

LEGISLATIVE BUDGET AND FINANCE COMMITTEE

A JOINT COMMITTEE OF THE PENNSYLVANIA GENERAL ASSEMBLY

A Study Pursuant to Act 55 of 2017: School District Furlough Procedures

December 2022



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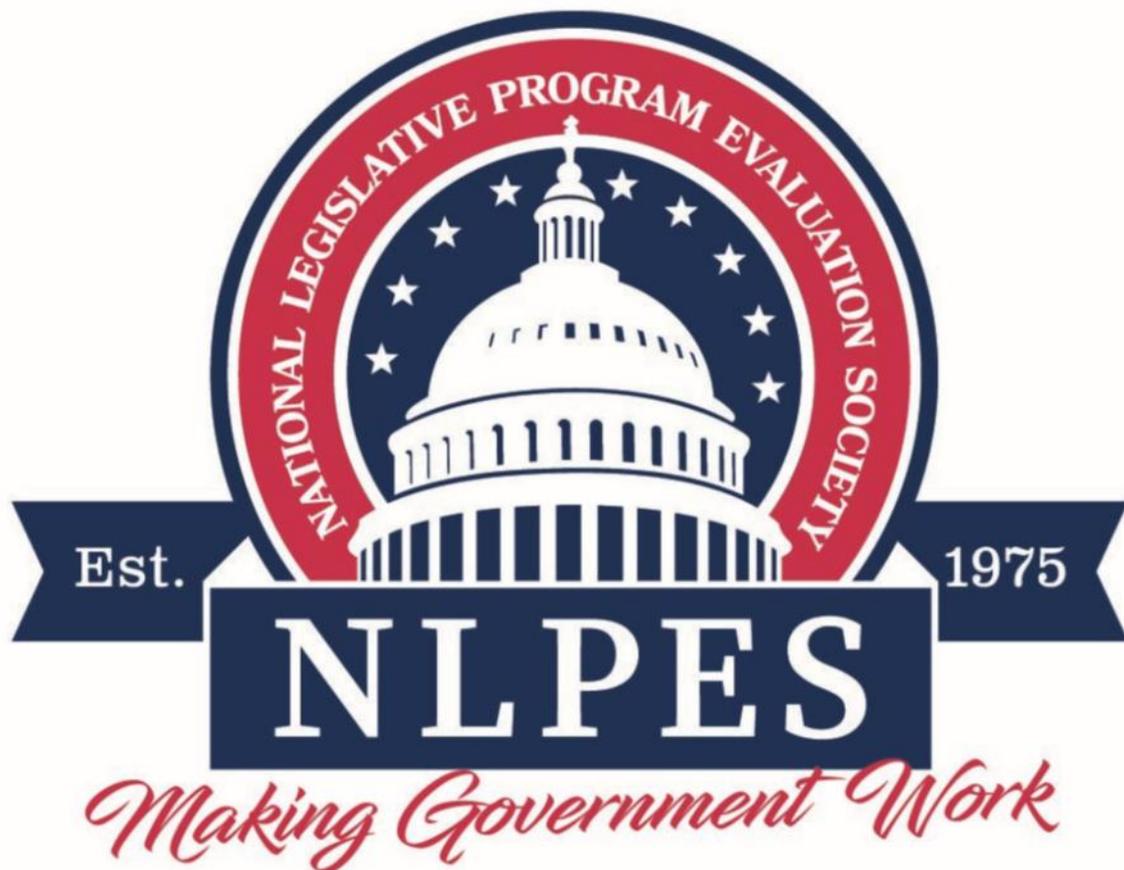
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For the seventh straight year the National Legislative Performance Evaluation Society (NLPEs) awarded the Legislative Budget and Finance Committee with a Certificate of Impact. The Certificate of Impact is presented to legislative offices that produce evaluations or audit reports that resulted in documented public policy changes, program improvements, dollar savings or other public impacts.

Introduction and Overview

Why we conducted this study...

As part of Act 2017-55, the Legislative Budget and Finance Committee is required to conduct a study following the 2021-2022 school year of the effectiveness of newly added provisions to the Public School Code concerning professional staff furloughs.

Act 55 of 2017 (Act) requires the Legislative Budget and Finance Committee (LBFC) to conduct a study of the “effectiveness” of certain provisions that were added to the Public School Code (Code) pertaining to professional staff suspensions. A key amendment to the Code was to include “economic reasons” as a basis for “suspending” professional staff. Although the term suspension is used in the Act, we interpret the language of the Act to refer to the process of furloughing or laying off teachers/administrators when a school district can no longer support paying the staff. Our report focus is solely on these operational-based furloughs, as opposed to suspensions/furloughs for disciplinary reasons.¹

Before the Act, “economic reasons” was not an enumerated basis by which a school district could eliminate staff, although other related factors, such as pupil enrollment decreases, were justified reasons. Additionally, as part of the Act, new procedures were added for how to determine which professional staff were to be furloughed. These procedures created furlough categories based on evaluations, certification, and seniority. Similar procedures were used for recalling staff.

As part of the Act, the LBFC is to conduct a study following the 2021-2022 school year of the effectiveness of the above added provisions, and specifically how the provisions have been used “effectively” by school districts to improve school efficiency. Because this requirement is broadly written, and further because access to measurable data is at issue, this study has a limited focus and is designed to provide summary information about Pennsylvania’s professional staff furlough requirements.

Methodology and Limitations

The requirement for this study is found in Section 1124 of the state’s Public School Code, 24 P.S. §11-1124, as amended by the Act, which states the following:

The Legislative Budget and Finance Committee shall conduct a study of the effectiveness of the provisions of subsections (a)(5), (c) and (d) and section 1125.1, including whether these provisions of law are being used ef-

¹ Whenever possible we use the term furlough instead of suspension so as not to confuse with disciplinary suspensions or dismissals.

fectively by school districts to improve school district efficiency and the impact of these provisions on programs offered to students, as well as the impact on programs that would have been offered to students if these provisions had not been enacted, if such information is available, and shall deliver a written report of its findings to the Governor, the chairperson and minority chairperson of the Education Committee of the Senate and the chairperson and minority chairperson of the Education Committee of the House of Representatives by December 31, 2022.

The language authorizing this study is broadly written and does not explicitly define how effectiveness, efficiency or impact on programs are to be measured. We sought data on school staff furloughs from the Pennsylvania Department of Education (PDE) and were informed that this data is not tracked, and thus is unavailable. According to PDE representatives, few school districts have furloughed staff, as there is a much greater need for retaining and attracting new talent as teachers.

We also consulted with two public education stakeholder groups: the Pennsylvania School Boards Association (PSBA), the primary association representing school boards and school directors; and the Pennsylvania State Education Association (PSEA), which represents teachers and other professionals in public education. Unfortunately, these organizations also do not explicitly track school district furloughs. Both organizations indicated that while there have been isolated cases of furloughs, it is generally an unpopular action to take by a school district.

Beyond the definitional and data limitation issues, another important limitation in completing this report was Act 13 of 2020, which changed the teacher evaluation criteria. As discussed later, teacher evaluations are the primary means by which the process for furloughing professional staff is directed. As a result, furlough comparisons that occurred prior to Act 13 of 2020 were based on different evaluation criteria for professional staff.

Because there is no single source of data available on school district furloughs, it was necessary for us to seek baseline information through a survey of all 500 Pennsylvania school districts. There are limitations in this approach. For example, not every district responded to our survey; thus, we do not have furlough information from all districts. Further, question interpretation error is present in those who do respond. We attempted to control for these factors by partnering with PDE and using their distribution lists. PDE also independently encouraged districts to respond to our survey.

The scope of our report covers school district furloughs that may have occurred between the period November 6, 2017, which was the effective

date of the Act, and June 30, 2022, which is the end of the 2021-2022 school year.

Finally, this report was developed by the staff of the Legislative Budget and Finance Committee. We thank the staff from the Pennsylvania Department of Education for its assistance in distributing our survey, and the Pennsylvania School Boards Association, and the Pennsylvania State Education Association for their collective input on the report.

The release of this report should not be construed as an indication that the Committee as a whole, or its individual members, necessarily concur with the report's findings, conclusions, or recommendations. Any questions or comments regarding the contents of this report should be directed to the following:

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Reasons for Furloughing Professional Staff

With respect to furloughs, the Act primarily addresses professional staff, which are defined within Section 1101 of the Public School Code (PSC) as:

- Certificated Teachers,
- Supervisors,
- Supervising Principals,
- Principals,
- Assistant Principals,
- Vice-Principals,
- Directors of Career and Technical Education,
- Dental Hygienists,
- Visiting Teachers,
- Home and School Visitors,
- School Counselors,
- Child Nutrition Program Specialists,
- School Librarians,
- School Secretaries (as determined by merit), and
- School Nurses.

Prior to the Act, there were only four reasons for which a school board could furlough professional employees. These four specific reasons were enumerated in Section 1124 of the PSC as follows:

1. Substantial decrease in pupil enrollment in the school district.
2. Curtailment or alteration of the educational program on recommendation of the superintendent and on concurrence by the board of school directors, 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 Education.
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 employees.
4. When new school districts are established as the result of reorganization of school districts pursuant to....this act, and when such reorganization makes it unnecessary to retain the full staff of professional employees.

With the passage of the Act, a fifth reason was added, which stated simply:

5. Economic reasons that require a reduction in professional employees.

From an historical perspective, most furloughs of professional employees are based on the first of these reasons, a substantial decrease in pupil enrollment.² The definition of “substantial” can be subjective, but research conducted by the Pennsylvania Principals’ Association identified nine cases where the courts determined varying amounts of enrollment as meeting the standard. These cases ranged from as few as 30 students in one department within the school district to as many as 508 students over 10 years.

Economic Reasons as a Basis for Furloughs Requires Additional Steps by a School Board

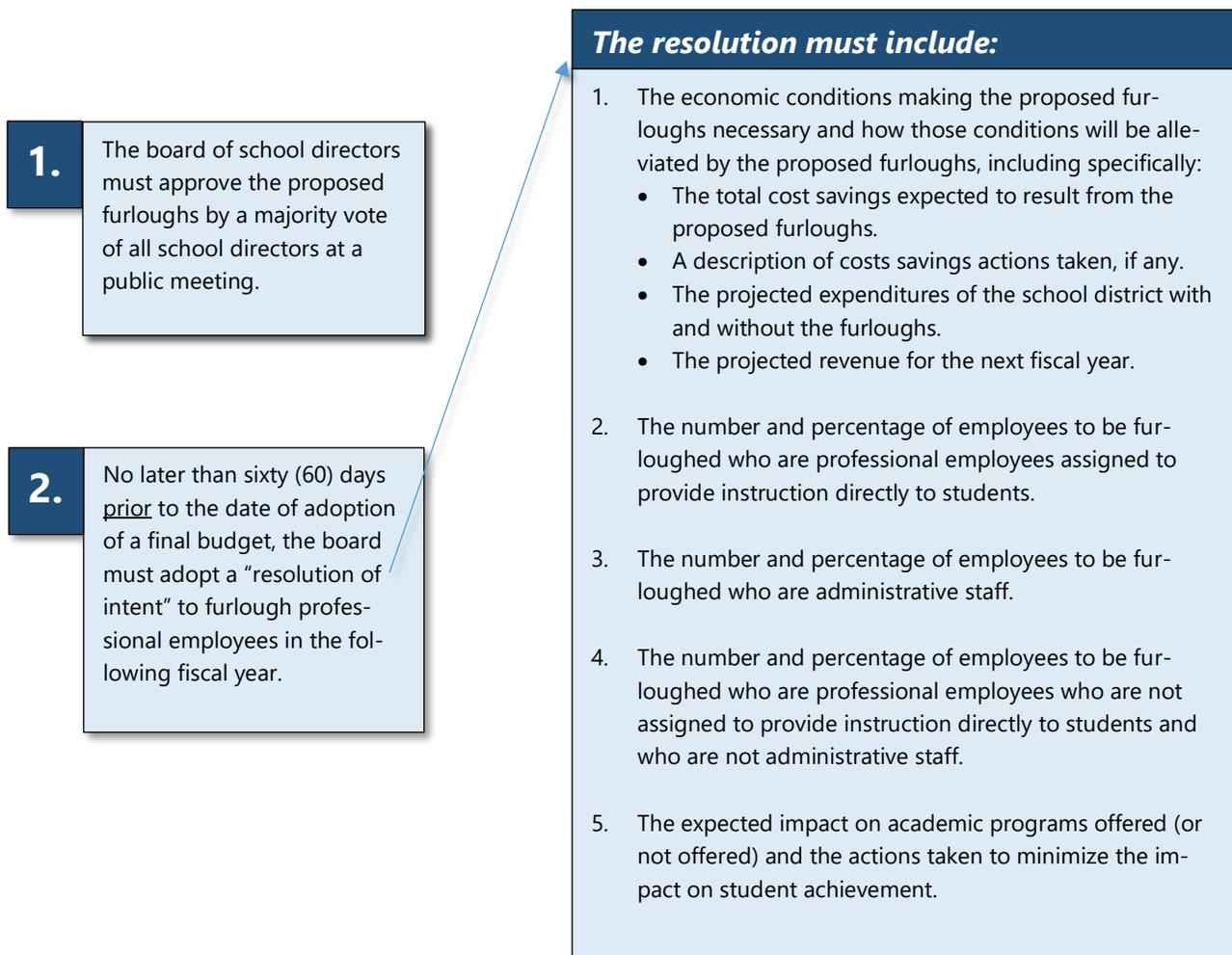
With the recent changes to the PSC, an area of concern is that there is no clear definition for what constitutes “economic reasons.” Ostensibly, economic reasons might include factors related to decreased tax revenue and/or required increases in expenditures by a school district. However, the definition could also be construed to mean larger macroeconomic declines to the state and or/local economy.

² Michael Levin Esq., “Furloughing Professional Employees, Legal Corner, Pennsylvania Principals’ Association, May 2006.

To this point, if a school board does cite economic reasons for furloughing staff, it then begins an array of additional procedures and steps that must be taken by the board. These steps begin with a public vote to approve the furloughs (by a majority), but also require additional information that must be contained within an adopted resolution of intent. This process is outlined in Exhibit 1 .

Exhibit 1

Furloughing Professional Staff for Economic Reasons



Source: Developed by LBFC staff from Act 55 of 2017.

As shown above, the process for furloughing professional staff for economic reasons is not as straight-forward as it may seem. For example, a significant amount of information must be collected and presented as to

how the furloughs were mitigated and what the expected consequences may be to students. Additionally, it is important to note that the resolution does not mean that actual furloughs will occur only that the board *intends* to start the process of furloughing. We were informed that many districts ultimately do not furlough professional staff as other actions to reduce costs are explored, which is a significant distinction.

Some Administrative Staff Furloughs Can be Exempted

As shown in Exhibit 1, the resolution of intent also requires specific emphasis on administrative staff. Interestingly, under the amendments to the PSC made by Act 55, boards must furlough at least an equal percentage of administrative staff as professional staff. However, the Act also provides a workaround to this requirement.

For example, a school board can apply for a waiver to the Secretary of Education stating that its school district's operations are already sufficiently streamlined and that further furloughs of administrative staff "would cause harm to school stability and student programs." The Secretary of Education can then send the determination to the State Board of Education and if the State Board approves the determination by a majority of its members, "any five administrative staff positions selected by the board of school directors, one of whom shall be the business manager of the school district or another staff member with the primary responsibility of managing the business operations of the school district, shall be exempt ..." from the equal furlough provision.³

Act 55 Professional Staff Furlough Process

If a school board makes the decision to furlough professional staff, whether it be for economic reasons or one of the previous four enumerated reasons, Act 55 of 2017 introduced new procedures which the furlough process (and any subsequent reinstatement) must follow.

Importantly, because these new procedures are now codified in the Public School Code, any collective bargaining agreements which previously addressed furloughs would have been "grandfathered;" however, once those agreements expired and a new contract was signed, then the new furlough procedures take effect immediately.

³ See 24 P.S. §11-1124(c)(3).

A key distinction brought about by Act 55 is that compensation alone may not be used as a means of determining which employees are to be furloughed. The importance of this aspect is underscored by 24 P.S. §11-1124(a.1)(2), which states that any administrator that knowingly approves a furlough based on an employee's compensation will have a letter placed in his/her file by the Secretary of Education indicating the violation.

Under the new provisions, professional employees must be furloughed based on their two most recent performance evaluations. However, this requirement brings forth another important discussion in that Pennsylvania recently revised its Educator Effectiveness System through passage of Act 13 of 2020. Before discussing the significance of this change, a brief overview of the system at the time of Act 55's passage is necessary.

Professional Staff Evaluations - Act 82/Act 13

At the time of Act 55's passage, professional staff were evaluated under a system known informally as "Act 82 performance ratings," which ultimately resulted in two types of ratings, summative and overall. Summative ratings included one of four outcomes:

1. Distinguished,
2. Proficient,
3. Needs Improvement, and
4. Failing.

These ratings were used to determine an "overall rating," which was either "satisfactory" or "unsatisfactory." Staff were considered satisfactory if they attained a rating that was either distinguished, proficient, or had one (1) needs improvement within 10 years, within the same certification and with the same employer. By extension, staff were to be rated "unsatisfactory," if they attained a failing rating or had multiple needs improvements within the 10 year lookback period. This rating system remained in place until Act 13 of 2020 and the 2021-2022 school year.

Beginning with the 2021-2022 school year, Act 13 of 2020 made significant changes to the methodology used in evaluating staff.⁴ Criteria used in the evaluation was less heavily weighted on the impact of standardized tests, recognized the impact of poverty on student performance, and encouraged greater collaboration to improve instructional practice.⁵ Additionally, the look back period of 10 years under the Act 82 rating system was changed to four (4) years. As a result, so long as a staff member did

⁴ Under Act 13 of 2020, Article XI, (c) "Tenure," section 1123 (Rating System) of the PSC expired on June 30, 2021. The new rating system is created under Article XI by adding a sub article c.1, "Revised Rating System," sections 1138.1 – 1138.16. See, 24 P.S. §§11-1138.1-11-1138.16.

⁵ PSEA, Professional Learning Exchange, *Pennsylvania Educator Effectiveness System*, April 2021.

not receive a needs improvement within four years of each summative rating, their overall rating would remain satisfactory.

Most significant to this report, although the furlough process remained the same for districts, Act 13 of 2020 changed the methodology for determining summative and overall ratings. As a result, comparisons of any furloughs by a school district that occurred before the 2021-2022 school year would have used different professional staff rating criteria.

Furlough/Reinstatement Procedures

The reason why evaluations are significant (i.e., Act 82 evaluations or Act 13 evaluations) is because they serve as the basis for decisions about which staff will be furloughed. Before Act 55 of 2017, these decisions were based on seniority within the district. As a result, more senior staff could “bump” more junior employees, regardless of performance, assuming they held the required certification.

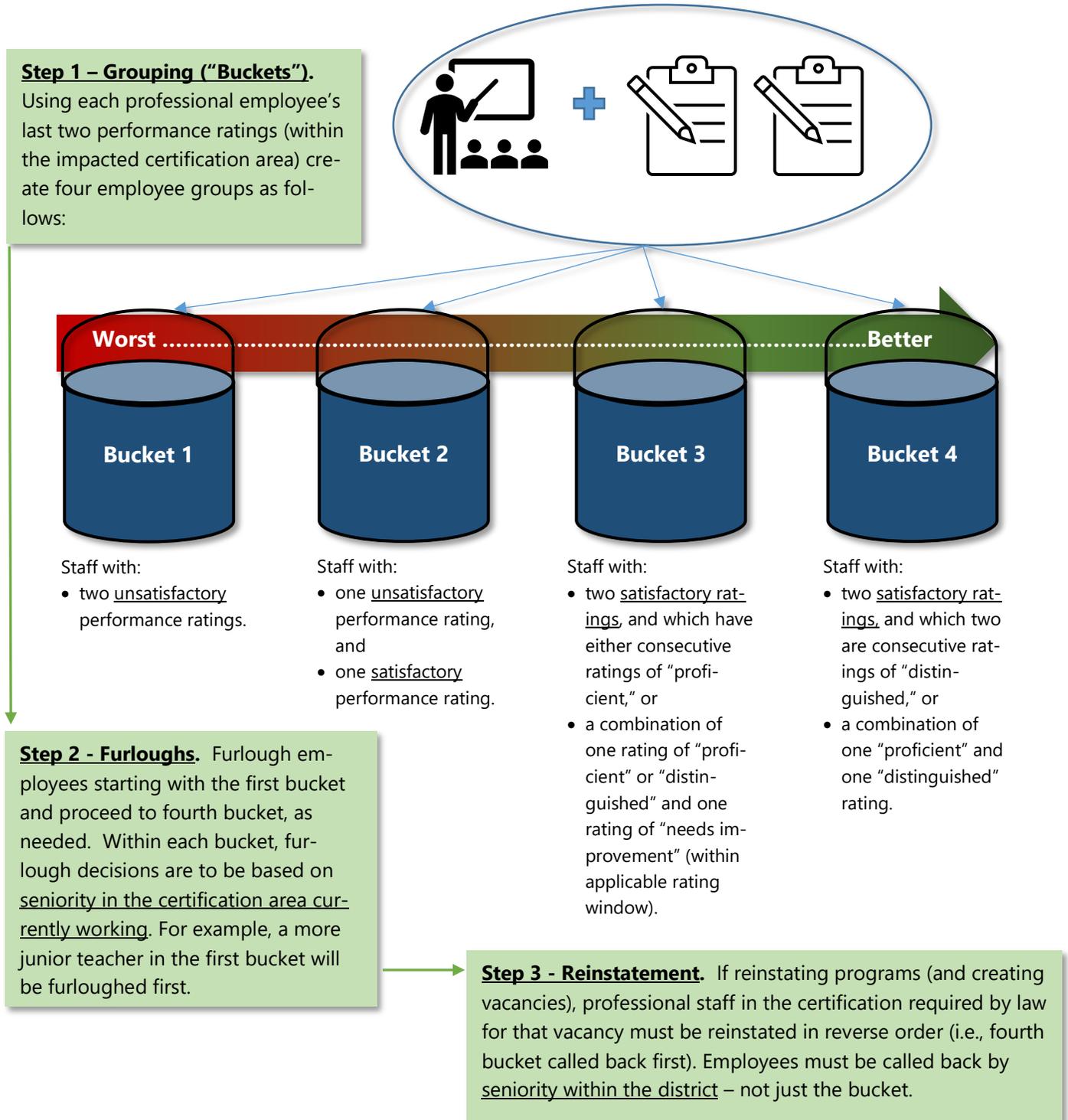
With the passage of Act 55, administrators must furlough staff based on specific procedures. At a high level, this process requires the district to create four groups of professional staff, which are based on certification areas and the respective staff evaluations within the impacted certification.

In plain language, after a district decides to furlough staff, administrators must then create four “buckets” of professional staff. These buckets are arranged from worst to better performing (i.e., 1-4). The criteria for which staff are to be placed within each bucket is based on each staff member’s (Act 82/Act 13) ratings. Then, after staff are assigned to a bucket, within each bucket furlough decisions are based on seniority in the certification area in which the professional staff are currently working.

Finally, under Act 55, the reverse order of the buckets also determines which staff (if any) may be reinstated at the district. The only distinction being with reinstatement is that these decisions are made based on seniority within the district, not just the certification that was held at the time of furlough. For example, assume an art teacher with 25 years of seniority and distinguished ratings had been furloughed, but he/she also held a certification in chemistry. If there was later a vacancy for a chemistry position, that (art) teacher would be eligible to be reinstated over a teacher who had been furloughed in chemistry but held unsatisfactory ratings. This process is outlined in Exhibit 2

Exhibit 2

Act 55 Furlough/Reinstatement Process



Source: Developed by LBFC staff from Act 55.

Pennsylvania School District Furloughs

One significant problem in completing this study was that there is no central data collection point for information on school district furloughs. We checked with representatives from the Pennsylvania State Education Association, the Pennsylvania School Boards Association, and the Pennsylvania Department of Education (PDE) for data on the number of school districts that furloughed professional staff during the period November 6, 2017, through June 30, 2022. None of these organizations had data on school district furloughs.

Absent a data source on school furloughs, we then surveyed all 500 Pennsylvania school district superintendents for information on any furloughs that occurred during our review period.

School District Survey

To further our outreach and response rate, we used the online survey tool SurveyMonkey® to distribute a brief survey asking if districts had furloughed staff during the review period. We enlisted the assistance of PDE to distribute the survey through its internally maintained distribution lists.

We had a response rate of approximately 60 percent (300), which is generally a favorable response rate. From the responses we received, 42 school districts indicated that they had furloughed staff during the review period.⁶ Our results are shown in more detail in Exhibit 3.

⁶ Although 42 respondents indicated that furloughs occurred, as we looked closer at the details and conducted a limited follow-up direct questionnaire survey, it appears that several respondents included any furloughs, including those not meeting the definition of professional staff. We also found that some districts intended to furlough staff, but then did not actually furlough staff because alternative actions were taken to avert the furlough. As a result, this number is probably higher than the number of districts that had actual professional staff furloughs.

Exhibit 3

LBFC Survey Results of Pennsylvania School District Superintendents

Q1. Since November 6, 2017, has your current school district suspended/furloughed professional staff for any of the reasons enumerated in Section 1124 of the Public School Code, including:

- (1) decrease in pupil enrollment;
- (2) curtailment of education programs;
- (3) consolidation of schools;
- (4) new school districts through reorganization; and
- (5) economic reasons?

Yes = 42

Q2. If professional staff were suspended/furloughed, which factors in question 1 were used as a basis for making the decision to reduce staff? Please select all that apply.

- (1) Decrease in pupil enrollment.
- (2) Curtailment of education programs.
- (3) Consolidation of schools.
- (4) New school districts through reorganization.
- (5) Economic reasons.

Count/Percent

(1)	31/49.2%
(2)	14/22.2%
(3)	4/6.3%
(4)	0/0
(5)	14/22.2%

Q3. For the economic reasons cited above, what factors supported the economic basis to suspend/furlough staff? Please select all that apply.

- (1) Decreased tax revenue
- (2) Decreased subsidies
- (3) Overall weakened economic conditions
- (4) Other

Count/Percent

(1)	7/17.5%
(2)	9/22.5%
(3)	14/35.0%
(4)	10/25.0%

Source: Developed by LBFC staff.

Of the districts that responded, nearly half (49.2 percent) furloughed staff based on declining pupil enrollment. Furloughs because of curtailment of education programs and economic reasons each were cited 14 times or 22 percent.

Given the newness of "economic reasons" as a basis for furloughing staff, it is expected that fewer districts pursued this option. Furloughing staff is never a desirable course of action, and further, given the additional steps required of a school board when citing economic reasons as a basis (e.g.,

resolution of intent), there was likely some hesitation to pursue it as an option. In fact, as one respondent noted to us the following:

Our solicitor was hesitant to utilize 'economic reasons' due to how new the law was at the time. Our rationale fit multiple categories.

With respect to economic reasons, we also asked superintendents what factors supported that conclusion. As shown in Exhibit 3, there was less clarity with this question, as "overall weakened conditions" or "other" were the two most common responses, both of which lack specificity for analysis.

The results of this survey should not be extrapolated to the entire population of Pennsylvania school districts. Our primary effort was to obtain baseline information on school district furloughs. As discussed further below, a significant limitation we found was in how respondents interpreted the survey questions.

Additional Survey Responses

We conjectured that respondents may have misinterpreted our survey and interpreted our inquiry about furloughs of professional staff to be broader and to include any staff. Accordingly, we randomly selected 10 school districts from the 42 that indicated that they had furloughed staff. We then sent each respondent an expanded email questionnaire in which we sought more clarity about the professional staff furloughs.

Specifically, we asked the following:

- 1) As part of our earlier survey, you indicated that your district **did furlough** professional staff during the period November 6, 2017, through June 30, 2022. Is this correct?
- 2) How many professional staff were ultimately furloughed?
- 3) In your opinion, did the new furlough procedures within Act 55 make the furlough process more efficient for the district or did it create additional problems/issues? Please provide examples of either.
- 4) Did the new furlough procedures have any impact on programs offered to students?
- 5) If applicable, did the addition of "economic reasons" as a basis by which professional staff could be furloughed aid the district's decision to furlough staff?

- 6) Are there any additional perspectives you would like to relay to us about the furlough process?

Unfortunately, despite two attempts at contacting the selected respondents, we had only four (4) responses. Of those four, two indicated that they did not furlough professional staff, but had either furloughed non-professional staff or did not replace teachers who had retired. As a result, we eliminated those responses. Of the two responses we received, only one provided additional perspective about the furloughs. Because we had too small of a response rate, we cannot present a meaningful breakdown for analysis.

Final Conclusions

Undoubtedly, Act 55 of 2017, and the introduction of “economic reasons” as an enumerated reason by which a school board can furlough professional offers a school board more options if staff furloughs are necessary. But this new authority does not give school boards *carte blanche* authority to furlough staff without justification. For example, specific and detailed requirements must be met in resolutions of intent, and the resolution must be approved by the school board. We believe this step is a reasonable control.

Further, the new furlough procedures, which place more emphasis on how professional staff perform in educating students, make sense. Stated simply, when rating systems are uniform, better performing teachers should be retained over poorer performing teachers. Better yet, Act 13 of 2020 intends to offer more balance in the educator effectiveness process. But more time and research is needed to make this conclusion.

Beyond these cursory inferences, we are unable to conclude whether the addition of Act 55’s provisions have been efficient or effective pursuant to the statutory duty placed upon us under Section 1124 of the Act. There are at least five interconnected circumstances that brought us to this final conclusion:

- 1) School district data on furloughs is not tracked. There is no single source of data to objectively measure the effectiveness of a board’s decision-making process to furlough staff. These decisions are made at the local level and involve decision-making dynamics that cannot be extrapolated to all districts. Each school board is unique and must make decisions that are responsive to the needs of that district and are accountable to the citizens of that district.

- 2) At first glance, lack of data may seem a troubling condition, but lack of data on this issue is not a concern at this point. Even if data was available, actual school district furloughs are relatively uncommon. As many stakeholders told us, furloughs are usually seen as a “last chance” option. Many boards may discuss furloughs, but it is much more likely that alternatives will be sought in the end. Our survey results bore this tendency out as well. To be clear, furloughs have happened, but by all accounts, they are not a priority for the vast majority of districts in Pennsylvania. As a result, we do not see a need to begin tracking data for something that is an uncommon occurrence.
- 3) To the above point, Pennsylvania has a teacher shortage; thus, Pennsylvania’s focus *should* be on teacher recruitment and retention. PDE has undertaken a three-year phased workforce strategy to this problem in its *2022-2025 The Foundation of Our Economy, Pennsylvania Educator Workforce Strategy*.⁷ A persistent implementation goal to the strategy is developing data collection and reporting processes needed to measure progress. This data will be helpful in future analysis of teacher employment trends, including furloughs.
- 4) Act 13 of 2020 significantly changed Pennsylvania’s teacher evaluation system. While the furlough process remains the same under Act 55, the ratings used in determining which teachers are to be furloughed have changed. It is too early to tell if the change in evaluation criteria impacted the ability of school districts to “effectively improve school district efficiency,” as outlined under the requirements of Act 55. However, because furloughs are an uncommon occurrence, the point may be inconsequential.
- 5) Finally, Act 55 passed prior to the COVID-19 pandemic. Undoubtedly, COVID-19 brought about significant changes to education delivery in Pennsylvania school districts. As a result of this rather significant upheaval to school district operations, there is too much variability to make meaningful comparisons on the effectiveness of the provisions in the Act, especially as districts are just moving out of COVID’s impact.

⁷ See <https://www.education.pa.gov/Documents/Teachers-Administrators/PA%20Educator%20Workforce%20Strategy.pdf>, accessed November 23, 2022.