

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1459 Session of
2012

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

SENATOR PICCOLA, EDUCATION, AS AMENDED, MAY 1, 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 EDUCATIONAL 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 AS DEFINED IN 22 PA. CODE § 49.2 (RELATING TO INACTIVITY AND INVALIDITY).

"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 AN ADMINISTRATOR, INCLUDING 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~~ A CONTRACTED EDUCATIONAL PROVIDER.

"CHILD" SHALL MEAN AN INDIVIDUAL WHO IS LESS THAN 18 YEARS OF
AGE.

"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~~ AN
ENTITY WITH WHICH A SCHOOL ENTITY HAS CONTRACTED TO PROVIDE
DIRECT EDUCATIONAL SERVICES TO ITS STUDENTS.

"CONTRACTED EDUCATIONAL PROVIDER STAFF MEMBER" SHALL MEAN A
PERSON WHO:

(1) SERVES IN A POSITION FOR WHICH CERTIFICATION WOULD BE
REQUIRED IN A PUBLIC SCHOOL; AND

(2) IS EMPLOYED BY A CONTRACTED EDUCATIONAL PROVIDER.

THE TERM INCLUDES AN INDIVIDUAL WHO IS AN ADMINISTRATOR,
INCLUDING THE CHIEF ADMINISTRATOR OR THE INDIVIDUAL WITH PRIMARY
RESPONSIBILITY FOR THE ADMINISTRATION OF A CONTRACTED
EDUCATIONAL PROVIDER.

"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.

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

(5) Surrender.

(6) SUPPLEMENTAL SANCTIONS.

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

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

"Educator" shall mean a person who holds a certificate, who is a charter or cyber charter school staff member or who is a

1 contracted educational provider STAFF MEMBER.

←

2 "Indictment" shall include a bill of indictment, police
3 criminal complaint, criminal information or other similar
4 document.

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

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

11 "Revocation" shall mean the termination of a certificate ~~or~~ ←
12 ~~eligibility to be employed in a charter or cyber charter school~~
13 ~~or any other entity contracted to provide educational services~~
14 ~~to students enrolled in a school district, intermediate unit,~~
15 ~~area vocational technical school, private academic school or~~
16 ~~charter or cyber charter school,~~ THE TERMINATION OF THE ←
17 ELIGIBILITY TO BE EMPLOYED AS A CHARTER OR CYBER CHARTER SCHOOL
18 STAFF MEMBER OR THE TERMINATION OF THE ELIGIBILITY TO BE
19 EMPLOYED AS A CONTRACTED EDUCATIONAL PROVIDER STAFF MEMBER.

20 "School entity" shall mean a school district, intermediate
21 unit [or], area vocational-technical school, charter [school,
22 Scotland School for Veterans' Children, Scranton State School
23 for the Deaf and Thaddeus Stevens College of Technology] ~~or~~
24 ~~cyber charter school, private academic school or any other~~ ←
25 ~~entity contracted to provide educational services to students~~
26 ~~enrolled in a school district, intermediate unit, area~~
27 ~~vocational technical school, private academic school or charter~~
28 ~~or cyber charter school~~ CONTRACTED EDUCATIONAL PROVIDER. ←

29 "Secretary" shall mean the Secretary of Education of the
30 Commonwealth.

1 "Sexual abuse or exploitation" shall [mean the employment,
2 use, persuasion, inducement, enticement or coercion of a child
3 or student to engage in or assist any other person to engage in
4 any sexually explicit conduct or a simulation of any sexually
5 explicit conduct for the purpose of producing a visual
6 depiction, including photographing, videotaping, computer
7 depicting or filming, of any sexually explicit conduct or
8 conduct that constitutes an offense under 18 Pa.C.S. Ch. 31
9 (relating to sexual offenses) or section 6312 (relating to
10 sexual abuse of children) or other forms of sexual exploitation
11 of children or students.] have the meaning given to the term by
12 23 Pa.C.S. Ch. 63 (relating to child protective services).

13 "Sexual misconduct" shall mean any act, including, but not
14 limited to, any verbal, nonverbal, written or electronic
15 communication or physical activity, directed toward or with a
16 child or a student regardless of the age of the child or student
17 that is designed to establish a romantic or sexual relationship
18 with the child or student. Such prohibited acts include, but are
19 not limited to, the following:

- 20 (1) sexual or romantic invitations;
21 (2) dating or soliciting dates;
22 (3) engaging in sexualized or romantic dialogue;
23 (4) making sexually suggestive comments;
24 (5) self-disclosure or physical exposure of a sexual,
25 romantic or erotic nature; or
26 (6) any sexual, indecent, romantic or erotic contact with
27 the child or student.

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



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

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

6 "Student" shall mean an individual enrolled in a public, ←
7 nonpublic, nonlicensed, private or charter or cyber charter
8 school, intermediate unit or area vocational technical school or
9 in any other entity contracted to provide direct educational
10 services to students enrolled in a school district, intermediate
11 unit, area vocational technical school, private academic school
12 or charter or cyber charter school: ←

13 (1) A PUBLIC SCHOOL, INCLUDING AN INTERMEDIATE UNIT, AREA
14 VOCATIONAL-TECHNICAL SCHOOL AND A CHARTER OR CYBER CHARTER
15 SCHOOL;

16 (2) A PRIVATE SCHOOL, INCLUDING A NONPUBLIC, NONLICENSED
17 SCHOOL, PRIVATE ACADEMIC SCHOOL AND ACCREDITED SCHOOL; OR

18 (3) A CONTRACTED EDUCATIONAL PROVIDER.

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

24 "Surrender" shall mean the termination by consent of a
25 certificate or eligibility to be employed by AS a charter or ←
26 cyber charter school or contracted educational provider whenever ←
27 the certificate or eligibility is surrendered to the department
28 after the educator receives notice of allegations of misconduct
29 by a school entity, after the educator is dismissed for cause by
30 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 guest 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~~ STAFF MEMBER OR AS A CONTRACTED EDUCATIONAL PROVIDER STAFF MEMBER WHENEVER THE SURRENDER OCCURS AT ANY TIME AFTER THE ISSUANCE OF THE CERTIFICATE OR THE EMPLOYMENT IN A CHARTER OR CYBER CHARTER SCHOOL OR CONTRACTED EDUCATIONAL PROVIDER.

"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,~~ THE TEMPORARY TERMINATION OF THE ELIGIBILITY TO BE EMPLOYED AS A CHARTER OR CYBER CHARTER SCHOOL STAFF MEMBER OR THE TEMPORARY TERMINATION OF THE ELIGIBILITY TO BE EMPLOYED AS A CONTRACTED EDUCATIONAL PROVIDER STAFF MEMBER FOR A SPECIFIC PERIOD OF TIME, FOR AN INDEFINITE PERIOD OF TIME OR UNTIL SPECIFIC CONDITIONS ARE MET.

1 ["Teach" shall mean to engage in the practice of teaching in
2 the public schools of the Commonwealth or to provide related
3 educational specialist, administrative or supervisory services
4 in such schools.]

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

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

14 Section 2. Certification ~~Requirements.~~ ~~No~~ REQUIREMENTS.-- ←

15 (A) NO [person shall teach in a public school] educator shall
16 be employed by a school entity in the Commonwealth unless he has
17 met the certification requirements which are applicable to the
18 institution in which he is employed as established by the State
19 Board [of Education which are applicable to the institution
20 where he is employed], the State Board of Private Academic
21 Schools or the department. An educator whose certificate ~~or~~ ←
22 eligibility to be employed as a contracted educational provider
23 ~~or by a charter or cyber charter school~~ has been revoked,
24 suspended or surrendered is not eligible for employment in a
25 school entity or eligible for any certificate until the
26 certificate or eligibility is reinstated in accordance with this
27 act.

28 (B) AN EDUCATOR WHOSE ELIGIBILITY TO BE EMPLOYED AS A ←
29 CHARTER OR CYBER CHARTER SCHOOL STAFF MEMBER OR AS A CONTRACTED
30 EDUCATIONAL PROVIDER STAFF MEMBER HAS BEEN REVOKED, SUSPENDED OR

SURRENDERED IS NOT ELIGIBLE FOR EMPLOYMENT IN A SCHOOL ENTITY OR
ELIGIBLE FOR ANY CERTIFICATE UNTIL ELIGIBILITY IS REINSTATED IN
ACCORDANCE WITH THIS ACT.

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

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

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

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

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

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

(c) Vacancies shall be filled for an unexpired term in the
same manner as original appointments. No person shall serve for
more than two consecutive terms as a member of the commission;
however, members may continue to serve after the expiration of
their term until a replacement appointed by the Governor is
confirmed. The Governor may remove any member from the

1 commission for misconduct or malfeasance in office, incapacity,
2 or neglect of duty. All members of the commission shall be
3 residents of the Commonwealth of Pennsylvania.

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

7 (1) [Seven classroom teachers, including one educational
8 specialist, broadly representative of the teaching profession
9 from public schools] Six classroom teachers broadly
10 representative of the education profession, with not more than
11 one from a school entity other than a public school.

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

16 (3) One administrator from an approved institution of higher
17 learning in the Commonwealth offering approved teacher education
18 programs.

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

21 (5) One educational specialist.

22 (b) Except for the representatives of the general public,
23 the Governor in making appointments shall consider
24 recommendations from panels of nominees submitted by Statewide
25 educational organizations [of professional educators] which
26 certify that the panels include only representatives of the
27 category of professional personnel for which the panel or panels
28 of nominees are submitted. However, the Governor shall not be
29 limited to nominating members of Statewide organizations for
30 appointments to the commission.

1 (c) All members of the commission except the persons
2 representing the general public shall have been actively engaged
3 in teaching or providing related educational, administrative or
4 supervisory services in a [public school] school entity or
5 approved institution of higher education with approved teacher
6 education programs for at least five of the eight years
7 immediately preceding their appointment. A person appointed to
8 the commission who leaves the Commonwealth to become domiciled
9 in another state shall have his position on the commission
10 deemed vacated. A person whose status changes to a category
11 different from that for which that person was appointed may
12 continue to serve on the commission for the remainder of that
13 person's appointment or until replaced.

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

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

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

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

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

1 regulations providing for making a certificate permanent upon
2 evidence of such teaching experience and additional preparation
3 as may by rule be required.

4 (3) To recommend to the State Board [of Education] rules and
5 regulations providing for [the Department of Education] the
6 department's investigation and determination of the
7 acceptability of programs of professional education in colleges
8 and universities of this Commonwealth issuing degrees to persons
9 who may desire to teach in the schools of this Commonwealth. The
10 commission may recommend as its own, with or without
11 modification, standards used by other organizations engaged in
12 the evaluation of teacher preparation programs. In
13 [establishing] recommending standards pursuant to this clause,
14 the commission shall consider, among other factors, the
15 following:

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

17 (ii) The knowledge and skills necessary to effectively
18 perform professional education functions.

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

21 (iv) The value of student [teacher] teaching, laboratory
22 work and other professional experience as preparation for
23 certification.

24 (v) The cultural and demographic diversity of relevant
25 student populations.

26 (vi) Other interests of the public.

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

30 (4) To recommend to the State Board [of Education] changes

1 in teacher education programs based on commission conducted
2 assessments of these programs.

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

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

10 (7) To recommend to the State Board [of Education] rules and
11 regulations governing examinations for the initial certification
12 of teachers.

13 (8) To cooperate with a national board for professional
14 education certification recognized by the commission to such
15 degree as, in the commission's judgment, shall bring advantage
16 to the Commonwealth.

17 (9) To establish procedures for [conducting hearings
18 pursuant to section 13 and for hearings regarding reinstatement
19 of certificates] the commission's adjudication of educator
20 misconduct and applications for reinstatement and for conducting
21 public hearings, including the imposition of fines and fees.

22 (9.1) To adopt requirements regarding the submission of
23 reports by the department on the processing of complaints in
24 order to ensure the timely and effective resolution of
25 complaints.

26 (10) To adopt and maintain a code for professional practice
27 and conduct that shall be applicable to any educator as defined
28 in this act, pursuant to the act of July 31, 1968 (P.L.769,
29 No.240), referred to as the Commonwealth Documents Law. Nothing
30 in the code for professional practice and conduct shall be an

1 independent basis for [the suspension or revocation of a
2 certificate] discipline other than a public or private
3 reprimand, nor shall it pertain to questions of membership or
4 affiliation or nonaffiliation in an employe organization, or
5 participation in the actions of an employe organization, or
6 participation or nonparticipation in the actions of an employe
7 organization related to the negotiation of a collective
8 bargaining agreement, a strike or other work stoppage as defined
9 under the act of July 23, 1970 (P.L.563, No.195), known as the
10 "Public Employe Relations [Act," provided that the code may
11 specify those sections the violation of which may constitute a
12 basis for reprimand.] Act."

13 [(11) To discipline any professional educator or charter
14 school staff member found guilty upon hearings before the
15 commission of immorality, incompetency, intemperance, cruelty or
16 negligence or for violation of any provision of the act of May
17 29, 1931 (P.L.210, No.126), entitled, as amended, "An act to
18 regulate the certification and the registration of persons
19 qualified to teach in accredited elementary and secondary
20 schools in this State; imposing certain duties upon the
21 Department of Public Instruction and the State Board of
22 Education; defining violations; providing penalties, and for
23 appeal to the court of common pleas of Dauphin County." The
24 commission shall establish definitions consistent with this
25 clause.]

26 (11.1) To direct the department to [suspend or revoke the
27 certificate of a professional educator or charter school staff
28 member] discipline any educator in accordance with section 9.2,
29 9.3, 9.4 or 9.5.

30 (11.2) To impose SUPPLEMENTAL SANCTIONS OR OTHER conditions, ←

corrective action, fines or fees for violations of this act or
for reinstatement, including requiring an educator, at the
educator's own expense, to submit to the evaluation or care,
counseling or treatment of a physician, psychologist, therapist
or psychiatrist as designated by the commission or enter an
impaired educator program or similar program approved by the
commission.

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

(12) To establish procedures which assure that actions
concerning discipline and reinstatement of [professional]
educators shall comply with due process REQUIREMENTS.

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

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

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

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

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

6 (b) All teachers' certificates in force in this Commonwealth
7 on [the effective date of this amendatory act] February 17,
8 2001, shall continue in full force and effect, subject to all
9 the terms and conditions under which they were issued, until
10 they expire by virtue of their own limitations, unless they are
11 sooner annulled for the reasons and in the manner provided by
12 law.

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

19 Section 6. Organization and Meetings of the Commission.--(a)
20 The Governor shall annually select a chairman from among the
21 membership of the commission. The chairman, or a commission
22 member designated by the chairman, shall be an ex officio member
23 of the State Board [of Education] without voting privileges or
24 assignment to either council.

25 (b) Meetings shall be held at least five times per year at
26 the call of the chairman or upon request in writing of a
27 majority of the commission. A majority shall constitute a quorum
28 and a majority of such quorum shall have authority to act upon
29 any matter properly before the commission unless otherwise
30 specified in this act. [In the case of the discipline of an

1 administrator, the commission shall act by a majority vote of a
2 special panel of at least nine members selected by the chairman,
3 to include no more than three teachers. The first meeting of the
4 commission shall be held within six months of the effective date
5 of this act.] Meetings of the commission shall be open to the
6 public and the executive director of the commission shall be
7 responsible for seeing that notices of meetings of the
8 commission are properly circulated.

9 Section 4. Sections 7 and 8 of the act, amended December 14,
10 1989 (P.L.612, No.71), are amended to read:

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

1 government operations of the [Department of Education]
2 department, for any income lost, pursuant to guidelines
3 established by the commission, as a result of attendance at
4 commission meetings or performance of other official commission
5 duties upon presentation of a request for reimbursement and
6 documentation of such loss.

7 Section 8. Commission Staff.--(a) There shall be an
8 executive director of the commission who shall serve as the
9 executive officer and secretary of the commission. The
10 commission and the secretary shall jointly employ and fix the
11 compensation of the executive director. The executive director,
12 with approval of the commission and the secretary, may employ
13 additional professional and clerical personnel as may be
14 necessary to carry out the duties and responsibilities of the
15 commission. The [Department of Education] department shall
16 provide adequate space and equipment to facilitate the
17 activities of the commission.

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

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

22 Section 9. Complaints and Department Investigations.--(a)
23 [A proceeding to discipline a professional educator shall be
24 initiated by the filing of a complaint with the department by
25 any interested party within one year from the date of the
26 occurrence of any alleged action specified under section
27 5(a)(11), or from the date of its discovery. Complaints
28 involving sexual abuse or exploitation of a child or a student
29 may be filed beyond the date of the alleged occurrence or date
30 of its discovery up until five years after the child or student

1 reaches 18 years of age. If the alleged action is of a
2 continuing nature, the date of its occurrence is the last date
3 on which the conduct occurred.] The filing of a written educator
4 misconduct complaint with the department will initiate the
5 department's review and investigation of an educator.

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

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

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

11 (2) specify the nature and character of the [charges]
12 allegations of misconduct; and

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

18 (d) The commission[, and its individual members,] may not
19 file a complaint [or initiate a disciplinary proceeding on their
20 own motion, except that if,]. If an individual commissioner in
21 HIS OR HER PERSONAL CAPACITY OR IN the performance of
22 [commission business, the commission, or any of its individual
23 members,] his or her professional responsibilities as an employe
24 of a school entity uncovers evidence of educator misconduct that
25 would appear to [require discipline, the commission may transmit
26 such evidence to the department where such evidence will be
27 treated as] warrant discipline under this act, the individual
28 commissioner may file a complaint in accordance with the
29 provisions of this act.

30 [(f)] (e) Upon receipt of a complaint, the department shall

promptly review it and all other complaints and information relating to the [professional] educator.

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

(2) If the facts alleged are deemed legally sufficient to warrant discipline[, the department shall notify the affected professional educator and the complaining party in writing of the sufficiency of the complaint and] under this act, the 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

1 a finding of probable cause is made, the department shall so
2 notify the affected professional educator and the complaining
3 party and may immediately conduct an investigation pursuant to
4 section 12 or transmit its preliminary findings to the local
5 school governing board of the school entity in which the
6 affected professional educator is or was last serving, to allow
7 the local school board to investigate and comment upon the
8 appropriateness of professional discipline.] the department
9 shall dismiss the complaint and provide a written notice of such
10 dismissal to the educator, the complainant and the current and
11 former school entity in which the educator is or was employed.

12 (4) If the department determines that probable cause exists,
13 the department shall provide written notice to the educator, the
14 complainant and the current and former school entity in which
15 the educator is or was employed and may immediately conduct an
16 investigation, which may include directing the school entity to
17 investigate and comment upon the appropriateness of professional
18 discipline in accordance with section 11.

19 (f) In conducting its investigations under this act, the
20 department may investigate any and all allegations of misconduct
21 in the complaint or complaints and any other misconduct
22 concerning the educator that is discovered in the course of the
23 investigations.

24 Section 9.1. [Reporting to Department] Mandatory
25 Reporting.--(a) The [superintendent, assistant superintendent,
26 executive director of an intermediate unit, chief administrator
27 of an area vocational-technical school, administrator of a
28 charter school or their designees shall report any] chief school
29 administrator or his designee shall file all of the following
30 [to] INFORMATION with the department in writing on a form



1 prescribed by the department:

2 (1) [The dismissal of a certificated employee] Any educator
3 who has been provided with notice of intent to dismiss or REMOVE ←
4 FOR CAUSE, NOTICE of nonrenewal for cause, NOTICE OF REMOVAL ←
5 FROM ELIGIBILITY LISTS FOR CAUSE OR NOTICE OF A DETERMINATION
6 NOT TO REEMPLOY FOR CAUSE. The report shall be filed within [30]
7 15 days after [an administrative decision by an arbitrator or
8 the local board of school directors] notice is provided by a
9 school entity.

10 (2) [Conduct that has resulted in a criminal indictment or
11 conviction for a crime set forth in section 111(e)(1) through
12 (3) of the act of March 10, 1949 (P.L.30, No.14), known as the
13 "Public School Code of 1949," or other crime that involves moral
14 turpitude. The report shall be filed within 30 days of the
15 receipt of information and shall include all available
16 information relating to the conduct resulting in the charge or
17 conviction.] Any educator who has been ARRESTED OR indicted for ←
18 or convicted of any crime that is graded a misdemeanor or
19 felony. For purposes of this section, the term conviction shall
20 include a plea of guilty or nolo contendere. The report shall be
21 filed within 15 days of discovery of the indictment or
22 conviction.

23 (3) [Information which constitutes reasonable cause to
24 believe that a certificated employee has] Any educator against
25 whom allegations have been made that the educator has:

26 (i) caused physical injury to a CHILD OR student [or child] ←
27 as a result of negligence or malice [or has];

28 (ii) committed sexual abuse or exploitation involving a
29 CHILD OR student [or child].]; or ←

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

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

3 (4) Any educator who has resigned, retired or otherwise
4 separated from employment after a school entity has received
5 notice of alleged misconduct UNDER THIS ACT. The report shall be ←
6 filed within 15 days of the separation from employment,
7 notwithstanding any termination agreement to the contrary that
8 the school entity may enter into with the educator.

9 (5) ANY EDUCATOR WHO IS THE SUBJECT OF A REPORT FILED BY THE ←
10 SCHOOL ENTITY UNDER THE REPORTING REQUIREMENTS OF 23 PA.C.S. CH.
11 63 (RELATING TO CHILD PROTECTIVE SERVICES). THE REPORT SHALL BE
12 FILED WITHIN 15 DAYS OF THE FILING OF THE CHILD PROTECTIVE
13 SERVICES REPORT.

14 [(b) The superintendent, assistant superintendent, executive
15 director of an intermediate unit, chief administrator of an area
16 vocational-technical school and administrator of a charter
17 school or their designees shall comply with the provisions of
18 subsection (a). Failure to comply shall be deemed a violation of
19 subsection (a) by the chief school administrator of that school
20 entity and may result in disciplinary action against the chief
21 school administrator.]

22 (c) An educator who is ARRESTED OR indicted for or convicted ←
23 of any crime graded as a misdemeanor or felony shall report the
24 indictment or conviction to the school entity at which the
25 educator is currently employed within 72 hours of the indictment
26 or conviction.

27 (D) AN EDUCATOR WHO KNOWS OF ANY ACTION, INACTION OR CONDUCT ←
28 WHICH CONSTITUTES MISCONDUCT UNDER THIS ACT SHALL REPORT SUCH
29 MISCONDUCT TO HIS OR HER CHIEF SCHOOL ADMINISTRATOR AND
30 IMMEDIATE SUPERVISOR. IF THE MISCONDUCT INVOLVES SEXUAL

1 MISCONDUCT OR SEXUAL ABUSE OR EXPLOITATION, THE EDUCATOR SHALL
2 FILE A MANDATORY REPORT WITH THE DEPARTMENT AND INFORM HIS OR
3 HER CHIEF SCHOOL ADMINISTRATOR AND IMMEDIATE SUPERVISOR OF THE
4 FILING.

5 ~~(d)~~ (E) All reports submitted to the department shall ←
6 include AN INVENTORY OF all information and documentary and ←
7 physical evidence in possession or control of the school entity
8 relating to the misconduct resulting in the report AND THE NAME ←
9 AND CONTACT INFORMATION FOR THE CURRENT CUSTODIAN OF THE ITEMS
10 LISTED IN THE INVENTORY. THE SCHOOL ENTITY SHALL PROVIDE
11 PROMPTLY TO THE DEPARTMENT ANY DOCUMENTS OR ITEMS REQUESTED
12 AFTER THE DEPARTMENT REVIEWS THE INVENTORY.

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

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

28 (i) Within 15 days of [the receipt] service of notice of
29 charges issued by the department, the [professional] educator
30 may request a hearing before the commission on the question of

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

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

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

29 (iv) [The commission may reinstate the certificate of a
30 professional] Upon petition by the educator, the commission may

1 direct the department to reinstate the certificate and
2 employment eligibility of an educator suspended under this
3 paragraph or release the [professional] educator from an
4 affidavit under subparagraph (ii) if the [professional educator
5 participates in] educator ~~successfully completes~~ IS ADMITTED ←
6 INTO an accelerated rehabilitative disposition program as a
7 result of the indictment and the commission determines that the
8 [professional] educator does not pose a threat to the health,
9 safety or welfare of students or other individuals in a school.
10 The commission shall conduct an expedited hearing, if requested,
11 for an applicant for reinstatement or release under this
12 subparagraph. †Notwithstanding the provisions of this ←
13 subparagraph, an applicant shall not be reinstated if the
14 indictment was for an offense under 18 Pa.C.S. Ch. 31 (relating
15 to sexual offenses) [where the victim is a minor.] PRIOR TO ←
16 SUCCESSFUL COMPLETION OF THE ACCELERATED REHABILITATIVE
17 DISPOSITION PROGRAM AND DISMISSAL OF THE CRIMINAL CHARGES.

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

1 "conviction" shall include a plea of guilty or nolo contendere.

2 [(3) Direct the department to discipline a professional
3 educator upon receipt of a certified copy of an adjudication
4 from the appropriate licensing authority in another state,
5 territory or nation imposing discipline for grounds, other than
6 a conviction under paragraph (2), that are comparable to grounds
7 for discipline under this act. Upon receipt of the adjudication,
8 the commission shall issue an order directing that the
9 professional educator show cause why the imposition of identical
10 or comparable discipline in this Commonwealth would be
11 unwarranted. The professional educator shall respond within 30
12 days of receipt of the order. The final adjudication by an
13 appropriate licensing authority of another jurisdiction shall be
14 conclusive as to the misconduct of a professional educator under
15 this act. Within 30 days after the time allotted for the
16 professional educator to respond to the order to show cause, the
17 commission may impose the identical or comparable discipline
18 unless the professional educator demonstrates that:

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

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

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

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

28 (b) Nothing in this section shall be construed to prevent
29 the department from pursuing discipline under this act against
30 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.

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

Section 9.4. Imposition of Discipline on Founded and
Indicated Reports.--(a) ~~The~~ NOTWITHSTANDING ANY PROVISION OF 23
PA.C.S. CH. 63 (RELATING TO CHILD PROTECTIVE SERVICES), THE
commission shall:

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

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

1 educator demonstrates that:

2 (i) the revocation would result in a grave injustice; or

3 (ii) the procedure used in the administrative procedure
4 under 23 Pa.C.S. Ch. 63 did not provide due process.

5 (3) Direct the department to immediately reinstate a
6 certificate and employment eligibility upon receipt of a
7 certified document establishing that a founded or indicated
8 report of child abuse or founded or indicated report for a
9 school employe was reversed or determined to be unfounded.

10 (b) Nothing in this section shall be construed to prevent
11 the department from pursuing discipline under this act against
12 any educator for whom a founded or indicated report of child
13 abuse or founded or indicated report for a school employe was
14 reversed or determined to be unfounded.

15 (C) FOR PURPOSES OF THIS SECTION, "FINAL DETERMINATION"
16 SHALL MEAN A FINAL ORDER ISSUED BY THE DEPARTMENT OF PUBLIC
17 WELFARE BUREAU OF HEARINGS AND APPEALS OR THE SECRETARY OF
18 PUBLIC WELFARE IN RESOLUTION OF ANY ADMINISTRATIVE APPEAL OF AN
19 INDICATED REPORT OR THE EXPIRATION OF THE TIME PERIOD IN WHICH
20 THE SUBJECT OF AN INDICATED REPORT MAY REQUEST AN ADMINISTRATIVE
21 APPEAL.

22 Section 9.5. Reciprocal Discipline.--(a) Upon receipt of a
23 certified copy of an adjudication from the appropriate licensing
24 authority in another state, territory or nation imposing
25 discipline for grounds, ~~other than a conviction under section~~
26 ~~9.2,~~ that are comparable to the grounds for discipline under
27 this act, the department may issue an order directing that the
28 educator show cause why the imposition of identical or
29 comparable discipline in this Commonwealth would be unwarranted.
30 The final adjudication by an appropriate licensing authority of

another jurisdiction shall be conclusive as to the misconduct of
an educator under this section. The educator shall respond
within 30 days of service of the order to show cause. The
commission may direct the department to impose the identical or
comparable discipline unless the educator demonstrates that:

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

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

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

(b) Nothing in this section shall be construed to prevent
the department from pursuing discipline against any educator
disciplined in another state, territory or nation under other
sections of this act.

SECTION 9.6. UNAVAILABILITY OF CERTAIN DEFENSE AND
MITIGATING FACTOR.--THE CONSENT OF A CHILD OR A STUDENT TO
ENGAGE IN SEXUAL MISCONDUCT OR SEXUAL ABUSE OR EXPLOITATION MAY
NOT BE A DEFENSE OR A MITIGATING FACTOR IN ANY DISCIPLINE
PROCEEDING UNDER THIS ACT.

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

[Section 10. Confidentiality.--(a) All information relating
to any complaints, including the identity of the complainant, or
any proceedings relating to or resulting from such complaints,
shall remain confidential, unless or until discipline, other
than a private reprimand, is ordered, any provision of law to
the contrary notwithstanding. Should proceedings, after all
appeals, result in discipline, other than private reprimand,
such discipline and all records pertaining thereto shall become

public. There shall be no ex-parte communication on any pending matter regarding discipline.

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

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

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

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

Section 11. Duties of [Local School Board Officials] School Entities.--(a) Upon receipt of [the preliminary findings] notification in writing from the department, a [local school board shall investigate] school entity shall investigate the allegations of misconduct as directed by the department and may pursue the local disciplinary procedures established by law or by collective bargaining agreement for adjudication of complaints against [professional educators. The local school board shall inform the department within 90 days of receipt of the preliminary findings whether the local school board will pursue disciplinary action and whether the board believes that professional disciplinary action by the commission is warranted] an educator.

(b) [The school board, when its local investigation is

completed, may make a definite] Within 90 days of receipt of the
written notification from the department directing the school
entity to conduct an investigation, the school entity shall
inform the department of the outcome of its investigation and
whether it will pursue local employment action and may make a
recommendation concerning discipline[. The school board shall
notify the affected professional educator of any such
recommendation and shall provide to the department] under this
act. THE DEPARTMENT, UPON REQUEST BY A SCHOOL ENTITY, MAY EXTEND
THE 90-DAY REPORTING PERIOD. In reporting the outcome of its
investigation, the school entity shall provide the department
with:

(1) Its findings [and], a summary of the evidence gathered
and AN INVENTORY OF all documentary and physical evidence
related to the allegations of misconduct AND THE NAME AND
CONTACT INFORMATION FOR THE CURRENT CUSTODIAN OF ITEMS LISTED IN
THE INVENTORY.

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

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

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

(d) When the department receives information at any time

1 during the course of its review, investigation or prosecution of
2 misconduct that the educator is currently employed by a school
3 entity not previously notified under this act, the department
4 shall notify the school entity of the complaint, investigation
5 and charges so that the school entity may exercise its duties
6 and rights under this act.

7 (e) A school entity is prohibited from entering into any
8 agreement with an educator or educator association whereby a
9 school entity agrees not to comply with its mandatory reporting
10 duties or other duties outlined in this act. Any agreement or
11 provision of an agreement contrary to this subsection is void
12 and unenforceable.

13 Section 12. Department Action After Investigation.--After
14 completion of [an] a preliminary or full investigation, the
15 department may dismiss the [charges] complaint, determine that
16 appropriate and sufficient punishment has been imposed by the
17 [local school board, or initiate hearing procedures] school
18 entity, participate in alternative dispute resolution process,
19 enter into a written settlement agreement with the educator or
20 initiate the formal adjudicatory hearing process with the filing
21 of charges with the commission. If the complaint is dismissed or
22 [it is determined that appropriate and sufficient punishment has
23 been imposed by the local school board] otherwise resolved
24 without the filing of charges with the commission, the
25 department shall inform the [professional] educator, the
26 complainant and the [local school board of the determination]
27 school entity of its resolution of the complaint.

28 Section 13. Hearing.--(a) Upon determination to initiate
29 [hearing procedures] the formal adjudicatory hearing process,
30 the department shall[,] within 30 days[,] send a written notice

1 to the [affected professional] educator advising of the charges
2 and of his right to request a hearing within 30 days of
3 [receipt] service of such notice. A copy of the written notice
4 of the charges shall be served upon the [professional educator's
5 current or prior employer] current and former school entity in
6 which the educator is or was employed. The notice of charges
7 shall set forth all acts or omissions which the department
8 asserts constitute misconduct and warrant discipline, which need
9 not be limited to the allegations in the complaint or
10 complaints, and may include allegations of misconduct that were
11 discovered in the course of the department's investigation of a
12 complaint or complaints.

13 (b) Notwithstanding any other provision of this act, if the
14 department in its discretion determines that immediate
15 discipline is necessary to protect the health, safety or welfare
16 of students or other persons in the schools of this
17 Commonwealth, it [shall] may request that the commission modify
18 the procedure set forth in this section and schedule an
19 expedited hearing.

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

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

30 (2) The burden of proof shall be on the department, which

1 shall act as prosecutor, to establish by a preponderance of the
2 evidence that grounds for discipline exist.

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

7 (4) [The governing board of the school entity in which the
8 affected professional educator is or was last employed may
9 intervene, for cause shown, in accordance with 1 Pa. Code §
10 35.28] After the filing of charges against an educator with the
11 commission, the current or former school entity in which the
12 educator is or was employed may intervene AS OF RIGHT in the ←
13 disciplinary proceeding. The hearing officer may limit the ←
14 intervener's participation in the hearing where appropriate.
15 Admission as an intervener shall not be construed as conferring
16 full party status on the school entity, and interveners are
17 granted no rights which survive discontinuance or resolution of
18 the disciplinary matter before the commission.

19 (5) The hearing shall be closed[, unless the affected
20 professional educator requests that it be open to the public. If
21 the hearing is open, the hearing officer, in his discretion, may
22 close any portion of the hearing for good cause shown. If the
23 hearing is closed,] and only the department, commission members
24 and staff, the [affected professional educator and his or her
25 representatives, any intervenors] educator and his or her
26 counsel, any intervener or its counsel, if applicable, and any
27 [material] witnesses shall be permitted to attend. [Students ←
28 attending school in the district which employs the professional
29 educator shall not be permitted to attend any hearing except as
30 witnesses duly subpoenaed to testify with respect to the charges

1 made.] Where a witness is a child or student, the commission or
2 its hearing officers may in their discretion permit a parent or
3 guardian to be in attendance during the testimony of the child
4 or student.

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

7 (7) [The hearing officer shall, within 60] Within 90 days
8 after the conclusion of the hearing, [issue a decision
9 concerning whether] submission of written legal memoranda and
10 receipt of the transcript, the hearing officer shall issue a
11 proposed report concerning whether the department has met its
12 burden of establishing that misconduct has occurred and whether
13 discipline should be imposed. [A decision] The proposed report
14 shall include findings of fact and conclusions of law and
15 specify the recommended discipline.

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

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

19 (1) the [professional] educator or the department files
20 [exceptions or a brief on] exceptions in accordance with 1 Pa.
21 Code §§ 35.211 (relating to procedure to except to proposed
22 report) and 35.212 (relating to content and form of briefs on
23 exceptions) within 30 days of the date of the [recommended
24 decision.] proposed report;

25 (2) WITHIN 60 DAYS OF THE DATE OF THE PROPOSED REPORT, the ←
26 commission initiates a review of the proposed report in the
27 absence of exceptions; or

28 (3) WITHIN 60 DAYS OF THE DATE OF THE PROPOSED REPORT, the ←
29 commission reopens the proceeding for the reception of further
30 evidence in accordance with 1 Pa. Code § 35.233 (relating to

1 reopening by agency action).

2 (b) [The commission shall promptly consider] After
3 consideration of exceptions to the hearing officer's [decision.
4 The commission by a majority vote of the full membership]
5 proposed report or further evidence or its review under this
6 section, the commission shall accept, modify or reject the
7 hearing officer's [decision, except that, in the case of
8 discipline of an administrator, all exceptions shall be taken by
9 a special panel of at least nine members of the commission
10 selected by the chairperson, which will include no more than
11 three teachers] proposed report.

12 [(c) Within 45 days after receiving the decision from the
13 hearing officer and the exceptions thereto, the commission shall
14 issue a written opinion and order affirming, reversing or
15 modifying the hearing officer's decision and imposing
16 discipline, if any.]

17 Section 15. Appeal.--(a) An order of the commission
18 regarding discipline [of a professional] or reinstatement of an
19 educator may be appealed only by the department or the
20 [professional] educator as an adjudication by a [State]
21 Commonwealth agency in the manner provided by law.

22 (b) An appeal filed under subsection (a) shall operate as a
23 stay of the discipline [until the determination] imposed under
24 this act until the resolution of the appeal, except where the
25 commission's decision to discipline is accompanied by a finding
26 that immediate discipline is necessary to protect the health,
27 safety or welfare of students or other persons in the schools of
28 this Commonwealth or the discipline imposed is the result of a
29 negotiated settlement between the parties or is imposed under
30 section 9.2.

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

(d) The commission shall make all adjudications imposing discipline, other than a private reprimand, available to the public ON A PUBLICLY ACCESSIBLE INTERNET WEBSITE AND SHALL COOPERATE WITH THE DEPARTMENT IN MAINTAINING A CENTRAL ONLINE REGISTRY ON A PUBLICLY ACCESSIBLE INTERNET WEBSITE OF CHARTER AND CYBER CHARTER SCHOOL STAFF MEMBERS AND CONTRACTED EDUCATIONAL PROVIDER STAFF MEMBERS WHOSE ELIGIBILITY FOR EMPLOYMENT HAS BEEN SUSPENDED, REVOKED, SURRENDERED OR OTHERWISE DISCIPLINED PURSUANT TO THIS ACT.

Section 16. Reinstatement.--(a) [Any professional] An educator whose certificate [has] or employment eligibility has been suspended, revoked or surrendered may apply to the commission for an order lifting the suspension or reinstating the certificate. The commission shall order the lifting of the suspension or reinstatement if the commission determines it would be just and proper. The commission shall seek and consider recommendations from the department prior to ordering the lifting of the suspension or reinstatement of the certificate and employment eligibility and shall conduct hearings on the application at the request of the [professional] educator in 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 A MANDATORY REPORT or for 
25 providing information to or cooperating with the department or
26 the commission in the course of an investigation or proceeding
27 conducted under this act. This section shall not apply to
28 malicious action by any person or the provision of false
29 information if the person knew or had reason to know that the
30 information was false.

1 (b) A school entity which provides information about the
2 professional conduct of a former or current employe to a
3 prospective employer of that employe is immune from civil
4 liability for the disclosure of the information.

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

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

10 Section 17.2. Confidentiality.--(a) ~~All~~ EXCEPT AS OTHERWISE ←
11 PROVIDED IN THIS ACT, ALL information relating to any complaints
12 or any proceedings relating to or resulting from such
13 complaints, including the identity of the complainant, shall
14 remain confidential, unless or until discipline is imposed,
15 other than a private reprimand or a supplemental sanction deemed
16 private by the commission, any provision of law to the contrary
17 notwithstanding unless otherwise specified in this act. All
18 records pertaining to proceedings resulting in public
19 discipline, excluding those records that are privileged or
20 otherwise protected from release, shall become public after the
21 exhaustion of all appeals except where the commission has
22 determined that immediate discipline is necessary. Records
23 pertaining to immediate discipline proceedings are public at the
24 time that the immediate discipline is imposed.

25 (b) Any person who releases or gives out information
26 received at a commission meeting or hearing or through any
27 disciplinary proceedings, including investigations conducted
28 pursuant to this act, without authorization of the commission OR ←
29 AS AUTHORIZED BY THIS ACT commits a misdemeanor of the third
30 degree.

1 (c) This section shall not prohibit any person from
2 disclosing information previously made public as a result of
3 action by a school entity to dismiss an employe for cause or as
4 a result of an employe's having been formally indicted for or
5 convicted of a crime or from disclosing information that was
6 known prior to OR AVAILABLE INDEPENDENTLY OF the disciplinary
7 proceeding.

8 (d) The provisions of this section shall not apply to
9 information relating to reinstatements or to proceedings under
10 section 9.2 or 9.5 OR TO INFORMATION DEVELOPED IN THE COURSE OF
11 INVESTIGATIONS CONDUCTED BY SCHOOL ENTITIES WHETHER CONDUCTED
12 INDEPENDENTLY OR BY DIRECTION OF THE DEPARTMENT.

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

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

20 (1) Deny an educator access to information CONTAINED IN A
21 COMPLAINT, IF THE INFORMATION IS necessary to prepare a defense
22 in a disciplinary proceeding under this act.

23 (2) Prevent the department or a school entity from
24 investigating OR PROSECUTING allegations of misconduct.
25 Individuals contacted in the course of the department's
26 investigation and prosecution are subject to the confidentiality
27 proscriptions set forth in this section.

28 (3) Prevent the department or a school entity from providing
29 information to, or consulting with, a law enforcement, child
30 protective services or licensing agency of the Commonwealth or

1 other state or jurisdiction.

2 (G) AN INDIVIDUAL CONTACTED IN THE COURSE OF THE
3 DEPARTMENT'S INVESTIGATION AND PROSECUTION SHALL BE SUBJECT TO
4 THE CONFIDENTIALITY PROVISIONS OF THIS SECTION.

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

7 Section 18. Commission Proceedings and Procedures.--(a) The
8 commission shall conduct its disciplinary proceedings in
9 accordance with the provisions of this act and Title 2 of the
10 Pennsylvania Consolidated Statutes (relating to administrative
11 law and procedure), unless otherwise specified in this act; if
12 any inconsistency arises, the provisions of this act shall be
13 controlling. [Any] In all disciplinary proceedings conducted by
14 or on behalf of the commission, the educator is entitled to
15 represent himself or be represented by legal counsel. In all
16 public hearings conducted by the commission, a person is
17 entitled to be heard by the commission in person, in writing,
18 through counsel or through his or her designated
19 representative[,] in accordance with procedures adopted pursuant
20 to this act. The commission shall enter as a matter of record
21 the minutes of each meeting, every vote taken by the commission
22 and every official act of the commission.

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

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

30 (1) the [professional] educator who is the subject of the

1 proceeding is employed by the same school entity[; or] as the
2 commissioner;

3 (2) the [professional] educator who is the subject of the
4 proceeding is a member of a Statewide [professional] educator
5 organization of which the commissioner is an officer, director
6 or employe[.];

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

9 (4) the commissioner has any personal and independent
10 knowledge of the educator or issues in the case that would
11 compromise the commissioner's ability to make an impartial
12 decision.

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

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

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

19 (2) To issue subpoenas ~~upon petition by the parties after~~ ←
20 the filing of charges as provided for under the provisions of
21 this act, COMMISSION BYLAWS and 2 Pa.C.S. (relating to ←
22 administrative law and procedure) to compel the attendance and
23 testimony of witnesses and the production of books, records,
24 documents and other evidentiary material.

25 (b) A subpoena issued under this act shall clearly indicate
26 on its face that the subpoena is issued in connection with a
27 confidential proceeding and a breach of confidentiality by the
28 persons or entity subpoenaed may result in a civil penalty or
29 misdemeanor.

30 Section 18.3. Disposition of Fees and Fines Collected.--All

1 fees, fines and civil penalties shall be paid into the State
2 Treasury through the department and credited to a restricted
3 revenue account in the General Fund, which is hereby
4 established. Funds in the account may be utilized to the extent
5 of expenditures incurred by the department and the commission in
6 the implementation of their respective duties under this act.

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