

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 34 Session of 2013

INTRODUCED BY SMUCKER, WILLIAMS, MENSCH, TOMLINSON, VULAKOVICH,
BROWNE, WHITE, RAFFERTY, WAUGH, BAKER, PILEGGI AND BOSCOLA,
MARCH 15, 2013

REFERRED TO EDUCATION, MARCH 15, 2013

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; providing for
6 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; and establishing the Professional
10 Educator Discipline Account.

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

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

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

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

21 "Administrator" shall mean [a person who is a commissioned

1 officer or holds a valid administrative certificate.] an
2 educator who holds a letter of eligibility, a commission, an
3 administrative certificate or a supervisory certificate or who
4 serves in a school entity in a position that supervises the
5 educational operations of a school building, a school program or
6 a school system.

7 "Certificate" shall mean any Commonwealth of Pennsylvania
8 certificate, commission, letter of eligibility or permit issued
9 under the act of March 10, 1949 (P.L.30, No.14), known as the
10 "Public School Code of 1949," or under the act of January 28,
11 1988 (P.L.24, No.11), known as the "Private Academic Schools
12 Act." The term includes a certificate or letter of eligibility
13 that is invalid or inactive as defined in 22 Pa. Code § 49.2
14 (relating to inactivity and invalidity).

15 "Charter or cyber charter school" shall mean a school
16 established pursuant to Article XVII-A of the act of March 10,
17 1949 (P.L.30, No.14), known as the "Public School Code of 1949."

18 "Charter or cyber charter school staff member" shall mean an
19 individual employed by a charter or cyber charter school in a
20 position for which [State] certification would be required in a
21 public school other than a charter or cyber charter school but
22 who is not required to hold [State] certification under section
23 1724-A of the act of March 10, 1949 (P.L.30, No.14), known as
24 the "Public School Code of 1949." The term includes an
25 individual who is an administrator, including the chief
26 administrator or the individual with primary responsibility for
27 the administration of the charter or cyber charter school.

28 "Chief school administrator" shall mean the superintendent or
29 chief executive officer of a school district, the executive
30 director of an intermediate unit, the director of an area

1 vocational-technical school, the chief administrator of a
2 charter or cyber charter school, the director of a private
3 academic school or the chief administrator of a contracted
4 educational provider.

5 "Child" shall mean an individual who is less than 18 years of
6 age.

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

9 "Contracted educational provider" shall mean an individual or
10 an entity with which a school entity has contracted to provide
11 direct educational services to its students.

12 "Contracted educational provider staff member" shall mean a
13 person who:

14 (1) serves in a position for which certification would be
15 required in a public school; and

16 (2) is employed by a contracted educational provider or by
17 or in a school entity as an individual contracted educational
18 provider.

19 The term includes an individual who is an administrator,
20 including the chief administrator or the individual with primary
21 responsibility for the administration of a contracted
22 educational provider.

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

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

27 (1) [Issue a private] Private reprimand.

28 (2) [Issue a public] Public reprimand.

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

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

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

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

9 (5) Surrender.

10 (6) Supplemental sanctions.

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

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

21 "Educator" shall mean a person who holds a certificate, who
22 is a charter or cyber charter school staff member or who is a
23 contracted educational provider staff member.

24 "Indictment" shall include a bill of indictment, police
25 criminal complaint, criminal information or other similar
26 document.

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

30 ["Professional educator" shall mean a person who is

1 certificated as a teacher, educational specialist or an
2 administrator in the Commonwealth.]

3 "Revocation" shall mean the termination of a certificate, the
4 termination of the eligibility to be employed as a charter or
5 cyber charter school staff member or the termination of the
6 eligibility to be employed as a contracted educational provider
7 staff member.

8 "School entity" shall mean a school district, intermediate
9 unit [or], area vocational-technical school, charter [school,
10 Scotland School for Veterans' Children, Scranton State School
11 for the Deaf and Thaddeus Stevens College of Technology] or
12 cyber charter school, private academic school or contracted
13 educational provider.

14 "Secretary" shall mean the Secretary of Education of the
15 Commonwealth.

16 "Sexual abuse or exploitation" shall [mean the employment,
17 use, persuasion, inducement, enticement or coercion of a child
18 or student to engage in or assist any other person to engage in
19 any sexually explicit conduct or a simulation of any sexually
20 explicit conduct for the purpose of producing a visual
21 depiction, including photographing, videotaping, computer
22 depicting or filming, of any sexually explicit conduct or
23 conduct that constitutes an offense under 18 Pa.C.S. Ch. 31
24 (relating to sexual offenses) or section 6312 (relating to
25 sexual abuse of children) or other forms of sexual exploitation
26 of children or students.] have the meaning given to the term by
27 23 Pa.C.S. Ch. 63 (relating to child protective services).

28 "Sexual misconduct" shall mean any act, including, but not
29 limited to, any verbal, nonverbal, written or electronic
30 communication or physical activity, directed toward or with a

1 child or a student regardless of the age of the child or student
2 that is designed to establish a romantic or sexual relationship
3 with the child or student. Such prohibited acts include, but are
4 not limited to, the following:

5 (1) sexual or romantic invitations;

6 (2) dating or soliciting dates;

7 (3) engaging in sexualized or romantic dialogue;

8 (4) making sexually suggestive comments;

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

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

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

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

18 "Student" shall mean an individual enrolled in:

19 (1) a public school, including an intermediate unit, area
20 vocational-technical school and a charter or cyber charter
21 school;

22 (2) a private school, including a nonpublic, nonlicensed
23 school, private academic school and accredited school; or

24 (3) a contracted educational provider.

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

30 "Surrender" shall mean the termination by consent of a

1 certificate or eligibility to be employed as a charter or cyber
2 charter school staff member or as a contracted educational
3 provider staff member whenever the surrender occurs at any time
4 after the issuance of the certificate or the employment in a
5 charter or cyber charter school or contracted educational
6 provider.

7 "Suspension" shall mean the temporary termination of a
8 certificate, the temporary termination of the eligibility to be
9 employed as a charter or cyber charter school staff member or
10 the temporary termination of the eligibility to be employed as a
11 contracted educational provider staff member for a specific
12 period of time, for an indefinite period of time or until
13 specific conditions are met.

14 ["Teach" shall mean to engage in the practice of teaching in
15 the public schools of the Commonwealth or to provide related
16 educational specialist, administrative or supervisory services
17 in such schools.]

18 "Teacher" shall mean [a] any person who holds a [valid]
19 Pennsylvania teaching certificate[.] or who is employed as a
20 contracted educational provider staff member or by a charter or
21 cyber charter school in a position for which certification would
22 be required in a public school other than a charter or cyber
23 charter school, but who is not required to hold certification
24 under the act of March 10, 1949 (P.L.30, No.14), known as the
25 "Public School Code of 1949."

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

27 Section 2. Certification Requirements.--(a) No [person
28 shall teach in a public school] educator shall be employed by a
29 school entity in the Commonwealth unless he has met the
30 certification requirements which are applicable to the position

1 in the institution in which he is employed as established by the
2 State Board [of Education which are applicable to the
3 institution where he is employed.], the State Board of Private
4 Academic Schools or the department. An educator whose
5 certificate has been revoked, suspended or surrendered is not
6 eligible for employment in a school entity in a position
7 requiring certification or for which certification would be
8 required in a public school other than a charter or cyber
9 charter school or eligible for any certificate until the
10 certificate or eligibility is reinstated in accordance with this
11 act.

12 (b) An educator whose eligibility to be employed as a
13 charter or cyber charter school staff member or as a contracted
14 educational provider staff member has been revoked, suspended or
15 surrendered is not eligible for employment in a school entity in
16 a position requiring certification or for which certification
17 would be required in a public school other than a charter or
18 cyber charter school or eligible for any certificate until
19 eligibility is reinstated in accordance with this act.

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

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

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

1 three years, the terms of five members expire.

2 [(1) the terms of office of four members appointed in the
3 calendar year 2000 shall expire on the third Tuesday of January
4 2001;

5 (2) the terms of office of four members appointed in the
6 calendar year 2000 shall expire on the third Tuesday of January
7 2002; and

8 (3) the terms of office of five members appointed in the
9 calendar year 2000 shall expire on the third Tuesday of January
10 2003.]

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

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

23 (1) [Seven classroom teachers, including one educational
24 specialist, broadly representative of the teaching profession
25 from public schools] Six classroom teachers broadly
26 representative of the education profession, with not more than
27 one from a school entity other than a public school.

28 (2) Three administrators from [public schools] a school
29 entity, at least one of whom shall be a commissioned officer and
30 one a principal, with not more than one from a school entity

1 other than a public school.

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

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

7 (5) One educational specialist.

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

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

30 (d) The chairman of the State Board [of Education], or a

1 member of the [board] State Board designated by the chairman,
2 shall be an ex officio member of the commission without voting
3 privileges.

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

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

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

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

20 (3) To recommend to the State Board [of Education] rules and
21 regulations providing for [the Department of Education] the
22 department's investigation and determination of the
23 acceptability of programs of professional education in colleges
24 and universities of this Commonwealth issuing degrees to persons
25 who may desire to teach in the schools of this Commonwealth. The
26 commission may recommend as its own, with or without
27 modification, standards used by other organizations engaged in
28 the evaluation of teacher preparation programs. In
29 [establishing] recommending standards pursuant to this clause,
30 the commission shall consider, among other factors, the

1 following:

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

3 (ii) The knowledge and skills necessary to effectively
4 perform professional education functions.

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

7 (iv) The value of student [teacher] teaching, laboratory
8 work and other professional experience as preparation for
9 certification.

10 (v) The cultural and demographic diversity of relevant
11 student populations.

12 (vi) Other interests of the public.

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

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

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

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

26 (7) To recommend to the State Board [of Education] rules and
27 regulations governing examinations for the initial certification
28 of teachers.

29 (8) To cooperate with a national board for professional
30 education certification recognized by the commission to such

1 degree as, in the commission's judgment, shall bring advantage
2 to the Commonwealth.

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

8 (9.1) To adopt requirements regarding the submission of
9 reports by the department on the processing of complaints in
10 order to ensure the timely and effective resolution of
11 complaints.

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

29 [(11) To discipline any professional educator or charter
30 school staff member found guilty upon hearings before the

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

12 (11.1) To direct the department to [suspend or revoke the
13 certificate of a professional educator or charter school staff
14 member] discipline any educator in accordance with section 9.2,
15 9.3, 9.4 or 9.5.

16 (11.2) To impose supplemental sanctions or other conditions,
17 corrective action, fines, costs or fees for violations of this
18 act or for reinstatement, including requiring an educator, at
19 the educator's own expense, to submit to the evaluation or care,
20 counseling or treatment of a physician, psychologist, therapist
21 or psychiatrist as designated by the commission or enter an
22 impaired educator program or similar program approved by the
23 commission.

24 (11.3) To issue subpoenas in accordance with procedures set
25 forth in this act.

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

29 (12.1) To establish and participate in alternative dispute
30 resolution programs to allow for flexibility, early resolution

1 and cooperation in resolving charges filed under section 13.

2 (12.2) To develop outreach programs, professional
3 development and courses designed to improve the quality of
4 practice and ethical conduct in the teaching profession.

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

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

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

22 (b) All teachers' certificates in force in this Commonwealth
23 on [the effective date of this amendatory act] February 17,
24 2001, shall continue in full force and effect, subject to all
25 the terms and conditions under which they were issued, until
26 they expire by virtue of their own limitations, unless they are
27 sooner annulled for the reasons and in the manner provided by
28 law.

29 (c) Recommendations as outlined in subsection (a) shall be
30 presented publicly at a scheduled State Board [of Education]

1 meeting. This presentation shall be prior to any board action on
2 regulations, standards or guidelines affecting teacher
3 certification, professional practices, accreditation of teacher
4 education programs and long range plans.

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

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

25 Section 4. Sections 7 and 8 of the act, amended December 14,
26 1989 (P.L.612, No.71), are amended to read:

27 Section 7. Expenses.--Members of the commission shall
28 receive no compensation for their services, but shall be
29 reimbursed for their actual and necessary expenses incurred in
30 the performance of official commission business. A member of the

1 commission, who is an employe of an agency of the Commonwealth,
2 or any of its political subdivisions [including school
3 districts], or of a school entity, shall be permitted to attend
4 commission meetings and perform other commission duties without
5 loss of income or other benefits. A State agency or any
6 political subdivision of this Commonwealth, including a school
7 entity, required to employ a substitute for a member of the
8 commission who is absent from his employment while performing
9 commission business shall be reimbursed by the [Department of
10 Education] department from funds appropriated for the general
11 government operations of the [Department of Education]
12 department for the actual amount of any costs incurred upon
13 presentation of a request for reimbursement and documentation of
14 such cost. A member of the commission who is employed by a
15 private employer shall be reimbursed by the [Department of
16 Education] department, from funds appropriated for the general
17 government operations of the [Department of Education]
18 department, for any income lost, pursuant to guidelines
19 established by the commission, as a result of attendance at
20 commission meetings or performance of other official commission
21 duties upon presentation of a request for reimbursement and
22 documentation of such loss.

23 Section 8. Commission Staff.--(a) There shall be an
24 executive director of the commission who shall serve as the
25 executive officer and secretary of the commission. The
26 commission and the secretary shall jointly employ and fix the
27 compensation of the executive director. The executive director,
28 with approval of the commission and the secretary, may employ
29 additional professional and clerical personnel as may be
30 necessary to carry out the duties and responsibilities of the

1 commission. The [Department of Education] department shall
2 provide adequate space and equipment to facilitate the
3 activities of the commission.

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

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

8 Section 9. Complaints and Department Investigations.--(a)

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

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

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

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

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

28 allegations of misconduct; and

29 (3) be verified [under oath by the complaining party] by the
30 complainant or a duly authorized agent of the [complaining

1 party] complainant and made subject to the penalties of 18
2 Pa.C.S. § 4904 (relating to unsworn falsification to
3 authorities).

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

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

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

24 (2) If the facts alleged are deemed legally sufficient to
25 warrant discipline[, the department shall notify the affected
26 professional educator and the complaining party in writing of
27 the sufficiency of the complaint and] under this act, the
28 department shall provide written notice of the legal sufficiency
29 of the complaint to the educator, the current and former school
30 entity in which the educator is or was employed and the

1 complainant.

2 (2.1) If the facts alleged are deemed legally sufficient to
3 warrant discipline, the department may conduct a preliminary
4 investigation to determine whether there is probable cause to
5 believe that grounds for discipline exist. The department shall
6 be provided, upon request to the complainant, the educator and
7 the current and former school entity in which the educator is or
8 was employed, any [documents] relevant information and
9 documentary and physical evidence it may reasonably require in
10 pursuit of its preliminary investigation. [Such request shall be
11 made in writing to the professional educator or the current or
12 prior employer.]

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

28 (4) If the department determines that probable cause exists,
29 the department shall provide written notice to the educator, the
30 complainant and the current and former school entity in which

1 the educator is or was employed and may immediately conduct an
2 investigation, which may include directing the school entity to
3 investigate and comment upon the appropriateness of professional
4 discipline in accordance with section 11.

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

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

18 (1) [The dismissal of a certificated employe] Any educator
19 who has been provided with notice of intent to dismiss or remove
20 for cause, notice of nonrenewal for cause, notice of removal
21 from eligibility lists for cause or notice of a determination
22 not to reemploy for cause. The report shall be filed within [30]
23 15 days after [an administrative decision by an arbitrator or
24 the local board of school directors] notice is provided by a
25 school 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 arrested or indicted for
4 or convicted of any crime that is graded a misdemeanor or
5 felony. For purposes of this section, the term conviction shall
6 include a plea of guilty or nolo contendere. The report shall be
7 filed within 15 days of discovery of the indictment, arrest or
8 conviction.

9 (3) [Information which constitutes reasonable cause to
10 believe that a certificated employe has caused physical injury
11 to a student or child as a result of negligence or malice or
12 has] Any educator against whom allegations have been made that
13 the educator has:

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

16 (ii) engaged in sexual misconduct with a child or student.

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

19 (3.1) Information which constitutes reasonable cause to
20 suspect that an educator has caused physical injury to a child
21 or student as a result of negligence or malice. The report shall
22 be filed within 15 days of the discovery of the information.

23 (4) Any educator who has resigned, retired or otherwise
24 separated from employment after a school entity has received
25 information of alleged misconduct under this act. The report
26 shall be filed within 15 days of the separation from employment,
27 notwithstanding any termination agreement to the contrary that
28 the school entity may enter into with the educator.

29 (5) Any educator who is the subject of a report filed by the
30 school entity under the reporting requirements of 23 Pa.C.S. Ch.

1 63 (relating to child protective services). The report shall be
2 filed within 15 days of the filing of the child protective
3 services report.

4 (6) Any educator who the school entity knows to have been
5 named as the perpetrator of an indicated or founded report of
6 child abuse or named as an individual responsible for injury or
7 abuse in an indicated or founded report for a school employe
8 under 23 Pa.C.S. Ch. 63. The report shall be filed within 15
9 days of discovery of the child protective services report.

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

18 (c) An educator who is arrested or indicted for or convicted
19 of any crime enumerated under section 111(e) and (f) of the act
20 of March 10, 1949 (P.L.30, No.14), known as the "Public School
21 Code of 1949," shall report the indictment, arrest or conviction
22 to the school entity at which the educator is currently employed
23 within 72 hours of the indictment or conviction.

24 (d) An educator who knows of any action, inaction or conduct
25 which constitutes sexual abuse or exploitation or sexual
26 misconduct under this act shall file a mandatory report with the
27 department and shall report such misconduct to his or her chief
28 school administrator and immediate supervisor. The report shall
29 be filed within 15 days of the discovery of the sexual abuse or
30 exploitation or sexual misconduct.

1 (e) All reports submitted to the department shall include an
2 inventory of all information and documentary and physical
3 evidence in possession or control of the school entity relating
4 to the misconduct resulting in the report and the name and
5 contact information for the current custodian of the items
6 listed in the inventory. The school entity shall provide
7 promptly to the department any documents or items requested
8 after the department reviews the inventory.

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

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

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

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

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

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

25 (iv) [The commission may reinstate the certificate of a
26 professional] Upon petition by the educator, the commission may
27 direct the department to reinstate the certificate and
28 employment eligibility of an educator suspended under this
29 paragraph or release the [professional] educator from an
30 affidavit under subparagraph (ii) if the [professional educator

1 participates in] educator is admitted into an accelerated
2 rehabilitative disposition program as a result of the indictment
3 and the commission determines that the [professional] educator
4 does not pose a threat to the health, safety or welfare of
5 students or other individuals in a school. The commission shall
6 conduct an expedited hearing, if requested, for an applicant for
7 reinstatement or release under this subparagraph.
8 Notwithstanding the provisions of this subparagraph, an
9 applicant shall not be reinstated if the indictment was for an
10 offense under 18 Pa.C.S. Ch. 31 (relating to sexual offenses)
11 [where the victim is a minor.] prior to successful completion of
12 the accelerated rehabilitative disposition program and dismissal
13 of the criminal charges.

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,

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

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

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

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

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

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

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

30 Section 9.3. Imposition of Discipline on Additional

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

4 (1) Immorality.

5 (2) Incompetency.

6 (3) Intemperance.

7 (4) Cruelty.

8 (5) Negligence.

9 (6) Sexual misconduct.

10 (7) Sexual abuse or exploitation.

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

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

21 (10) Failure to comply with duties under this act, including
22 the mandatory reporting duties set forth in section 9.1.

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

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

30 Section 9.4. Imposition of Discipline on Founded and

1 Indicated Reports.--(a) Notwithstanding any provision of 23
2 Pa.C.S. Ch. 63 (relating to child protective services), the
3 commission shall:

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

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

23 (i) the discipline would result in a grave injustice or be
24 unwarranted; or

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

27 (3) Direct the department to immediately reinstate a
28 certificate and employment eligibility upon receipt of a
29 certified document establishing that a founded or indicated
30 report of child abuse or founded or indicated report for a

1 school employe was reversed or determined to be unfounded.

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

7 (c) For purposes of this section, "final determination"
8 shall mean a final order issued by the Department of Public
9 Welfare Bureau of Hearings and Appeals or the Secretary of
10 Public Welfare in resolution of any administrative appeal of an
11 indicated report or the expiration of the time period in which
12 the subject of an indicated report may request an administrative
13 appeal.

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

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

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

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

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

7 Section 9.6. Unavailability of Certain Defense and
8 Mitigating Factor.--The consent of a child or a student to
9 engage in sexual misconduct or sexual abuse or exploitation may
10 not be a defense or a mitigating factor in any discipline
11 proceeding under this act.

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

14 [Section 10. Confidentiality.--(a) All information relating
15 to any complaints, including the identity of the complainant, or
16 any proceedings relating to or resulting from such complaints,
17 shall remain confidential, unless or until discipline, other
18 than a private reprimand, is ordered, any provision of law to
19 the contrary notwithstanding. Should proceedings, after all
20 appeals, result in discipline, other than private reprimand,
21 such discipline and all records pertaining thereto shall become
22 public. There shall be no ex-parte communication on any pending
23 matter regarding discipline.

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

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

1 reinstatements.

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

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

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

21 (b) [The school board, when its local investigation is
22 completed, may make a definite] Within 90 days of receipt of the
23 written notification from the department directing the school
24 entity to conduct an investigation, the school entity shall
25 inform the department of the outcome of its investigation and
26 whether it will pursue local employment action and may make a
27 recommendation concerning discipline[. The school board shall
28 notify the affected professional educator of any such
29 recommendation and shall provide to the department] under this
30 act. The department, upon request by a school entity, may extend

1 the 90-day reporting period. In reporting the outcome of its
2 investigation, the school entity shall provide the department
3 with:

4 (1) Its findings [and], a summary of the evidence gathered
5 and an inventory of all documentary and physical evidence
6 related to the allegations of misconduct and the name and
7 contact information for the current custodian of items listed in
8 the inventory.

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

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

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

21 (d) When the department receives information at any time
22 during the course of its review, investigation or prosecution of
23 misconduct that the educator is currently employed by a school
24 entity not previously notified under this act, the department
25 shall notify the school entity of the complaint, investigation
26 and charges so that the school entity may exercise its duties
27 and rights under this act.

28 (e) A school entity is prohibited from entering into any
29 agreement with an educator or educator association whereby a
30 school entity agrees not to comply with its mandatory reporting

1 duties or other duties outlined in this act. Any agreement or
2 provision of an agreement contrary to this subsection is void
3 and unenforceable.

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

19 Section 13. Hearing.--(a) Upon determination to initiate
20 [hearing procedures] the formal adjudicatory hearing process,
21 the department shall[,] within 30 days[,] send a written notice
22 to the [affected professional] educator advising of the charges
23 and of his right to request a hearing within 30 days of
24 [receipt] service of such notice. A copy of the written notice
25 of the charges shall be served upon the [professional educator's
26 current or prior employer] current and former school entity in
27 which the educator is or was employed. The notice of charges
28 shall set forth all acts or omissions which the department
29 asserts constitute misconduct and warrant discipline, which need
30 not be limited to the allegations in the complaint or

1 complaints, and may include allegations of misconduct that were
2 discovered in the course of the department's investigation of a
3 complaint or complaints.

4 (b) Notwithstanding any other provision of this act, if the
5 department in its discretion determines that immediate
6 discipline is necessary to protect the health, safety or welfare
7 of students or other persons in the schools of this
8 Commonwealth, it [shall] may request that the commission modify
9 the procedure set forth in this section and schedule an
10 expedited hearing.

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

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

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

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

28 (4) [The governing board of the school entity in which the
29 affected professional educator is or was last employed may
30 intervene, for cause shown, in accordance with 1 Pa. Code §

1 35.28] After the filing of charges against an educator with the
2 commission, the current or former school entity in which the
3 educator is or was employed may intervene as of right in the
4 disciplinary proceeding. Admission as an intervener shall not be
5 construed as conferring full party status on the school entity,
6 and interveners are granted no rights which survive
7 discontinuance or resolution of the disciplinary matter before
8 the commission.

9 (5) The hearing shall be closed[, unless the affected
10 professional educator requests that it be open to the public. If
11 the hearing is open, the hearing officer, in his discretion, may
12 close any portion of the hearing for good cause shown. If the
13 hearing is closed,] and only the department, commission members
14 and staff, the [affected professional educator and his or her
15 representatives, any intervenors] educator and his or her
16 counsel, any intervener or its counsel, if applicable, and any
17 [material] witnesses shall be permitted to attend. [Students
18 attending school in the district which employs the professional
19 educator shall not be permitted to attend any hearing except as
20 witnesses duly subpoenaed to testify with respect to the charges
21 made.] Where a witness is a child or student, the commission or
22 its hearing officers may in their discretion permit a parent or
23 guardian to be in attendance during the testimony of the child
24 or student.

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

27 (7) [The hearing officer shall, within 60] Within 90 days
28 after the conclusion of the hearing, [issue a decision
29 concerning whether] receipt of the transcript and submission of
30 written legal memoranda, the hearing officer shall issue a

1 proposed report concerning whether the department has met its
2 burden of establishing that misconduct has occurred and whether
3 discipline should be imposed. [A decision] The proposed report
4 shall include findings of fact and conclusions of law and
5 specify the recommended discipline.

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

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

9 (1) the [professional] educator or the department files
10 [exceptions or a brief on] exceptions in accordance with 1 Pa.
11 Code §§ 35.211 (relating to procedure to except to proposed
12 report) and 35.212 (relating to content and form of briefs on
13 exceptions) within 30 days of the date [of] the [recommended
14 decision.] proposed report was mailed;

15 (2) within 60 days of the date the proposed report was
16 mailed, the commission initiates a review of the proposed report
17 in the absence of exceptions; or

18 (3) within 60 days of the date the proposed report was
19 mailed, the commission reopens the proceeding for the reception
20 of further evidence in accordance with 1 Pa. Code § 35.233
21 (relating to reopening by agency action).

22 (b) [The commission shall promptly consider] After
23 consideration of exceptions to the hearing officer's [decision.
24 The commission by a majority vote of the full membership]
25 proposed report or further evidence or its review under this
26 section, the commission shall accept, modify or reject the
27 hearing officer's [decision, except that, in the case of
28 discipline of an administrator, all exceptions shall be taken by
29 a special panel of at least nine members of the commission
30 selected by the chairperson, which will include no more than

1 three teachers] proposed report.

2 [(c) Within 45 days after receiving the decision from the
3 hearing officer and the exceptions thereto, the commission shall
4 issue a written opinion and order affirming, reversing or
5 modifying the hearing officer's decision and imposing
6 discipline, if any.]

7 Section 15. Appeal.--(a) An order of the commission
8 regarding discipline [of a professional] or reinstatement of an
9 educator may be appealed only by the department or the
10 [professional] educator as an adjudication by a [State]
11 Commonwealth agency in the manner provided by law.

12 (b) An appeal filed under subsection (a) shall operate as a
13 stay of the discipline [until the determination] imposed under
14 this act until the resolution of the appeal, except where:

15 (1) the grounds for discipline include sexual misconduct or
16 sexual abuse or exploitation;

17 (2) the commission's decision to discipline is accompanied
18 by a finding that immediate discipline is necessary to protect
19 the health, safety or welfare of students or other persons in
20 the schools of this Commonwealth; or

21 (3) the discipline imposed is the result of a negotiated
22 settlement between the parties or is imposed under section 9.2.

23 (c) Where the commission's adjudication [is in favor of the
24 professional educator] finds no educator misconduct under this
25 act, the charges pertaining to the disciplinary proceeding shall
26 be expunged from any personal or professional file of the
27 [professional] educator maintained by the department [and/or the
28 local school entity.] and the school entity unless the school
29 entity has taken or is pursuing local disciplinary action
30 against the educator.

1 (d) The commission shall make all adjudications imposing
2 discipline, other than a private reprimand, available on a
3 publicly accessible Internet website and shall cooperate with
4 the department in maintaining a central online registry on a
5 publicly accessible Internet website of charter and cyber
6 charter school staff members and contracted educational provider
7 staff members whose eligibility for employment has been
8 suspended, revoked, surrendered or otherwise disciplined
9 pursuant to this act.

10 Section 16. Reinstatement.--(a) [Any professional] An
11 educator whose certificate [has] or employment eligibility has
12 been suspended, revoked or surrendered may apply to the
13 commission for an order lifting the suspension or reinstating
14 the certificate. The commission shall order the lifting of the
15 suspension or reinstatement if the commission determines it
16 would be just and proper. The commission shall seek and consider
17 recommendations from the department prior to ordering the
18 lifting of the suspension or reinstatement of the certificate
19 and employment eligibility and shall conduct hearings on the
20 application at the request of the [professional] educator in
21 accordance with procedures [of this act] established by the
22 commission in accordance with this act. The commission shall
23 also seek and may consider recommendations from the school
24 entity or entities in which the educator was employed at the
25 time of the misconduct. For purposes of determining whether it
26 is just and proper to lift a suspension or reinstate a
27 certificate, the commission may consider:

- 28 (1) The conduct which resulted in discipline.
- 29 (2) Other past conduct of the applicant.
- 30 (3) The applicant's current attitude toward past conduct.

1 (4) Rehabilitation efforts and activities.

2 (4.1) Evidence of compliance with any conditions imposed as
3 part of the discipline.

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

6 (b) The commission shall not lift the suspension or
7 reinstate the certificate [of a professional] or employment
8 eligibility of an educator if the suspension or revocation
9 resulted from any of the following:

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

12 (2) Surrender of a certificate [in lieu of discipline] or
13 employment eligibility for conduct relating to sexual abuse or
14 exploitation.

15 (c) The commission shall not lift the suspension or
16 reinstate the certificate or employment eligibility of [a
17 professional] an educator convicted of an offense [under 18
18 Pa.C.S. (relating to crimes and offenses)] set forth in section
19 111(e)(1) through (3) of the act of March 10, 1949 (P.L.30,
20 No.14), known as the "Public School Code of 1949" for the time
21 period set forth in that section.

22 Section 9. Section 17 of the act, amended December 20, 2000
23 (P.L.918, No.123), is repealed:

24 [Section 17. Unauthorized Release of Information.--(a)
25 Except as otherwise provided in section 10, a member, staff
26 member or employee of the commission, the Department of
27 Education, or any local school entity who releases or gives out
28 information received at a commission meeting or hearing or
29 through any disciplinary proceedings conducted pursuant to this
30 act, without authorization of the commission, is guilty of a

1 misdemeanor of the third degree.

2 (b) Any material witness or his or her representative who
3 releases or gives out information received at a commission
4 meeting or hearing involving disciplinary proceedings, or who
5 releases or gives out information obtained as a result of direct
6 involvement in the investigation of a professional educator or
7 in any disciplinary proceedings conducted pursuant to this act,
8 without authorization of the commission, is guilty of a
9 misdemeanor of the third degree unless this information was
10 known to the material witness or his or her representative prior
11 to that meeting, hearing or investigation.]

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

14 Section 17.1. Immunity From Liability.--(a) Notwithstanding
15 any other provision of law, no person shall be subject to civil
16 liability for filing a complaint or a report or for providing
17 information to or cooperating with the department or the
18 commission in the course of an investigation or proceeding
19 conducted under this act. [This section shall not apply to
20 malicious action by any person or the provision of false
21 information if the person knew or had reason to know that the
22 information was false.]

23 (b) A school entity which provides information about the
24 professional conduct of a former or current employe to a
25 prospective employer of that employe is immune from civil
26 liability for the disclosure of the information.

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

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

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

17 (b) Any person who releases or gives out information deemed
18 confidential under this act, without authorization of the
19 commission or as authorized by this act, commits a misdemeanor
20 of the third degree.

21 (c) This section shall not prohibit any person from
22 disclosing information previously made public as a result of
23 action by a school entity to discipline or dismiss an employe
24 for cause or as a result of an employe's having been formally
25 indicted for or convicted of a crime or from disclosing
26 information that was known or available independently of the
27 disciplinary proceeding.

28 (d) The provisions of this section shall not apply to
29 information relating to reinstatements or to proceedings under
30 section 9.2 or 9.5.

1 (e) The commission may order the release of confidential
2 information upon petition of any interested party when it is
3 just and proper. Petitions for release of information deemed
4 confidential under this section shall be filed with the
5 commission in accordance with procedures established by the
6 commission.

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

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

10 (2) Prevent the department or a school entity from
11 investigating or prosecuting allegations of misconduct.

12 (3) Prevent the commission, the department or a school
13 entity from providing information to, or consulting with, a law
14 enforcement, child protective services or licensing agency of
15 the Commonwealth or other state or jurisdiction.

16 (4) Prevent a school entity from disclosing information
17 developed in the course of investigations conducted by the
18 school entity whether conducted independently or by direction of
19 the department in any disciplinary proceeding against the
20 educator.

21 (g) An individual contacted in the course of the
22 department's investigation and prosecution shall be subject to
23 the confidentiality provisions of this section.

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

26 Section 18. Commission Proceedings and Procedures.--(a) The
27 commission shall conduct its disciplinary proceedings in
28 accordance with the provisions of this act and Title 2 of the
29 Pennsylvania Consolidated Statutes (relating to administrative
30 law and procedure), unless otherwise specified in this act; if

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

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

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

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

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

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

28 (4) the commissioner has any personal and independent
29 knowledge of the educator or issues in the case that would
30 compromise the commissioner's ability to make an impartial

1 decision.

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

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

5 (1) To issue investigatory subpoenas upon petition by the
6 department for purposes of reviewing a complaint and
7 investigating alleged educator misconduct under this act. Notice
8 of the subpoena shall be issued to the educator who is the
9 subject of the complaint or investigation in accordance with
10 bylaws promulgated by the commission.

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

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

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

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