

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 34

PRINTER'S NO. 930

AMOUNT

No Fiscal Impact

FUND

General Fund

DATE INTRODUCED

March 15, 2013

PRIME SPONSOR

Senator Smucker

HISTORY OF BILL

Referred to EDUCATION, March 15, 2013
Reported as amended, April 16, 2013
First consideration, April 16, 2013
Re-referred to APPROPRIATIONS, May 1, 2013
Re-reported as committed, May 13, 2013

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 34 amends the Professional Educator Discipline Act (Act 141 of 1973) to make changes to provisions under which professional educators are investigated and disciplined for misconduct as follows:

Jurisdiction and Grounds for Discipline

- Expands the jurisdiction of the Pennsylvania Standards and Practices Commission to include educators holding private academic school certification and those working for independent contractors providing direct education services to a school.
- Expands basis for discipline to include founded and indicated reports of child abuse and founded and indicated reports for a school employee; sexual misconduct, which includes "grooming" to establish a romantic or sexual relationship with a student; failure to comply with reporting requirements; and, threats or discrimination against someone who reports suspected misconduct or participates in a disciplinary hearing.
- Eliminates one-year statute of limitations for filing misconduct complaints.
- Clarifies allegations discovered in the investigation of a misconduct complaint can be used to prosecute an educator.
- Allows commission members who uncover evidence of misconduct to file a complaint.
- Specifies the Department of Education may pursue discipline against an educator who has been acquitted of criminal charges or who has participated in an alternative disposition program, for whom criminal charges were withdrawn or dismissed, or a founded or indicated report of child abuse is reversed or determined to be unfounded.

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Reporting

- Expands reporting requirements for chief school administrators related to professional disciplinary issues and modifies mandatory reporting deadlines.
- Requires an educator to make a report to the chief school administrator, immediate supervisor and the department, when having knowledge of sexual misconduct, sexual abuse or exploitation.
- Expands the requirements for educators to report when they are arrested indicted or convicted of certain crimes.
- Prohibits school entities from entering into confidential agreements that interfere with mandatory reporting requirements.

Confidentiality

- Provides civil immunity to a school entity for providing accurate references involving professional misconduct for employees and to individuals who file a mandatory report or complaint with the Department of Education or who provide information to or cooperate with the department or commission, unless the school entity or person act maliciously or knowingly provide false information.
- Clarifies confidentiality provisions to stipulate that a person is not prohibited from disclosing information available independently of a disciplinary proceeding, provisions do not apply to information developed in the course of investigations by a school entity and provisions apply to individuals contacted during the investigation and prosecution of a complaint by the department.

Discipline

- Provides that an educator may be required to participate in supplemental sanctions as a form of discipline. Supplemental sanctions may include the payment of fines, cost or fees, counseling, care or treatment of a physician, psychologist or psychiatrist.
- Requires the commission direct the department to revoke the certificate and employment eligibility of an educator who has been convicted of certain crimes enumerated in the School Code or the attempt, solicitation or conspiracy to commit any such crime.
- Requires the commission to direct the department to impose discipline for conduct found to constitute one of the following: immorality; incompetency; intemperance; cruelty; negligence; sexual misconduct; sexual abuse or exploitation; a violation of the code of professional conduct; illegal use of professional title; failure to comply with their duties under the this act; or actions taken to threaten, coerce, discriminate or otherwise retaliate against an individual who reports actual or suspected misconduct or against, victims, witnesses or others participating in disciplinary proceedings.

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- Requires the commission to direct the department to discipline and 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 employee.
- Requires the commission to direct the department to discipline an educator who is named as the perpetrator of an indicated report of child abuse or is named as an individual responsible for injury or abuse in an indicated report for a school employee.
- Requires immediate reinstatement of an educator when a founded or indicated report is reversed.

Investigations and Hearing

- Allows issuance of investigatory subpoenas and subpoenas.
- Eliminates provisions requiring the discipline of an administrator be overseen by a special panel.
- Requires the department to notify a school entity of any complaint, investigation and charges when it has not been previously notified so it may exercise its duties under the act.
- Modifies deadlines for events to occur in the disciplinary process.
- Clarifies the standard of proof that misconduct has occurred to be "a preponderance of the evidence."
- Allows the commission to permit a parent or guardian to be present when a child or student is testifying as a witness during a hearing.
- Allows the department to grant a school entity an extension of time to complete a report on a misconduct investigation.
- Allows the commission to initiate a review of the hearing officer's proposed report even if neither party to the hearing has filed exceptions or to reopen the proceeding to receive further evidence.
- Requires the department and the school entity to expunge the charges from the educator's file when the commission finds no misconduct has occurred, unless the school entity is pursuing local disciplinary action.
- Requires the commission to make all adjudications imposing discipline, other than a private reprimand, available via a publicly accessible website and maintain a publicly accessible central online registry of staff members from charter and cyber charter schools, as well as, contracted educational providers whose employment eligibility has been suspended, revoked or otherwise disciplined under the act.
- Prohibits a commission member from voting in any case where the commissioner has filed a misconduct complaint against the educator or has personal and independent knowledge of the educator or issues in the case that would compromise the commissioner's ability to make an impartial decision.
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- Clarifies the consent of a child or a student to engage in sexual abuse or exploitation may not be a defense or a mitigating factor in a discipline proceeding.

Reinstatement

- Allows the commission when considering whether to reinstate an educator's certificate or employment eligibility, to consider recommendations from the school entity in which the educator was employed and whether the educator complied with any conditions imposed as part of the discipline.
- Allows reinstatement of the certificate and employment eligibility if an educator is admitted into an accelerated rehabilitative disposition program. When the educator was indicated for a sexual offense, the reinstatement cannot occur until completion of the program and criminal charges are dismissed.

Other Provisions

- Makes changes to the commission's membership.
- Allows the commission to establish and participate in dispute resolution programs and develop outreach programs, professional development and courses designed to improve practice and ethical conduct.
- Provides that an educator misconduct complaint is subject to the penalties for unsworn falsification to authorities.
- Provides that all fees, fines costs and civil penalties shall be paid into the State Treasury through the department and credited to a restricted account in the General Fund, known as the Professional Educator Discipline Account. Funds from the account may be used by the department and the commission for expenditures incurred in performing their duties under the act.
- The legislation is scheduled to take effect in 60 days.

FISCAL IMPACT:

The enactment of Senate Bill 34 will have no adverse fiscal impact on Commonwealth Funds. The Pennsylvania Standards and Practices Commission and the Department of Education have indicated that the provisions which expand the jurisdiction of the commission to include educators holding private academic school certification and independent contractors will likely increase the disciplinary caseload. However, provisions allowing the commission to issue fines and fees to educators as penalties related to misconduct and reinstatement will likely offset the additional costs.

Additionally, there has been a significant increase in misconduct complaints in recent years (240 per year to 560 per year). In response to the increased caseload, the Governor has proposed increasing teacher certification fees by \$25, which is projected to generate \$775,000 on an annual basis.