
 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

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
NOVEMBER 20, 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:

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

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

16 "Charter or cyber charter school" shall mean a school
17 established pursuant to Article XVII-A of the act of March 10,
18 1949 (P.L.30, No.14), known as the "Public School Code of 1949."

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

29 "Chief school administrator" shall mean the superintendent or
30 chief executive officer of a school district, the executive

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

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

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

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

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

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

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

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

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

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

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

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

30 (3) [Direct the department to suspend the certificate of a

1 professional educator] Suspension.

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

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

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

10 (5) Surrender.

11 (6) Supplemental sanctions.

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

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

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

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

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

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

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

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

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

17 "Sexual abuse or exploitation" shall [mean the employment,
18 use, persuasion, inducement, enticement or coercion of a child
19 or student to engage in or assist any other person to engage in
20 any sexually explicit conduct or a simulation of any sexually
21 explicit conduct for the purpose of producing a visual
22 depiction, including photographing, videotaping, computer
23 depicting or filming, of any sexually explicit conduct or
24 conduct that constitutes an offense under 18 Pa.C.S. Ch. 31
25 (relating to sexual offenses) or section 6312 (relating to
26 sexual abuse of children) or other forms of sexual exploitation
27 of children or students.] have the meaning given to the term by
28 23 Pa.C.S. Ch. 63 (relating to child protective services).

29 "Sexual misconduct" shall mean any act, including, but not
30 limited to, any verbal, nonverbal, written or electronic

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

6 (1) sexual or romantic invitations;

7 (2) dating or soliciting dates;

8 (3) engaging in sexualized or romantic dialogue;

9 (4) making sexually suggestive comments;

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

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

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

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

19 "Student" shall mean an individual enrolled in:

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

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

25 (3) a contracted educational provider.

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

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

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

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

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

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

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

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

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

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

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

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

1 the terms of four members expire, and in the third of every
2 three years, the terms of five members expire.

3 [(1) the terms of office of four members appointed in the
4 calendar year 2000 shall expire on the third Tuesday of January
5 2001;

6 (2) the terms of office of four members appointed in the
7 calendar year 2000 shall expire on the third Tuesday of January
8 2002; and

9 (3) the terms of office of five members appointed in the
10 calendar year 2000 shall expire on the third Tuesday of January
11 2003.]

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

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

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

29 (2) Three administrators from [public schools] a school
30 entity, at least one of whom shall be a commissioned officer and

1 one a principal, with not more than one from a school entity
2 other than a public school.

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

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

8 (5) One educational specialist.

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

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

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

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

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

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

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

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

1 the commission shall consider, among other factors, the
2 following:

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

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

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

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

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

13 (vi) Other interests of the public.

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

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

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

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

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

30 (8) To cooperate with a national board for professional

1 education certification recognized by the commission to such
2 degree as, in the commission's judgment, shall bring advantage
3 to the Commonwealth.

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

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

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

30 [(11) To discipline any professional educator or charter

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

13 (11.1) To direct the department to [suspend or revoke the
14 certificate of a professional educator or charter school staff
15 member] discipline any educator in accordance with section 9.2,
16 9.3, 9.4 or 9.5.

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

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

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

30 (12.1) To establish and participate in alternative dispute

1 resolution programs to allow for flexibility, early resolution
2 and cooperation in resolving charges filed under section 13.

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

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

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

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

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

30 (c) Recommendations as outlined in subsection (a) shall be

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

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

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

26 Section 4. Sections 7 and 8 of the act, amended December 14,
27 1989 (P.L.612, No.71), are amended to read:

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

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

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

1 necessary to carry out the duties and responsibilities of the
2 commission. The [Department of Education] department shall
3 provide adequate space and equipment to facilitate the
4 activities of the commission.

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

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

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

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

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

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

28 (2) specify the nature and character of the [charges]
29 allegations of misconduct; and

30 (3) be verified [under oath by the complaining party] by the

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

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

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

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

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

1 entity in which the educator is or was employed and the
2 complainant.

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

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

29 (4) If the department determines that probable cause exists,
30 the department shall provide written notice to the educator, the

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

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

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

19 (1) [The dismissal of a certificated employe] Any educator
20 who has been provided with notice of intent to dismiss or remove
21 for cause, notice of nonrenewal for cause, notice of removal
22 from eligibility lists for cause or notice of a determination
23 not to reemploy for cause. The report shall be filed within [30]
24 15 days after [an administrative decision by an arbitrator or
25 the local board of school directors] notice is provided by a
26 school entity.

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

1 turpitude. The report shall be filed within 30 days of the
2 receipt of information and shall include all available
3 information relating to the conduct resulting in the charge or
4 conviction.] Any educator who has been arrested or indicted for
5 or convicted of any crime that is graded a misdemeanor or
6 felony. For purposes of this section, the term conviction shall
7 include a plea of guilty or nolo contendere. The report shall be
8 filed within 15 days of discovery of the indictment, arrest or
9 conviction.

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

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

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

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

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

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

30 (5) Any educator who is the subject of a report filed by the

1 school entity under the reporting requirements of 23 Pa.C.S. Ch.
2 63 (relating to child protective services). The report shall be
3 filed within 15 days of the filing of the child protective
4 services report.

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

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

19 (c) An educator who is arrested or indicted for or convicted
20 of any crime enumerated under section 111(e) and (f.1) of the
21 act of March 10, 1949 (P.L.30, No.14), known as the "Public
22 School Code of 1949," shall report the indictment, arrest or
23 conviction to the school entity at which the educator is
24 currently employed within 72 hours of the indictment or
25 conviction.

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

1 be filed within 15 days of the discovery of the sexual abuse or
2 exploitation or sexual misconduct.

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

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

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

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

1 members of the commission shall hold a hearing within [15] 30
2 days of the receipt of the request for hearing. If the educator
3 fails to request a hearing, the commission or a panel of members
4 of the commission promptly shall convene a meeting to consider
5 the request for immediate suspension. The commission or
6 [committee] panel shall issue a decision within 20 days after
7 the conclusion of the meeting or hearing, including receipt of
8 the transcript or filing of any briefs. The [professional]
9 educator may appeal the decision of the commission pursuant to
10 section [15] 15(a), except that an appeal filed shall not
11 operate as a stay of the discipline.

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

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

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

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

10 Notwithstanding the provisions of this subparagraph, an
11 applicant shall not be reinstated if the indictment was for an
12 offense under 18 Pa.C.S. Ch. 31 (relating to sexual offenses)
13 [where the victim is a minor.] prior to successful completion of
14 the accelerated rehabilitative disposition program and dismissal
15 of the criminal charges.

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

30 [(3) Direct the department to discipline a professional

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

- 17 (i) the discipline would result in a grave injustice;
18 (ii) the discipline is substantially different from what
19 would have been imposed for similar conduct in this
20 Commonwealth; or
21 (iii) the procedure used in the other jurisdiction did not
22 provide due process.

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

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

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

2 Section 9.3. Imposition of Discipline on Additional

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

6 (1) Immorality.

7 (2) Incompetency.

8 (3) Intemperance.

9 (4) Cruelty.

10 (5) Negligence.

11 (6) Sexual misconduct.

12 (7) Sexual abuse or exploitation.

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

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

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

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

30 (b) The commission shall establish definitions consistent

1 with this section.

2 Section 9.4. Imposition of Discipline on Founded and <--
3 Indicated Reports.--(a) Notwithstanding any provision of 23
4 Pa.C.S. Ch. 63 (relating to child protective services), the
5 commission shall:

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

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

25 ~~(i) the discipline would result in a grave injustice or be~~
26 ~~unwarranted; or~~

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

29 ~~(3)~~ (2) Direct the department to immediately reinstate a <--
30 certificate and employment eligibility upon receipt of a

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

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

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

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

- 29 (1) the discipline would result in a grave injustice;
30 (2) the discipline is substantially different from what

1 would have been imposed for similar conduct in this
2 Commonwealth; or

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

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

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

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

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

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

1 another offense requiring mandatory revocation of a certificate.

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

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

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

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

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

1 recommendation and shall provide to the department] under this
2 act. The department, upon request by a school entity, may extend
3 the 90-day reporting period. In reporting the outcome of its
4 investigation, the school entity shall provide the department
5 with:

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

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

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

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

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

30 (e) A school entity is prohibited from entering into any

1 agreement with an educator or educator association whereby a
2 school entity agrees not to comply with its mandatory reporting
3 duties or other duties outlined in this act. Any agreement or
4 provision of an agreement contrary to this subsection is void
5 and unenforceable.

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

21 Section 13. Hearing.--(a) Upon determination to initiate
22 [hearing procedures] the formal adjudicatory hearing process,
23 the department shall[,] within 30 days[,] send a written notice
24 to the [affected professional] educator advising of the charges
25 and of his right to request a hearing within 30 days of
26 [receipt] service of such notice. A copy of the written notice
27 of the charges shall be served upon the [professional educator's
28 current or prior employer] current and former school entity in
29 which the educator is or was employed. The notice of charges
30 shall set forth all acts or omissions which the department

1 asserts constitute misconduct and warrant discipline, which need
2 not be limited to the allegations in the complaint or
3 complaints, and may include allegations of misconduct that were
4 discovered in the course of the department's investigation of a
5 complaint or complaints.

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

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

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

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

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

30 (4) [The governing board of the school entity in which the

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

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

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

29 (7) [The hearing officer shall, within 60] Within 90 days
30 after the conclusion of the hearing, [issue a decision

1 concerning whether] receipt of the transcript and submission of
2 written legal memoranda, the hearing officer shall issue a
3 proposed report concerning whether the department has met its
4 burden of establishing that misconduct has occurred and whether
5 discipline should be imposed. [A decision] The proposed report
6 shall include findings of fact and conclusions of law and
7 specify the recommended discipline.

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

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

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

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

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

24 (b) [The commission shall promptly consider] After
25 consideration of exceptions to the hearing officer's [decision.
26 The commission by a majority vote of the full membership]
27 proposed report or further evidence or its review under this
28 section, the commission shall accept, modify or reject the
29 hearing officer's [decision, except that, in the case of
30 discipline of an administrator, all exceptions shall be taken by

1 a special panel of at least nine members of the commission
2 selected by the chairperson, which will include no more than
3 three teachers] proposed report.

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

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

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

17 (1) the grounds for discipline include sexual misconduct or
18 sexual abuse or exploitation;

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

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

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

1 entity has taken or is pursuing local disciplinary action
2 against the educator.

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

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

30 (1) The conduct which resulted in discipline.

- 1 (2) Other past conduct of the applicant.
- 2 (3) The applicant's current attitude toward past conduct.
- 3 (4) Rehabilitation efforts and activities.

4 (4.1) Evidence of compliance with any conditions imposed as
5 part of the discipline.

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

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

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

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

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

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

26 [Section 17. Unauthorized Release of Information.--(a)
27 Except as otherwise provided in section 10, a member, staff
28 member or employee of the commission, the Department of
29 Education, or any local school entity who releases or gives out
30 information received at a commission meeting or hearing or

1 through any disciplinary proceedings conducted pursuant to this
2 act, without authorization of the commission, is guilty of a
3 misdemeanor of the third degree.

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

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

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

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

29 (c) This section shall not apply to malicious action by any
30 person or school entity or the provision of false information if

1 the person or school entity knew, or had reason to know, that
2 the information was false.

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

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

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

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

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

1 information relating to reinstatements or to proceedings under
2 section 9.2 or 9.5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (4) the commissioner has any personal and independent

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

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

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

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

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

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

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

1 commission in the implementation of their respective duties
2 under this act.

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