010, one of Penn-Trafford’s high school math teachers resigned. A substitute teacher who was not in the CWCTC pool of suspended employees was hired to fill the vacancy. He subsequently stayed on for the 2010-2011 school year. The Association and the suspended employees informed Penn-Trafford that it was their position that the district was obligated to fill the math vacancy with one of the suspended teachers in the pool. The district responded that there had been no transfer of a program or classes so as to implicate the Act. The Association disagreed and further asserted that, even absent a program transfer, the district was still required to offer the math position to properly certificated employees in the pool pursuant to sub-paragraph (b.1)(2) of the Act since the district had assumed “program responsibility” for the transferred math students.

The Association and the suspended teachers filed suit in the Westmoreland County Court of Common Pleas seeking a declaratory judgment interpreting the Act to require Penn-Trafford to fill the vacant math position from the CWCTC pool, as well as for lost wages and benefits. The Common Pleas Court granted Penn-Trafford’s motion for summary judgment, agreeing with its argument that no transfer occurred since no classes were “dismantled” at CWCTC and “reconstituted” at Penn-Trafford. A three judge panel of the Commonwealth Court affirmed, noting that the obligation to hire from the employee pool is limited to schools that receive transferred programs of some sort and that the term “transfer” means to carry or take from one person or place to another. The Association and teachers appealed to the Pennsylvania Supreme Court.

## DISCUSSION

Resolution of the appeal required the Supreme Court to determine the meaning of paragraph (b.1) of the Act. The contested issue was whether the transfer between entities of students, as opposed to the transfer of programs or classes, is sufficient to invoke the employment priorities afforded by paragraph (b.1) of the Act. The Court focused on the second sentence of paragraph (b.1) which provides that no new professional employee who is classified as a teacher may be employed by a school entity “assuming program responsibility for transferred students” while there are teachers who are properly certificated for available positions in the pool. The Court ruled that by taking action to discontinue the practice of sending their technical students to CWCTC for math instruction, Penn-Trafford had “assumed program responsibility for transferred students” and was therefore obligated to fill its vacant math position with one of the suspended CWCTC math teachers in the pool.

The Court’s finding that Penn-Trafford had assumed program responsibility for transferred math students apparently was based on the action taken by Penn-Trafford to discontinue the practice of sending its technical students to CWCTC for instruction in math. It is not clear if the same result would have occurred if the teachers had been suspended as a result of fewer students choosing to take math classes at CWCTC and instead electing to receive math instruction at their home district rather than as a result of an action by their home district to stop sending students to CWCTC for math instruction. However, the Central Westmoreland opinion confirms that it is not necessary that the teacher be suspended as a result of any transfer of a program, classes or even program responsibility for students in order to be placed in the pool. Rather, the Court recognized that “entrance into a pool of teachers can be predicated on the mere receipt of a formal notice of suspension.”

## PRACTICAL ADVICE

Before filling any vacant teaching positions, school districts should be sure to check with their Intermediate Unit and Career and Technology Center to determine if they have suspended teachers that hold certificates for available positions in the district. The district should then analyze whether it is obligated to offer any available position to properly certificated employees in the pool. Failure to do so could result in a court order directing that district to hire a teacher from the pool for a position that has already been filled.

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