

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1459 Session of 2012

INTRODUCED BY SMUCKER, PICCOLA, ERICKSON, RAFFERTY, WAUGH, ORIE,
BRUBAKER, WILLIAMS AND BROWNE, MARCH 28, 2012

REFERRED TO EDUCATION, MARCH 28, 2012

AN ACT

1 Amending the act of December 12, 1973 (P.L.397, No.141),
2 entitled "An act relating to certification of teachers in the
3 public schools of the Commonwealth and creating a
4 Professional Standards and Practices Commission," making
5 extensive substantive and editorial changes; and providing
6 for imposition of discipline on additional grounds, for
7 imposition of discipline on founded and indicated reports,
8 for confidentiality, for subpoenas and for disposition of
9 fees and fines collected.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Sections 1.1 and 1.2 of the act of December 12,
13 1973 (P.L.397, No.141), known as the Professional Educator
14 Discipline Act, added December 20, 2000 (P.L.918, No.123), are
15 amended to read:

16 Section 1.1. Short Title.--This act shall be known and may
17 be cited as the [Professional] Educator Discipline Act.

18 Section 1.2. Definitions.--When used in this act, the
19 following words and phrases shall have the following meanings:

20 "Administrator" shall mean [a person who is a commissioned
21 officer or holds a valid administrative certificate.] an

educator who holds a letter of eligibility, an administrative certificate or a supervisory certificate or who serves in a school entity in a position that supervises the academic operations of a school building, a school program or a school system.

"Certificate" shall mean any Commonwealth of Pennsylvania certificate, letter of eligibility or permit issued under the act of March 10, 1949 (P.L.30, No.14), known as the "Public School Code of 1949," or under the act of January 28, 1988 (P.L.24, No.11), known as the "Private Academic Schools Act."
The term includes a certificate or letter of eligibility that is invalid or inactive.

"Charter or cyber charter school" shall mean a school established pursuant to Article XVII-A of the act of March 10, 1949 (P.L.30, No.14), known as the "Public School Code of 1949."

"Charter or cyber charter school staff member" shall mean an individual employed by a charter or cyber charter school in a position for which [State] certification would be required in a public school other than a charter or cyber charter school but who is not required to hold [State] certification under section 1724-A of the act of March 10, 1949 (P.L.30, No.14), known as the "Public School Code of 1949." The term includes an individual who is the chief administrator or the individual with primary responsibility for the administration of the charter or cyber charter school.

"Chief school administrator" shall mean the superintendent or chief executive officer of a school district, the executive director of an intermediate unit, the director of an area vocational-technical school, the chief administrator of a charter or cyber charter school, the director of a private

academic school or the chief administrator of any other entity
contracted to provide direct educational services to students
enrolled in a school district, intermediate unit, area
vocational-technical school, private academic school or charter
or cyber charter school.

"Commission" shall mean the Professional Standards and
Practices Commission.

"Contracted educational provider" shall mean a person who:

(1) serves in a position for which certification would be
required in a public school but who is exempted under the act of
March 10, 1949 (P.L.30, No.14), known as the "Public School Code
of 1949"; and

(2) is employed by an entity with which a school entity has
contracted to provide direct educational services to its
students or is an individual who directly contracts with a
school entity to provide educational services to its students.

"Department" shall mean the Department of Education of the
Commonwealth.

"Discipline" shall mean [any one of the following actions]
any of the following:

(1) [Issue a private] Private reprimand.

(2) [Issue a public] Public reprimand.

(3) [Direct the department to suspend the certificate of a
professional educator] Suspension.

(4) [Direct the department to revoke the certificate of a
professional educator] Revocation.

[(5) For a charter school staff member, the term shall
include an order suspending the person's eligibility to be
employed by a charter school or prohibiting the person from
being employed by a charter school.

1 (6) Accept a professional certificate surrendered in lieu of
2 discipline.]

3 (5) Surrender.

4 [The commission may require a professional educator to meet
5 certain conditions or take corrective action in conjunction with
6 any discipline.]

7 "Educational specialist" shall mean a person who holds an
8 educational specialist certificate issued by the Commonwealth,
9 including, but not limited to, a certificate [endorsed] in the
10 area of elementary school counselor, secondary school counselor,
11 social restoration, school nurse, home and school visitor,
12 school psychologist, dental hygienist, instructional technology
13 specialist or nutrition service specialist.

14 "Educator" shall mean a person who holds a certificate, who
15 is a charter or cyber charter school staff member or who is a
16 contracted educational provider.

17 "Indictment" shall include a bill of indictment, police
18 criminal complaint, criminal information or other similar
19 document.

20 "Private academic school" shall mean a school that is
21 licensed to operate under the act of January 28, 1988 (P.L.24,
22 No.11), known as the "Private Academic Schools Act."

23 ["Professional educator" shall mean a person who is
24 certificated as a teacher, educational specialist or an
25 administrator in the Commonwealth.]

26 "Revocation" shall mean the termination of a certificate or
27 eligibility to be employed in a charter or cyber charter school
28 or any other entity contracted to provide educational services
29 to students enrolled in a school district, intermediate unit,
30 area vocational-technical school, private academic school or

1 charter or cyber charter school.

2 "School entity" shall mean a school district, intermediate
3 unit [or], area vocational-technical school, charter [school,
4 Scotland School for Veterans' Children, Scranton State School
5 for the Deaf and Thaddeus Stevens College of Technology] or
6 cyber charter school, private academic school or any other
7 entity contracted to provide educational services to students
8 enrolled in a school district, intermediate unit, area
9 vocational-technical school, private academic school or charter
10 or cyber charter school.

11 "Secretary" shall mean the Secretary of Education of the
12 Commonwealth.

13 "Sexual abuse or exploitation" shall [mean the employment,
14 use, persuasion, inducement, enticement or coercion of a child
15 or student to engage in or assist any other person to engage in
16 any sexually explicit conduct or a simulation of any sexually
17 explicit conduct for the purpose of producing a visual
18 depiction, including photographing, videotaping, computer
19 depicting or filming, of any sexually explicit conduct or
20 conduct that constitutes an offense under 18 Pa.C.S. Ch. 31
21 (relating to sexual offenses) or section 6312 (relating to
22 sexual abuse of children) or other forms of sexual exploitation
23 of children or students.] have the meaning given to the term by
24 23 Pa.C.S. Ch. 63 (relating to child protective services).

25 "Sexual misconduct" shall mean any act, including, but not
26 limited to, any verbal, nonverbal, written or electronic
27 communication or physical activity, directed toward or with a
28 child or a student regardless of the age of the child or student
29 that is designed to establish a romantic or sexual relationship
30 with the child or student. Such prohibited acts include, but are

not limited to, the following:

(1) sexual or romantic invitations;

(2) dating or soliciting dates;

(3) engaging in sexualized or romantic dialogue;

(4) making sexually suggestive comments;

(5) self-disclosure or physical exposure of a sexual,
romantic or erotic nature; or

(6) any sexual, indecent, romantic or erotic contact with
the child or student.

The consent of a child or a student to engage in sexual
misconduct may not be a defense or a mitigating factor in any
discipline proceeding under this act.

"State Board" shall mean the State Board of Education.

"State Board of Private Academic Schools" shall mean the
departmental administrative board as established by the act of
January 28, 1988 (P.L.24, No.11), known as the "Private Academic
Schools Act."

"Student" shall mean an individual enrolled in a public,
nonpublic, nonlicensed, private or charter or cyber charter
school, intermediate unit or area vocational-technical school or
in any other entity contracted to provide direct educational
services to students enrolled in a school district, intermediate
unit, area vocational-technical school, private academic school
or charter or cyber charter school.

"Supplemental sanctions" shall mean private or public
disciplinary sanctions that focus on remediation or restitution,
including, but not limited to, fees, fines, prescribed
coursework, evaluations, treatment plans, impaired educator
programs and other corrective action plans.

"Surrender" shall mean the termination by consent of a

certificate or eligibility to be employed by a charter or cyber
charter school or contracted educational provider whenever the
certificate or eligibility is surrendered to the department
after the educator receives notice of allegations of misconduct
by a school entity, after the educator is dismissed for cause by
a school entity, after the educator resigns, retires or
otherwise separates from employment after the school entity
receives notice of misconduct, after the educator is removed
from any employment eligibility lists, including substitute or
quest teacher lists, after the department receives a report
concerning the educator under section 9.1, after the department
receives a complaint concerning the educator under section 9 or
after the educator is indicted or charged for a crime set forth
in section 111(e)(1) through (3) of the act of March 10, 1949
(P.L.30, No.14), known as the "Public School Code of 1949," a
crime involving moral turpitude or the attempt, solicitation or
conspiracy to commit any crime set forth in section 111(e)(1)
through (3) of the "Public School Code of 1949" or any crime
involving moral turpitude.

"Suspension" shall mean the temporary termination of a
certificate or eligibility to be employed in a charter or cyber
charter school or any other entity contracted to provide direct
educational services to students enrolled in a school district,
intermediate unit, area vocational-technical school, private
academic school or charter or cyber charter school for a
specific period of time, for an indefinite period of time or
until specific conditions are met.

["Teach" shall mean to engage in the practice of teaching in
the public schools of the Commonwealth or to provide related
educational specialist, administrative or supervisory services

1 in such schools.]

2 "Teacher" shall mean [a] any person who holds a [valid]
3 Pennsylvania teaching certificate[.] or who is employed as a
4 contracted educational provider or by a charter or cyber charter
5 school in a position for which certification would be required
6 in a public school other than a charter or cyber charter school,
7 but who is not required to hold certification under the act of
8 March 10, 1949 (P.L.30, No.14), known as the "Public School Code
9 of 1949."

10 Section 2. Section 2 of the act is amended to read:

11 Section 2. Certification Requirements.--No [person shall
12 teach in a public school] educator shall be employed by a school
13 entity in the Commonwealth unless he has met the certification
14 requirements which are applicable to the institution in which he
15 is employed as established by the State Board [of Education
16 which are applicable to the institution where he is employed],
17 the State Board of Private Academic Schools or the department.
18 An educator whose certificate or eligibility to be employed as a
19 contracted educational provider or by a charter or cyber charter
20 school has been revoked, suspended or surrendered is not
21 eligible for employment in a school entity or eligible for any
22 certificate until the certificate or eligibility is reinstated
23 in accordance with this act.

24 Section 3. Sections 3, 4, 5 and 6 of the act, amended
25 December 20, 2000 (P.L.918, No.123), are amended to read:

26 Section 3. Professional Standards and Practices
27 Commission.--(a) There is hereby created a Professional
28 Standards and Practices Commission consisting of thirteen
29 members appointed by the Governor with the advice and consent of
30 a majority of the members elected to the Senate.

1 (b) The term of office of members of the commission shall be
2 three years [except that:], with members serving fixed and
3 staggered terms so that in the first two of every three years,
4 the terms of four members expire, and in the third of every
5 three years, the terms of five members expire.

6 [(1) the terms of office of four members appointed in the
7 calendar year 2000 shall expire on the third Tuesday of January
8 2001;

9 (2) the terms of office of four members appointed in the
10 calendar year 2000 shall expire on the third Tuesday of January
11 2002; and

12 (3) the terms of office of five members appointed in the
13 calendar year 2000 shall expire on the third Tuesday of January
14 2003.]

15 (c) Vacancies shall be filled for an unexpired term in the
16 same manner as original appointments. No person shall serve for
17 more than two consecutive terms as a member of the commission;
18 however, members may continue to serve after the expiration of
19 their term until a replacement appointed by the Governor is
20 confirmed. The Governor may remove any member from the
21 commission for misconduct or malfeasance in office, incapacity,
22 or neglect of duty. All members of the commission shall be
23 residents of the Commonwealth of Pennsylvania.

24 Section 4. Membership and Qualifications.--(a) The
25 membership of the Professional Standards and Practices
26 Commission shall consist of:

27 (1) [Seven classroom teachers, including one educational
28 specialist, broadly representative of the teaching profession
29 from public schools] Six classroom teachers broadly
30 representative of the education profession, with not more than

1 one from a school entity other than a public school.

2 (2) Three administrators from [public schools] a school
3 entity, at least one of whom shall be a commissioned officer and
4 one a principal, with not more than one from a school entity
5 other than a public school.

6 (3) One administrator from an approved institution of higher
7 learning in the Commonwealth offering approved teacher education
8 programs.

9 (4) Two members from the general public, at least one of
10 whom shall be an elected public school director.

11 (5) One educational specialist.

12 (b) Except for the representatives of the general public,
13 the Governor in making appointments shall consider
14 recommendations from panels of nominees submitted by Statewide
15 educational organizations [of professional educators] which
16 certify that the panels include only representatives of the
17 category of professional personnel for which the panel or panels
18 of nominees are submitted. However, the Governor shall not be
19 limited to nominating members of Statewide organizations for
20 appointments to the commission.

21 (c) All members of the commission except the persons
22 representing the general public shall have been actively engaged
23 in teaching or providing related educational, administrative or
24 supervisory services in a [public school] school entity or
25 approved institution of higher education with approved teacher
26 education programs for at least five of the eight years
27 immediately preceding their appointment. A person appointed to
28 the commission who leaves the Commonwealth to become domiciled
29 in another state shall have his position on the commission
30 deemed vacated. A person whose status changes to a category

different from that for which that person was appointed may continue to serve on the commission for the remainder of that person's appointment or until replaced.

(d) The chairman of the State Board [of Education], or a member of the [board] State Board designated by the chairman, shall be an ex officio member of the commission without voting privileges.

(e) The members of the commission, employees of the commission and agents of the commission shall in all of their deliberations consider the public interest, including ensuring the health, safety and welfare of students or other individuals in school entities.

Section 5. Power and Duties.--(a) The Professional Standards and Practices Commission shall have the power and its duty shall be:

(1) To recommend to the State Board [of Education] rules and regulations defining positions for which certification should be required and criteria to determine qualifications, consistent with this act, necessary to hold such a certificate.

(2) To recommend to the State Board [of Education] rules and regulations providing for making a certificate permanent upon evidence of such teaching experience and additional preparation as may by rule be required.

(3) To recommend to the State Board [of Education] rules and regulations providing for [the Department of Education] the department's investigation and determination of the acceptability of programs of professional education in colleges and universities of this Commonwealth issuing degrees to persons who may desire to teach in the schools of this Commonwealth. The commission may recommend as its own, with or without

1 modification, standards used by other organizations engaged in
2 the evaluation of teacher preparation programs. In
3 [establishing] recommending standards pursuant to this clause,
4 the commission shall consider, among other factors, the
5 following:

6 (i) Ongoing research and developing theories in education.

7 (ii) The knowledge and skills necessary to effectively
8 perform professional education functions.

9 (iii) The liberal arts and general education requirements
10 that are the foundation of a teacher preparation program.

11 (iv) The value of student [teacher] teaching, laboratory
12 work and other professional experience as preparation for
13 certification.

14 (v) The cultural and demographic diversity of relevant
15 student populations.

16 (vi) Other interests of the public.

17 The commission shall assess the effectiveness of educator
18 preparation programs and recommend changes to the State Board
19 [of Education] as indicated by such evaluations.

20 (4) To recommend to the State Board [of Education] changes
21 in teacher education programs based on commission conducted
22 assessments of these programs.

23 (5) To recommend to the State Board [of Education] rules and
24 regulations providing for acceptance or approval of certificates
25 to teach issued by other states, countries and bodies.

26 (6) To recommend to the State Board [of Education] rules and
27 regulations providing for the department to enter into
28 agreements with agencies of other states for reciprocal approval
29 of teacher preparation programs.

30 (7) To recommend to the State Board [of Education] rules and

1 regulations governing examinations for the initial certification
2 of teachers.

3 (8) To cooperate with a national board for professional
4 education certification recognized by the commission to such
5 degree as, in the commission's judgment, shall bring advantage
6 to the Commonwealth.

7 (9) To establish procedures for [conducting hearings
8 pursuant to section 13 and for hearings regarding reinstatement
9 of certificates] the commission's adjudication of educator
10 misconduct and applications for reinstatement and for conducting
11 public hearings, including the imposition of fines and fees.

12 (9.1) To adopt requirements regarding the submission of
13 reports by the department on the processing of complaints in
14 order to ensure the timely and effective resolution of
15 complaints.

16 (10) To adopt and maintain a code for professional practice
17 and conduct that shall be applicable to any educator as defined
18 in this act, pursuant to the act of July 31, 1968 (P.L.769,
19 No.240), referred to as the Commonwealth Documents Law. Nothing
20 in the code for professional practice and conduct shall be an
21 independent basis for [the suspension or revocation of a
22 certificate] discipline other than a public or private
23 reprimand, nor shall it pertain to questions of membership or
24 affiliation or nonaffiliation in an employe organization, or
25 participation in the actions of an employe organization, or
26 participation or nonparticipation in the actions of an employe
27 organization related to the negotiation of a collective
28 bargaining agreement, a strike or other work stoppage as defined
29 under the act of July 23, 1970 (P.L.563, No.195), known as the
30 "Public Employe Relations [Act," provided that the code may

1 specify those sections the violation of which may constitute a
2 basis for reprimand.] Act."

3 [(11) To discipline any professional educator or charter
4 school staff member found guilty upon hearings before the
5 commission of immorality, incompetency, intemperance, cruelty or
6 negligence or for violation of any provision of the act of May
7 29, 1931 (P.L.210, No.126), entitled, as amended, "An act to
8 regulate the certification and the registration of persons
9 qualified to teach in accredited elementary and secondary
10 schools in this State; imposing certain duties upon the
11 Department of Public Instruction and the State Board of
12 Education; defining violations; providing penalties, and for
13 appeal to the court of common pleas of Dauphin County." The
14 commission shall establish definitions consistent with this
15 clause.]

16 (11.1) To direct the department to [suspend or revoke the
17 certificate of a professional educator or charter school staff
18 member] discipline any educator in accordance with section 9.2,
19 9.3, 9.4 or 9.5.

20 (11.2) To impose conditions, corrective action, fines or
21 fees for violations of this act or for reinstatement, including
22 requiring an educator, at the educator's own expense, to submit
23 to the evaluation or care, counseling or treatment of a
24 physician, psychologist, therapist or psychiatrist as designated
25 by the commission or enter an impaired educator program or
26 similar program approved by the commission.

27 (11.3) To issue subpoenas in accordance with procedures set
28 forth in this act.

29 (12) To establish procedures which assure that actions
30 concerning discipline and reinstatement of [professional]

1 educators shall comply with due process.

2 (12.1) To establish and participate in alternative dispute
3 resolution programs to allow for flexibility, early resolution
4 and cooperation in resolving charges filed under section 13.

5 (12.2) To develop outreach programs, professional
6 development and courses designed to improve the quality of
7 practice and ethical conduct in the teaching profession.

8 (13) To keep minutes of its meetings and report annually to
9 the Governor, the General Assembly, the State Board [of
10 Education], the education profession and the public and to
11 publish, from time to time, such other reports as it deems
12 appropriate.

13 (14) To adopt, pursuant to the act of July 31, 1968
14 (P.L.769, No.240), referred to as the Commonwealth Documents
15 Law, operating and procedural rules and regulations necessary to
16 carry out the purposes of this act. The commission shall hold
17 public hearings and take testimony concerning proposed
18 recommendations which shall be presented to the State Board [of
19 Education].

20 (a.1) Nothing in this act shall be construed to prevent
21 organizations of the education profession from adopting measures
22 designed to improve the standards and practices of ethics and
23 academic freedom among their members and in their relationships
24 with other persons and groups.

25 (b) All teachers' certificates in force in this Commonwealth
26 on [the effective date of this amendatory act] February 17,
27 2001, shall continue in full force and effect, subject to all
28 the terms and conditions under which they were issued, until
29 they expire by virtue of their own limitations, unless they are
30 sooner annulled for the reasons and in the manner provided by

1 law.

2 (c) Recommendations as outlined in subsection (a) shall be
3 presented publicly at a scheduled State Board [of Education]
4 meeting. This presentation shall be prior to any board action on
5 regulations, standards or guidelines affecting teacher
6 certification, professional practices, accreditation of teacher
7 education programs and long range plans.

8 Section 6. Organization and Meetings of the Commission.--(a)
9 The Governor shall annually select a chairman from among the
10 membership of the commission. The chairman, or a commission
11 member designated by the chairman, shall be an ex officio member
12 of the State Board [of Education] without voting privileges or
13 assignment to either council.

14 (b) Meetings shall be held at least five times per year at
15 the call of the chairman or upon request in writing of a
16 majority of the commission. A majority shall constitute a quorum
17 and a majority of such quorum shall have authority to act upon
18 any matter properly before the commission unless otherwise
19 specified in this act. [In the case of the discipline of an
20 administrator, the commission shall act by a majority vote of a
21 special panel of at least nine members selected by the chairman,
22 to include no more than three teachers. The first meeting of the
23 commission shall be held within six months of the effective date
24 of this act.] Meetings of the commission shall be open to the
25 public and the executive director of the commission shall be
26 responsible for seeing that notices of meetings of the
27 commission are properly circulated.

28 Section 4. Sections 7 and 8 of the act, amended December 14,
29 1989 (P.L.612, No.71), are amended to read:

30 Section 7. Expenses.--Members of the commission shall

1 receive no compensation for their services, but shall be
2 reimbursed for their actual and necessary expenses incurred in
3 the performance of official commission business. A member of the
4 commission, who is an employe of an agency of the Commonwealth,
5 or any of its political subdivisions [including school
6 districts], or of a school entity, shall be permitted to attend
7 commission meetings and perform other commission duties without
8 loss of income or other benefits. A State agency or any
9 political subdivision of this Commonwealth, including a school
10 entity, required to employ a substitute for a member of the
11 commission who is absent from his employment while performing
12 commission business shall be reimbursed by the [Department of
13 Education] department from funds appropriated for the general
14 government operations of the [Department of Education]
15 department for the actual amount of any costs incurred upon
16 presentation of a request for reimbursement and documentation of
17 such cost. A member of the commission who is employed by a
18 private employer shall be reimbursed by the [Department of
19 Education] department, from funds appropriated for the general
20 government operations of the [Department of Education]
21 department, for any income lost, pursuant to guidelines
22 established by the commission, as a result of attendance at
23 commission meetings or performance of other official commission
24 duties upon presentation of a request for reimbursement and
25 documentation of such loss.

26 Section 8. Commission Staff.--(a) There shall be an
27 executive director of the commission who shall serve as the
28 executive officer and secretary of the commission. The
29 commission and the secretary shall jointly employ and fix the
30 compensation of the executive director. The executive director,

1 with approval of the commission and the secretary, may employ
2 additional professional and clerical personnel as may be
3 necessary to carry out the duties and responsibilities of the
4 commission. The [Department of Education] department shall
5 provide adequate space and equipment to facilitate the
6 activities of the commission.

7 (b) The Governor, through his General Counsel, shall provide
8 such legal advice and assistance as the commission may require.

9 Section 5. Sections 9, 9.1 and 9.2 of the act, amended or
10 added December 20, 2000 (P.L.918, No.123), are amended to read:

11 Section 9. Complaints and Department Investigations.--(a)
12 [A proceeding to discipline a professional educator shall be
13 initiated by the filing of a complaint with the department by
14 any interested party within one year from the date of the
15 occurrence of any alleged action specified under section
16 5(a)(11), or from the date of its discovery. Complaints
17 involving sexual abuse or exploitation of a child or a student
18 may be filed beyond the date of the alleged occurrence or date
19 of its discovery up until five years after the child or student
20 reaches 18 years of age. If the alleged action is of a
21 continuing nature, the date of its occurrence is the last date
22 on which the conduct occurred.] The filing of a written educator
23 misconduct complaint with the department will initiate the
24 department's review and investigation of an educator.

25 (b) For purposes of this act, the department may file an
26 educator misconduct complaint.

27 (c) The department may by regulation prescribe standards for
28 the filing of complaints. The complaint shall, at a minimum:

29 (1) be in a written form prescribed by the department;

30 (2) specify the nature and character of the [charges]

1 allegations of misconduct; and

2 (3) be verified [under oath by the complaining party] by the
3 complainant or a duly authorized agent of the [complaining
4 party] complainant and made subject to the penalties of 18
5 Pa.C.S. § 4904 (relating to unsworn falsification to
6 authorities).

7 (d) The commission[, and its individual members,] may not
8 file a complaint [or initiate a disciplinary proceeding on their
9 own motion, except that if,]. If an individual commissioner in
10 the performance of [commission business, the commission, or any
11 of its individual members,] his or her professional
12 responsibilities as an employe of a school entity uncovers
13 evidence of educator misconduct that would appear to [require
14 discipline, the commission may transmit such evidence to the
15 department where such evidence will be treated as] warrant
16 discipline under this act, the individual commissioner may file
17 a complaint in accordance with the provisions of this act.

18 [(f)] (e) Upon receipt of a complaint, the department shall
19 promptly review it and all other complaints and information
20 relating to the [professional] educator.

21 (1) If the facts alleged are not legally sufficient to
22 warrant discipline under this act, the department shall dismiss
23 the complaint and provide written notice of such dismissal to
24 the [complaining party and to the affected professional]
25 complainant and to the educator.

26 (2) If the facts alleged are deemed legally sufficient to
27 warrant discipline[, the department shall notify the affected
28 professional educator and the complaining party in writing of
29 the sufficiency of the complaint and] under this act, the
30 department shall provide written notice of the legal sufficiency

of the complaint to the educator, the current and former school entity in which the educator is or was employed and the complainant.

(2.1) If the facts alleged are deemed legally sufficient to warrant discipline, the department may conduct a preliminary investigation to determine whether there is probable cause to believe that grounds for discipline exist. The department shall be provided, upon request to the complainant, the educator and the current and former school entity in which the educator is or was employed, any [documents] relevant information and documentary and physical evidence it may reasonably require in pursuit of its preliminary investigation. [Such request shall be made in writing to the professional educator or the current or prior employer.]

(3) If the department determines that probable cause does not exist, [it shall issue a written notice to the affected professional educator, the complaining party and the current or prior employer if the employer was notified of the complaint. If a finding of probable cause is made, the department shall so notify the affected professional educator and the complaining party and may immediately conduct an investigation pursuant to section 12 or transmit its preliminary findings to the local school governing board of the school entity in which the affected professional educator is or was last serving, to allow the local school board to investigate and comment upon the appropriateness of professional discipline.] the department shall dismiss the complaint and provide a written notice of such dismissal to the educator, the complainant and the current and former school entity in which the educator is or was employed.

(4) If the department determines that probable cause exists,

1 the department shall provide written notice to the educator, the
2 complainant and the current and former school entity in which
3 the educator is or was employed and may immediately conduct an
4 investigation, which may include directing the school entity to
5 investigate and comment upon the appropriateness of professional
6 discipline in accordance with section 11.

7 (f) In conducting its investigations under this act, the
8 department may investigate any and all allegations of misconduct
9 in the complaint or complaints and any other misconduct
10 concerning the educator that is discovered in the course of the
11 investigations.

12 Section 9.1. [Reporting to Department] Mandatory
13 Reporting.--(a) The [superintendent, assistant superintendent,
14 executive director of an intermediate unit, chief administrator
15 of an area vocational-technical school, administrator of a
16 charter school or their designees shall report any] chief school
17 administrator or his designee shall file all of the following
18 [to] with the department in writing on a form prescribed by the
19 department:

20 (1) [The dismissal of a certificated employee] Any educator
21 who has been provided with notice of intent to dismiss or of
22 nonrenewal for cause. The report shall be filed within [30] 15
23 days after [an administrative decision by an arbitrator or the
24 local board of school directors] notice is provided by a school
25 entity.

26 (2) [Conduct that has resulted in a criminal indictment or
27 conviction for a crime set forth in section 111(e)(1) through
28 (3) of the act of March 10, 1949 (P.L.30, No.14), known as the
29 "Public School Code of 1949," or other crime that involves moral
30 turpitude. The report shall be filed within 30 days of the

1 receipt of information and shall include all available
2 information relating to the conduct resulting in the charge or
3 conviction.] Any educator who has been indicted for or convicted
4 of any crime that is graded a misdemeanor or felony. For
5 purposes of this section, the term conviction shall include a
6 plea of guilty or nolo contendere. The report shall be filed
7 within 15 days of discovery of the indictment or conviction.

8 (3) [Information which constitutes reasonable cause to
9 believe that a certificated employe has] Any educator against
10 whom allegations have been made that the educator has:

11 (i) caused physical injury to a student or child as a result
12 of negligence or malice [or has];

13 (ii) committed sexual abuse or exploitation involving a
14 student or child[.]; or

15 (iii) engaged in sexual misconduct with a student or child.

16 The report shall be filed within [60] 15 days of the [receipt of
17 the information.] discovery of the allegations of misconduct.

18 (4) Any educator who has resigned, retired or otherwise
19 separated from employment after a school entity has received
20 notice of alleged misconduct. The report shall be filed within
21 15 days of the separation from employment, notwithstanding any
22 termination agreement to the contrary that the school entity may
23 enter into with the educator.

24 [(b) The superintendent, assistant superintendent, executive
25 director of an intermediate unit, chief administrator of an area
26 vocational-technical school and administrator of a charter
27 school or their designees shall comply with the provisions of
28 subsection (a). Failure to comply shall be deemed a violation of
29 subsection (a) by the chief school administrator of that school
30 entity and may result in disciplinary action against the chief

1 school administrator.]

2 (c) An educator who is indicted for or convicted of any
3 crime graded as a misdemeanor or felony shall report the
4 indictment or conviction to the school entity at which the
5 educator is currently employed within 72 hours of the indictment
6 or conviction.

7 (d) All reports submitted to the department shall include
8 all information and documentary and physical evidence in
9 possession or control of the school entity relating to the
10 misconduct resulting in the report.

11 Section 9.2. [Imposition of Discipline.--] Discipline for
12 Criminal Offenses.--(a) The commission shall [do all of the
13 following regarding suspension or revocation of a professional
14 certificate]:

15 (1) Direct the department to immediately suspend the
16 certificate [of a professional] and employment eligibility of an
17 educator indicted for a crime set forth in section 111(e) (1)
18 through (3) of the act of March 10, 1949 (P.L.30, No.14), known
19 as the "Public School Code of 1949," or the attempt,
20 solicitation or conspiracy to commit any crime set forth in that
21 section if the commission, after notice and hearing if
22 requested, determines that the [professional] educator poses a
23 threat to the health, safety or welfare of [a student] students
24 or other [individual in a school] persons in the schools of this
25 Commonwealth in accordance with the following:

26 (i) Within 15 days of [the receipt] service of notice of
27 charges issued by the department, the [professional] educator
28 may request a hearing before the commission on the question of
29 whether the certification or employment eligibility should be
30 immediately suspended. The commission or a [committee] panel of

1 members of the commission shall hold a hearing within 15 days of
2 the receipt of the request for hearing. If the educator fails to
3 request a hearing, the commission or a panel of members of the
4 commission promptly shall convene a meeting to consider the
5 request for immediate suspension. The commission or [committee]
6 panel shall issue a decision within 20 days after the conclusion
7 of the meeting or hearing, including receipt of the transcript
8 or filing of any briefs. The [professional] educator may appeal
9 the decision of the commission pursuant to section [15] 15(a),
10 except that an appeal filed shall not operate as a stay of the
11 discipline.

12 (ii) The commission may elect not to direct the department
13 to suspend the certificate [of a professional] and employment
14 eligibility of any educator indicted for a crime under this
15 subsection if the [professional] educator files an affidavit
16 attesting that during the pendency of the criminal [charge the
17 professional] proceeding the educator will not be employed in a
18 position that requires [professional] certification or involves
19 direct contact with children or students. The commission shall
20 not accept an affidavit when the allegations that form the basis
21 of the criminal proceeding involve sexual misconduct or sexual
22 abuse or exploitation of a student or child.

23 (iii) The commission shall direct the department to
24 immediately lift a suspension upon receipt of certified court
25 documents establishing that the charges have been dismissed or
26 otherwise removed.

27 (iv) [The commission may reinstate the certificate of a
28 professional] Upon petition by the educator, the commission may
29 direct the department to reinstate the certificate and
30 employment eligibility of an educator suspended under this

1 paragraph or release the [professional] educator from an
2 affidavit under subparagraph (ii) if the [professional educator
3 participates in] educator successfully completes an accelerated
4 rehabilitative disposition program as a result of the indictment
5 and the commission determines that the [professional] educator
6 does not pose a threat to the health, safety or welfare of
7 students or other individuals in a school. The commission shall
8 conduct an expedited hearing, if requested, for an applicant for
9 reinstatement or release under this subparagraph.

10 [Notwithstanding the provisions of this subparagraph, an
11 applicant shall not be reinstated if the indictment was for an
12 offense under 18 Pa.C.S. Ch. 31 (relating to sexual offenses)
13 where the victim is a minor.]

14 (2) Direct the department to revoke the certificate [of a
15 professional] and employment eligibility of an educator who has
16 been convicted of a crime set forth in section 111(e)(1) through
17 (3) of the "Public School Code of 1949," [or] a crime involving
18 moral turpitude, [or] an equivalent crime in Federal court or a
19 court of another state, territory or nation[,] or the attempt,
20 solicitation or conspiracy to commit any crime set forth in this
21 section upon the filing of a certified copy of the verdict or
22 judgment or sentence of the court with the commission. The
23 commission shall direct the department to immediately reinstate
24 a certificate and employment eligibility upon receipt of
25 certified court documents establishing that the conviction was
26 reversed on appeal. For purposes of this paragraph, the term
27 "conviction" shall include a plea of guilty or nolo contendere.

28 [(3) Direct the department to discipline a professional
29 educator upon receipt of a certified copy of an adjudication
30 from the appropriate licensing authority in another state,

territory or nation imposing discipline for grounds, other than a conviction under paragraph (2), that are comparable to grounds for discipline under this act. Upon receipt of the adjudication, the commission shall issue an order directing that the professional educator show cause why the imposition of identical or comparable discipline in this Commonwealth would be unwarranted. The professional educator shall respond within 30 days of receipt of the order. The final adjudication by an appropriate licensing authority of another jurisdiction shall be conclusive as to the misconduct of a professional educator under this act. Within 30 days after the time allotted for the professional educator to respond to the order to show cause, the commission may impose the identical or comparable discipline unless the professional educator demonstrates that:

(i) the discipline would result in a grave injustice;

(ii) the discipline is substantially different from what would have been imposed for similar conduct in this Commonwealth; or

(iii) the procedure used in the other jurisdiction did not provide due process.

(4) Direct reinstatement of a certificate revoked, suspended or surrendered in lieu of discipline in accordance with this act.]

(b) Nothing in this section shall be construed to prevent the department from pursuing discipline under this act against any educator who has been acquitted, who has participated in an alternative disposition program or for whom the criminal charges were otherwise withdrawn or dismissed.

Section 6. The act is amended by adding sections to read:

Section 9.3. Imposition of Discipline on Additional

Grounds.--(a) The commission shall direct the department to impose discipline against any educator for conduct found by the commission to constitute:

(1) Immorality.

(2) Incompetency.

(3) Intemperance.

(4) Cruelty.

(5) Negligence.

(6) Sexual misconduct.

(7) Sexual abuse or exploitation.

(8) A violation of the code for professional practice and conduct adopted pursuant to section 5(a)(10).

(9) Illegal use of professional title as set forth in the act of May 29, 1931 (P.L.210, No.126), entitled "An act to regulate the certification and the registration of persons qualified to teach in accredited elementary and secondary schools in this State; imposing certain duties upon the Department of Public Instruction and the State Board of Education; defining violations; providing penalties, and for appeal to the court of common pleas of Dauphin County."

(10) Failure to comply with duties under this act, including the mandatory reporting duties set forth in section 9(a).

(11) Failure to file reports under the act of March 10, 1949 (P.L.30, No.14), known as the "Public School Code of 1949."

(12) Actions taken by an educator to threaten, coerce or discriminate or otherwise retaliate against an individual who in good faith reports actual or suspected misconduct under this act or against complainants, victims, material witnesses or other individuals participating or cooperating in proceedings under this act.

1 (b) The commission shall establish definitions consistent
2 with this section.

3 Section 9.4. Imposition of Discipline on Founded and
4 Indicated Reports.--(a) The commission shall:

5 (1) Direct the department to revoke the certificate and
6 employment eligibility of an educator who is named as the
7 perpetrator of a founded report of child abuse or named as an
8 individual responsible for injury or abuse in a founded report
9 for a school employe under 23 Pa.C.S. Ch. 63 (relating to child
10 protective services) upon receipt of a certified copy of the
11 founded report.

12 (2) Direct the department to discipline an educator who is
13 named as the perpetrator of an indicated report of child abuse
14 or named as an individual responsible for injury or abuse in an
15 indicated report for a school employe under 23 Pa.C.S. Ch. 63.
16 Upon receipt of a certified copy of the indicated report after
17 final determination by the Department of Public Welfare, the
18 department shall issue an order directing that the educator show
19 cause why the revocation of the educator's certificate and
20 employment eligibility would be unwarranted. The educator shall
21 respond within 30 days of service of the order. The indicated
22 report shall be conclusive evidence of immorality as defined
23 under this act. The commission shall order the revocation of the
24 educator's certificate and employment eligibility unless the
25 educator demonstrates that:

26 (i) the revocation would result in a grave injustice; or
27 (ii) the procedure used in the administrative procedure
28 under 23 Pa.C.S. Ch. 63 did not provide due process.

29 (3) Direct the department to immediately reinstate a
30 certificate and employment eligibility upon receipt of a

1 certified document establishing that a founded or indicated
2 report of child abuse or founded or indicated report for a
3 school employe was reversed or determined to be unfounded.

4 (b) Nothing in this section shall be construed to prevent
5 the department from pursuing discipline under this act against
6 any educator for whom a founded or indicated report of child
7 abuse or founded or indicated report for a school employe was
8 reversed or determined to be unfounded.

9 Section 9.5. Reciprocal Discipline.--(a) Upon receipt of a
10 certified copy of an adjudication from the appropriate licensing
11 authority in another state, territory or nation imposing
12 discipline for grounds, other than a conviction under section
13 9.2, that are comparable to the grounds for discipline under
14 this act, the department may issue an order directing that the
15 educator show cause why the imposition of identical or
16 comparable discipline in this Commonwealth would be unwarranted.
17 The final adjudication by an appropriate licensing authority of
18 another jurisdiction shall be conclusive as to the misconduct of
19 an educator under this section. The educator shall respond
20 within 30 days of service of the order to show cause. The
21 commission may direct the department to impose the identical or
22 comparable discipline unless the educator demonstrates that:

23 (1) the discipline would result in a grave injustice;
24 (2) the discipline is substantially different from what
25 would have been imposed for similar conduct in this
26 Commonwealth; or

27 (3) the procedure used in the other jurisdiction did not
28 provide due process.

29 (b) Nothing in this section shall be construed to prevent
30 the department from pursuing discipline against any educator

1 disciplined in another state, territory or nation under other
2 sections of this act.

3 Section 7. Section 10 of the act, amended December 20, 2000
4 (P.L.918, No.123), is repealed:

5 [Section 10. Confidentiality.--(a) All information relating
6 to any complaints, including the identity of the complainant, or
7 any proceedings relating to or resulting from such complaints,
8 shall remain confidential, unless or until discipline, other
9 than a private reprimand, is ordered, any provision of law to
10 the contrary notwithstanding. Should proceedings, after all
11 appeals, result in discipline, other than private reprimand,
12 such discipline and all records pertaining thereto shall become
13 public. There shall be no ex-parte communication on any pending
14 matter regarding discipline.

15 (b) This section shall not prohibit any person from
16 disclosing information previously made public as a result of
17 action by a school entity to dismiss a certified employe for
18 cause or as a result of a certified employe having been formally
19 charged with or convicted of a crime of moral turpitude or
20 another offense requiring mandatory revocation of a certificate.

21 (c) The provisions of this section shall not apply to
22 reinstatements.

23 (d) Nothing in this section shall be construed to deny a
24 professional educator access to information necessary to prepare
25 a defense in a disciplinary proceeding under this act.]

26 Section 8. Sections 11, 12, 13, 14, 15 and 16 of the act,
27 amended December 20, 2000 (P.L.918, No.123), are amended to
28 read:

29 Section 11. Duties of [Local School Board Officials] School
30 Entities.--(a) Upon receipt of [the preliminary findings]

1 notification in writing from the department, a [local school
2 board shall investigate] school entity shall investigate the
3 allegations of misconduct as directed by the department and may
4 pursue the local disciplinary procedures established by law or
5 by collective bargaining agreement for adjudication of
6 complaints against [professional educators. The local school
7 board shall inform the department within 90 days of receipt of
8 the preliminary findings whether the local school board will
9 pursue disciplinary action and whether the board believes that
10 professional disciplinary action by the commission is warranted]
11 an educator.

12 (b) [The school board, when its local investigation is
13 completed, may make a definite] Within 90 days of receipt of the
14 written notification from the department directing the school
15 entity to conduct an investigation, the school entity shall
16 inform the department of the outcome of its investigation and
17 whether it will pursue local employment action and may make a
18 recommendation concerning discipline[. The school board shall
19 notify the affected professional educator of any such
20 recommendation and shall provide to the department] under this
21 act. In reporting the outcome of its investigation, the school
22 entity shall provide the department with:

23 (1) Its findings [and], a summary of the evidence gathered
24 and all documentary and physical evidence related to the
25 allegations of misconduct.

26 (2) Any other relevant information which the department may
27 request, including information related to individuals
28 interviewed by the [local school board.] school entity.

29 (b.1) If the school entity makes a recommendation concerning
30 discipline, it shall notify the educator of such recommendation.

1 (c) A school [district, intermediate unit, area vocational-
2 technical school or charter school,] entity and any official or
3 employe thereof[,] shall cooperate with the department during
4 [all stages of the disciplinary process.] its review,
5 investigation or prosecution and provide the department with any
6 relevant information and documentary and physical evidence that
7 the department may reasonably request.

8 (d) When the department receives information at any time
9 during the course of its review, investigation or prosecution of
10 misconduct that the educator is currently employed by a school
11 entity not previously notified under this act, the department
12 shall notify the school entity of the complaint, investigation
13 and charges so that the school entity may exercise its duties
14 and rights under this act.

15 (e) A school entity is prohibited from entering into any
16 agreement with an educator or educator association whereby a
17 school entity agrees not to comply with its mandatory reporting
18 duties or other duties outlined in this act. Any agreement or
19 provision of an agreement contrary to this subsection is void
20 and unenforceable.

21 Section 12. Department Action After Investigation.--After
22 completion of [an] a preliminary or full investigation, the
23 department may dismiss the [charges] complaint, determine that
24 appropriate and sufficient punishment has been imposed by the
25 [local school board, or initiate hearing procedures] school
26 entity, participate in alternative dispute resolution process,
27 enter into a written settlement agreement with the educator or
28 initiate the formal adjudicatory hearing process with the filing
29 of charges with the commission. If the complaint is dismissed or
30 [it is determined that appropriate and sufficient punishment has

1 been imposed by the local school board] otherwise resolved
2 without the filing of charges with the commission, the
3 department shall inform the [professional] educator, the
4 complainant and the [local school board of the determination]
5 school entity of its resolution of the complaint.

6 Section 13. Hearing.--(a) Upon determination to initiate
7 [hearing procedures] the formal adjudicatory hearing process,
8 the department shall[,] within 30 days[,] send a written notice
9 to the [affected professional] educator advising of the charges
10 and of his right to request a hearing within 30 days of
11 [receipt] service of such notice. A copy of the written notice
12 of the charges shall be served upon the [professional educator's
13 current or prior employer] current and former school entity in
14 which the educator is or was employed. The notice of charges
15 shall set forth all acts or omissions which the department
16 asserts constitute misconduct and warrant discipline, which need
17 not be limited to the allegations in the complaint or
18 complaints, and may include allegations of misconduct that were
19 discovered in the course of the department's investigation of a
20 complaint or complaints.

21 (b) Notwithstanding any other provision of this act, if the
22 department in its discretion determines that immediate
23 discipline is necessary to protect the health, safety or welfare
24 of students or other persons in the schools of this
25 Commonwealth, it [shall] may request that the commission modify
26 the procedure set forth in this section and schedule an
27 expedited hearing.

28 (c) The hearing shall be held in accordance with the
29 following procedures unless otherwise specified in this act or
30 ordered by the commission:

1 (1) Within [45] 15 days of receiving a request for a
2 hearing, the commission shall appoint a hearing officer from a
3 list of impartial third parties qualified to conduct such
4 hearings. The list shall have been previously agreed upon
5 jointly by the Governor's General Counsel and at least two-
6 thirds of the commission, and shall have at least five names
7 which shall be chosen on a rotating basis.

8 (2) The burden of proof shall be on the department, which
9 shall act as prosecutor, to establish by a preponderance of the
10 evidence that grounds for discipline exist.

11 (3) The [professional] educator against whom the [charge is]
12 charges are made shall have the right to be represented by
13 counsel and to present evidence and argument in accordance with
14 rules of procedure promulgated by the commission.

15 (4) [The governing board of the school entity in which the
16 affected professional educator is or was last employed may
17 intervene, for cause shown, in accordance with 1 Pa. Code §
18 35.28] After the filing of charges against an educator with the
19 commission, the current or former school entity in which the
20 educator is or was employed may intervene in the disciplinary
21 proceeding. The hearing officer may limit the intervener's
22 participation in the hearing where appropriate. Admission as an
23 intervener shall not be construed as conferring full party
24 status on the school entity, and interveners are granted no
25 rights which survive discontinuance or resolution of the
26 disciplinary matter before the commission.

27 (5) The hearing shall be closed[, unless the affected
28 professional educator requests that it be open to the public. If
29 the hearing is open, the hearing officer, in his discretion, may
30 close any portion of the hearing for good cause shown. If the

1 hearing is closed,] and only the department, commission members
2 and staff, the [affected professional educator and his or her
3 representatives, any intervenors] educator and his or her
4 counsel, any intervenor or its counsel, if applicable, and any
5 material witnesses shall be permitted to attend. [Students
6 attending school in the district which employs the professional
7 educator shall not be permitted to attend any hearing except as
8 witnesses duly subpoenaed to testify with respect to the charges
9 made.] Where a witness is a child or student, the commission or
10 its hearing officers may in their discretion permit a parent or
11 guardian to be in attendance during the testimony of the child
12 or student.

13 (6) The department may recommend to the hearing officer and
14 commission appropriate discipline.

15 (7) [The hearing officer shall, within 60] Within 90 days
16 after the conclusion of the hearing, [issue a decision
17 concerning whether] submission of written legal memoranda and
18 receipt of the transcript, the hearing officer shall issue a
19 proposed report concerning whether the department has met its
20 burden of establishing that misconduct has occurred and whether
21 discipline should be imposed. [A decision] The proposed report
22 shall include findings of fact and conclusions of law and
23 specify the recommended discipline.

24 Section 14. [Decision] Proposed Report by Hearing Officer.--

25 (a) The [decision] proposed report of the hearing officer shall
26 [become final unless] be accepted by the commission unless:

27 (1) the [professional] educator or the department files
28 [exceptions or a brief on] exceptions in accordance with 1 Pa.
29 Code §§ 35.211 (relating to procedure to except to proposed
30 report) and 35.212 (relating to content and form of briefs on

1 exceptions) within 30 days of the date of the [recommended
2 decision.] proposed report;

3 (2) the commission initiates a review of the proposed report
4 in the absence of exceptions; or

5 (3) the commission reopens the proceeding for the reception
6 of further evidence in accordance with 1 Pa. Code § 35.233
7 (relating to reopening by agency action).

8 (b) [The commission shall promptly consider] After
9 consideration of exceptions to the hearing officer's [decision.

10 The commission by a majority vote of the full membership]
11 proposed report or further evidence or its review under this
12 section, the commission shall accept, modify or reject the
13 hearing officer's [decision, except that, in the case of
14 discipline of an administrator, all exceptions shall be taken by
15 a special panel of at least nine members of the commission
16 selected by the chairperson, which will include no more than
17 three teachers] proposed report.

18 [(c) Within 45 days after receiving the decision from the
19 hearing officer and the exceptions thereto, the commission shall
20 issue a written opinion and order affirming, reversing or
21 modifying the hearing officer's decision and imposing
22 discipline, if any.]

23 Section 15. Appeal.--(a) An order of the commission
24 regarding discipline [of a professional] or reinstatement of an
25 educator may be appealed only by the department or the
26 [professional] educator as an adjudication by a [State]
27 Commonwealth agency in the manner provided by law.

28 (b) An appeal filed under subsection (a) shall operate as a
29 stay of the discipline [until the determination] imposed under
30 this act until the resolution of the appeal, except where the

1 commission's decision to discipline is accompanied by a finding
2 that immediate discipline is necessary to protect the health,
3 safety or welfare of students or other persons in the schools of
4 this Commonwealth or the discipline imposed is the result of a
5 negotiated settlement between the parties or is imposed under
6 section 9.2.

7 (c) Where the commission's adjudication [is in favor of the
8 professional educator] finds no educator misconduct under this
9 act, the charges pertaining to the disciplinary proceeding shall
10 be expunged from any personal or professional file of the
11 [professional] educator maintained by the department [and/or the
12 local school entity.] and the school entity unless the school
13 entity is actively pursuing local disciplinary action against
14 the educator under Article XI of the act of March 10, 1949
15 (P.L.30, No.14), known as the "Public School Code of 1949."

16 (d) The commission shall make all adjudications imposing
17 discipline, other than a private reprimand, available to the
18 public.

19 Section 16. Reinstatement.--(a) [Any professional] An
20 educator whose certificate [has] or employment eligibility has
21 been suspended, revoked or surrendered may apply to the
22 commission for an order lifting the suspension or reinstating
23 the certificate. The commission shall order the lifting of the
24 suspension or reinstatement if the commission determines it
25 would be just and proper. The commission shall seek and consider
26 recommendations from the department prior to ordering the
27 lifting of the suspension or reinstatement of the certificate
28 and employment eligibility and shall conduct hearings on the
29 application at the request of the [professional] educator in
30 accordance with procedures [of this act] established by the

1 commission in accordance with this act. The commission may also
2 seek and consider recommendations from the school entity or
3 entities in which the educator was employed. For purposes of
4 determining whether it is just and proper to lift a suspension
5 or reinstate a certificate, the commission may consider:

6 (1) The conduct which resulted in discipline.

7 (2) Other past conduct of the applicant.

8 (3) The applicant's current attitude toward past conduct.

9 (4) Rehabilitation efforts and activities.

10 (4.1) Evidence of compliance with any conditions imposed as
11 part of the discipline.

12 (5) References and letters of support [or] of or in
13 opposition to reinstatement.

14 (b) The commission shall not lift the suspension or
15 reinstate the certificate [of a professional] or employment
16 eligibility of an educator if the suspension or revocation
17 resulted from any of the following:

18 (1) A finding of guilt by the commission for sexual abuse or
19 exploitation.

20 (2) Surrender of a certificate [in lieu of discipline] or
21 employment eligibility for conduct relating to sexual abuse or
22 exploitation.

23 (c) The commission shall not lift the suspension or
24 reinstate the certificate or employment eligibility of [a
25 professional] an educator convicted of an offense under 18
26 Pa.C.S. (relating to crimes and offenses) set forth in section
27 111(e)(1) through (3) of the act of March 10, 1949 (P.L.30,
28 No.14), known as the "Public School Code of 1949" for the time
29 period set forth in that section.

30 Section 9. Section 17 of the act, amended December 20, 2000

1 (P.L.918, No.123), is repealed:

2 [Section 17. Unauthorized Release of Information.--(a)
3 Except as otherwise provided in section 10, a member, staff
4 member or employee of the commission, the Department of
5 Education, or any local school entity who releases or gives out
6 information received at a commission meeting or hearing or
7 through any disciplinary proceedings conducted pursuant to this
8 act, without authorization of the commission, is guilty of a
9 misdemeanor of the third degree.

10 (b) Any material witness or his or her representative who
11 releases or gives out information received at a commission
12 meeting or hearing involving disciplinary proceedings, or who
13 releases or gives out information obtained as a result of direct
14 involvement in the investigation of a professional educator or
15 in any disciplinary proceedings conducted pursuant to this act,
16 without authorization of the commission, is guilty of a
17 misdemeanor of the third degree unless this information was
18 known to the material witness or his or her representative prior
19 to that meeting, hearing or investigation.]

20 Section 10. Section 17.1 of the act, added December 20, 2000
21 (P.L.918, No.123), is amended to read:

22 Section 17.1. Immunity From Liability.--(a) Notwithstanding
23 any other provision of law, no person shall be subject to civil
24 liability for filing a complaint or for providing information to
25 or cooperating with the department or the commission in the
26 course of an investigation or proceeding conducted under this
27 act. This section shall not apply to malicious action by any
28 person or the provision of false information if the person knew
29 or had reason to know that the information was false.

30 (b) A school entity which provides information about the

professional conduct of a former or current employe to a
prospective employer of that employe is immune from civil
liability for the disclosure of the information.

(c) This section shall not apply to malicious action by any
person or school entity or the provision of false information if
the person or school entity knew, or had reason to know, that
the information was false.

Section 11. The act is amended by adding a section to read:

Section 17.2. Confidentiality.--(a) All information
relating to any complaints or any proceedings relating to or
resulting from such complaints, including the identity of the
complainant, shall remain confidential, unless or until
discipline is imposed, other than a private reprimand or a
supplemental sanction deemed private by the commission, any
provision of law to the contrary notwithstanding unless
otherwise specified in this act. All records pertaining to
proceedings resulting in public discipline, excluding those
records that are privileged or otherwise protected from release,
shall become public after the exhaustion of all appeals except
where the commission has determined that immediate discipline is
necessary. Records pertaining to immediate discipline
proceedings are public at the time that the immediate discipline
is imposed.

(b) Any person who releases or gives out information
received at a commission meeting or hearing or through any
disciplinary proceedings, including investigations conducted
pursuant to this act, without authorization of the commission
commits a misdemeanor of the third degree.

(c) This section shall not prohibit any person from
disclosing information previously made public as a result of

1 action by a school entity to dismiss an employee for cause or as
2 a result of an employee's having been formally indicted for or
3 convicted of a crime or from disclosing information that was
4 known prior to the disciplinary proceeding.

5 (d) The provisions of this section shall not apply to
6 information relating to reinstatements or to proceedings under
7 section 9.2 or 9.5.

8 (e) The commission may order the release of confidential
9 information upon petition of any interested party when it is
10 just and proper. Petitions for release of information deemed
11 confidential under this section shall be filed with the
12 commission in accordance with procedures established by the
13 commission.

14 (f) Nothing in this section shall be construed to:

15 (1) Deny an educator access to information necessary to
16 prepare a defense in a disciplinary proceeding under this act.

17 (2) Prevent the department or a school entity from
18 investigating allegations of misconduct. Individuals contacted
19 in the course of the department's investigation and prosecution
20 are subject to the confidentiality proscriptions set forth in
21 this section.

22 (3) Prevent the department or a school entity from providing
23 information to, or consulting with, a law enforcement, child
24 protective services or licensing agency of the Commonwealth or
25 other state or jurisdiction.

26 Section 12. Section 18 of the act, amended December 20, 2000
27 (P.L.918, No.123), is amended to read:

28 Section 18. Commission Proceedings and Procedures.--(a) The
29 commission shall conduct its disciplinary proceedings in
30 accordance with the provisions of this act and Title 2 of the

1 Pennsylvania Consolidated Statutes (relating to administrative
2 law and procedure), unless otherwise specified in this act; if
3 any inconsistency arises, the provisions of this act shall be
4 controlling. [Any] In all disciplinary proceedings conducted by
5 or on behalf of the commission, the educator is entitled to
6 represent himself or be represented by legal counsel. In all
7 public hearings conducted by the commission, a person is
8 entitled to be heard by the commission in person, in writing,
9 through counsel or through his or her designated
10 representative[,] in accordance with procedures adopted pursuant
11 to this act. The commission shall enter as a matter of record
12 the minutes of each meeting, every vote taken by the commission
13 and every official act of the commission.

14 [(b) In all investigations or disciplinary proceedings, the
15 commission is authorized to issue subpoenas as provided for by
16 law to compel the attendance and testimony of witnesses and the
17 production of books, records, documents and other evidentiary
18 material. A professional educator shall have five days from
19 service to respond to a subpoena.]

20 (c) No commissioner shall vote in any case where:

21 (1) the [professional] educator who is the subject of the
22 proceeding is employed by the same school entity[; or] as the
23 commissioner;

24 (2) the [professional] educator who is the subject of the
25 proceeding is a member of a Statewide [professional] educator
26 organization of which the commissioner is an officer, director
27 or employe[.];

28 (3) the commissioner has filed a misconduct complaint as
29 permitted under this act against the educator; or

30 (4) the commissioner has any personal and independent

1 knowledge of the educator or issues in the case that would
2 compromise the commissioner's ability to make an impartial
3 decision.

4 Section 13. The act is amended by adding sections to read:

5 Section 18.2. Subpoenas.--(a) The commission or its legal
6 counsel, as its designee, shall have the power:

7 (1) To issue investigatory subpoenas upon petition by the
8 department for purposes of reviewing a complaint and
9 investigating alleged educator misconduct under this act.

10 (2) To issue subpoenas upon petition by the parties after
11 the filing of charges as provided for under the provisions of
12 this act and 2 Pa.C.S. (relating to administrative law and
13 procedure) to compel the attendance and testimony of witnesses
14 and the production of books, records, documents and other
15 evidentiary material.

16 (b) A subpoena issued under this act shall clearly indicate
17 on its face that the subpoena is issued in connection with a
18 confidential proceeding and a breach of confidentiality by the
19 persons or entity subpoenaed may result in a civil penalty or
20 misdemeanor.

21 Section 18.3. Disposition of Fees and Fines Collected.--All
22 fees, fines and civil penalties shall be paid into the State
23 Treasury through the department and credited to a restricted
24 revenue account in the General Fund, which is hereby
25 established. Funds in the account may be utilized to the extent
26 of expenditures incurred by the department and the commission in
27 the implementation of their respective duties under this act.

28 Section 14. This act shall take effect in 60 days.