

EDUCATOR DISCIPLINE ACT¹

24 P.S. §§2070.1 et seq.
Effective February 18, 2014

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¹ This compilation of the Educator Discipline Act is not intended to be an official document. The document was created for the convenience of interested parties. When citing the Act, please refer to the version contained in Purdon's Statutes.

Section 1a. Short Title.--This act shall be known and may be cited as the Educator Discipline Act.

Section 1b. Definitions.--When used in this act, the following words and phrases shall have the following meanings:

"*Administrator*" shall mean an educator who holds a letter of eligibility, a commission, an administrative certificate or a supervisory certificate or who serves in a school entity in a position that supervises the educational operations of a school building, a school program or a school system.

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

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

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

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

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

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

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

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

- (1) serves in a position for which certification would be required in a public school; and
- (2) is employed by a contracted educational provider or by or in a school entity as an individual contracted educational provider.

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

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

"*Discipline*" shall mean any of the following:

- (1) Private reprimand.
- (2) Public reprimand.
- (3) Suspension.
- (4) Revocation.
- (5) Surrender.
- (6) Supplemental sanctions.

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

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

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

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

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

"*School entity*" shall mean a school district, intermediate unit, area vocational-technical school, charter or cyber charter school, private academic school or contracted educational provider.

"*Secretary*" shall mean the Secretary of Education of the Commonwealth.

"*Sexual abuse or exploitation*" shall have the meaning given to the term by 23 Pa.C.S. Ch. 63 (relating to child protective services).

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

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

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

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

"*Student*" shall mean an individual enrolled in:

- (1) a public school, including an intermediate unit, area vocational-technical school and a charter or cyber charter school;
- (2) a private school, including a nonpublic, nonlicensed school, private academic school and accredited school; or
- (3) a contracted educational provider.

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

"*Surrender*" shall mean the termination by consent of a certificate or eligibility to be employed as a charter or cyber charter school staff member or as a contracted educational provider staff member whenever the surrender occurs at any time after the issuance of the certificate or the employment in a

charter or cyber charter school or contracted educational provider.

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

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

Section 2. Certification Requirements.--(a) No educator shall be employed by a school entity in the Commonwealth unless he has met the certification requirements which are applicable to the position in the institution in which he is employed as established by the State Board, the State Board of Private Academic Schools or the department. An educator whose certificate has been revoked, suspended or surrendered is not eligible for employment in a school entity in a position requiring certification or for which certification would be required in a public school other than a charter or cyber charter school or eligible for any certificate until the certificate or eligibility is reinstated in accordance with this act.

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

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

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

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

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

(1) Six classroom teachers broadly representative of the education profession, with not more than one from a school entity other than a public school.

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

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

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

(5) One educational specialist.

(b) Except for the representatives of the general public, the Governor in making appointments shall consider recommendations from panels of nominees submitted by Statewide educational organizations which certify that the panels include only representatives of the category of professional personnel for which the panel or panels of nominees are submitted. However, the Governor shall not be limited to nominating members of Statewide organizations for appointments to the commission.

(c) All members of the commission except the persons representing the general public shall have been actively engaged in teaching or providing related educational, administrative or supervisory services in a school entity or approved institution of higher education with approved teacher education programs for at least five of the eight years immediately preceding their appointment. A person appointed to the commission who leaves the Commonwealth to become domiciled in another state shall have his position on the commission deemed vacated. A person whose status changes to a category different from that for which that person was appointed may continue to serve on the

commission for the remainder of that person's appointment or until replaced.

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

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

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

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

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

(3) To recommend to the State Board rules and regulations providing for the department's investigation and determination of the acceptability of programs of professional education in colleges and universities of this Commonwealth issuing degrees to persons who may desire to teach in the schools of this Commonwealth. The commission may recommend as its own, with or without modification, standards used by other organizations engaged in the evaluation of teacher preparation programs. In recommending standards pursuant to this clause, the commission shall consider, among other factors, the following:

(i) Ongoing research and developing theories in education.

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

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

(iv) The value of student teaching, laboratory work and other professional experience as preparation for certification.

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

(vi) Other interests of the public.

The commission shall assess the effectiveness of educator preparation programs and recommend changes to the State Board as indicated by such evaluations.

(4) To recommend to the State Board changes in teacher education programs based on commission conducted assessments of these programs.

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

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

(7) To recommend to the State Board rules and regulations governing examinations for the initial certification of teachers.

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

(9) To establish procedures for the commission's adjudication of educator misconduct and applications for reinstatement and for conducting public hearings, including the imposition of fines and fees.

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

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

(11.1) To direct the department to discipline any educator in accordance with section 9b, 9c, 9d

or 9e.

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

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

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

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

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

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

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

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

(b) All teachers' certificates in force in this Commonwealth on February 17, 2001, shall continue in full force and effect, subject to all the terms and conditions under which they were issued, until they expire by virtue of their own limitations, unless they are sooner annulled for the reasons and in the manner provided by law.

(c) Recommendations as outlined in subsection (a) shall be presented publicly at a scheduled State Board meeting. This presentation shall be prior to any board action on regulations, standards or

guidelines affecting teacher certification, professional practices, accreditation of teacher education programs and long range plans.

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

(b) Meetings shall be held at least five times per year at the call of the chairman or upon request in writing of a majority of the commission. A majority shall constitute a quorum and a majority of such quorum shall have authority to act upon any matter properly before the commission unless otherwise specified in this act. Meetings of the commission shall be open to the public and the executive director of the commission shall be responsible for seeing that notices of meetings of the commission are properly circulated.

Section 7. Expenses.--Members of the commission shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in the performance of official commission business. A member of the commission, who is an employe of an agency of the Commonwealth, or any of its political subdivisions or of a school entity, shall be permitted to attend commission meetings and perform other commission duties without loss of income or other benefits. A State agency or any political subdivision of this Commonwealth, including a school entity, required to employ a substitute for a member of the commission who is absent from his employment while performing commission business shall be reimbursed by the department from funds appropriated for the general government operations of the department for the actual amount of any costs incurred upon presentation of a request for reimbursement and documentation of such cost. A member of the commission who is employed by a private employer shall be reimbursed by the department, from funds appropriated for the general government operations of the department, for any income lost, pursuant to guidelines established by the commission, as a result of attendance at commission meetings or performance of other official commission duties upon presentation of a request for reimbursement and documentation of such loss.

Section 8. Commission Staff.--(a) There shall be an executive director of the commission who shall serve as the executive officer and secretary of the commission. The commission and the

secretary shall jointly employ and fix the compensation of the executive director. The executive director, with approval of the commission and the secretary, may employ additional professional and clerical personnel as may be necessary to carry out the duties and responsibilities of the commission. The department shall provide adequate space and equipment to facilitate the activities of the commission.

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

Section 9. Complaints and Department Investigations.--(a) The filing of a written educator misconduct complaint with the department will initiate the department's review and investigation of an educator.

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

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

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

(2) specify the nature and character of the allegations of misconduct; and

(3) be verified by the complainant or a duly authorized agent of the complainant and made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(d) The commission may not file a complaint. If an individual commissioner in his or her personal capacity or in the performance of his or her professional responsibilities as an employe of a school entity uncovers evidence of educator misconduct that would appear to warrant discipline under this act, the individual commissioner may file a complaint in accordance with the provisions of this act.

(e) Upon receipt of a complaint, the department shall promptly review it and all other complaints and information relating to the educator.

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

(2) If the facts alleged are deemed legally sufficient to warrant discipline under this act, the department shall provide written notice of the legal sufficiency of the complaint to the educator, the current and former school entity in which the educator is or was employed and the complainant.

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

(3) If the department determines that probable cause does not exist, the department shall dismiss the complaint and provide a written notice of such dismissal to the educator, the complainant and the current and former school entity in which the educator is or was employed.

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

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

Section 9a. Mandatory Reporting.--(a) The chief school administrator or his designee shall file all of the following information with the department in writing on a form prescribed by the department:

(1) Any educator who has been provided with notice of intent to dismiss or remove for cause, notice of nonrenewal for cause, notice of removal from eligibility lists for cause or notice of a determination not to reemploy for cause. The report shall be filed within 15 days after notice is provided by a school entity.

(2) Any educator who has been arrested or indicted for or convicted of any crime that is graded a misdemeanor or felony. For purposes of this section, the term conviction shall include a plea of guilty or nolo contendere. The report shall be filed within 15 days of discovery of the indictment, arrest or conviction.

(3) Any educator against whom allegations have been made that the educator has:

(i) committed sexual abuse or exploitation involving a child or student; or

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

The report shall be filed within 15 days of the discovery of the allegations of misconduct.

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

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

(5) Any educator who is the subject of a report filed by the school entity under the reporting requirements of 23 Pa.C.S. Ch. 63 (relating to child protective services). The report shall be filed within 15 days of the filing of the child protective services report.

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

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

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

(e) All reports submitted to the department shall include an inventory of all information and documentary and physical evidence in possession or control of the school entity relating to the misconduct resulting in the report and the name and contact information for the current custodian of the items listed in the inventory. The school entity shall provide promptly to the department any

documents or items requested after the department reviews the inventory.

Section 9b. Discipline for Criminal Offenses.--(a) The commission shall:

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

(i) Within 15 days of service of notice of charges issued by the department, the educator may request a hearing before the commission on the question of whether the certification or employment eligibility should be immediately suspended. The commission or a panel of members of the commission shall hold a hearing within 30 days of the receipt of the request for hearing. If the educator fails to request a hearing, the commission or a panel of members of the commission promptly shall convene a meeting to consider the request for immediate suspension. The commission or panel shall issue a decision within 20 days after the conclusion of the meeting or hearing, including receipt of the transcript or filing of any briefs. The educator may appeal the decision of the commission pursuant to section 15(a), except that an appeal filed shall not operate as a stay of the discipline.

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

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

(iv) Upon petition by the educator, the commission may direct the department to reinstate the certificate and employment eligibility of an educator suspended under this paragraph or release the educator from an affidavit under subparagraph (ii) if the educator is admitted into an accelerated

rehabilitative disposition program as a result of the indictment and the commission determines that the educator does not pose a threat to the health, safety or welfare of students or other individuals in a school. The commission shall conduct an expedited hearing, if requested, for an applicant for reinstatement or release under this subparagraph. Notwithstanding the provisions of this subparagraph, an applicant shall not be reinstated if the indictment was for an offense under 18 Pa.C.S. Ch. 31 (relating to sexual offenses) prior to successful completion of the accelerated rehabilitative disposition program and dismissal of the criminal charges.

(2) Direct the department to revoke the certificate and employment eligibility of an educator who has been convicted of a crime set forth in section 111(e)(1) through (3) of the "Public School Code of 1949," a crime involving moral turpitude, or the attempt, solicitation or conspiracy to commit any crime set forth in this section upon the filing of a certified copy of the verdict or judgment or sentence of the court with the commission. The commission shall direct the department to immediately reinstate a certificate and employment eligibility upon receipt of certified court documents establishing that the conviction was reversed. For purposes of this paragraph, the term "conviction" shall include a plea of guilty or nolo contendere.

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

Section 9c. Imposition of Discipline on Additional Grounds.--(a) The commission shall direct the department to impose discipline against any educator for conduct found by the commission to constitute:

- (1) Immorality.
- (2) Incompetency.
- (3) Intemperance.
- (4) Cruelty.
- (5) Negligence.
- (6) Sexual misconduct.
- (7) Sexual abuse or exploitation.
- (8) A violation of the code for professional practice and conduct adopted pursuant to section

5(a)(10).

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

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

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

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

Section 9d. Imposition of Discipline on Founded Reports.-- (a) Notwithstanding any provision of 23 Pa.C.S. Ch. 63 (relating to child protective services), the commission shall:

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

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

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

Section 9e. Reciprocal Discipline.--(a) Upon receipt of a certified copy of an adjudication from the appropriate licensing authority in another state, territory or nation imposing discipline for grounds that are comparable to the grounds for discipline under this act, the department may issue an order directing that the educator show cause why the imposition of identical or comparable discipline in this

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

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

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

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

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

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

Section 11. Duties of School Entities.--(a) Upon receipt of notification in writing from the department, a school entity shall investigate the allegations of misconduct as directed by the department and may pursue the local disciplinary procedures established by law or by collective bargaining agreement for adjudication of complaints against an educator.

(b) Within 90 days of receipt of the written notification from the department directing the school entity to conduct an investigation, the school entity shall inform the department of the outcome of its investigation and whether it will pursue local employment action and may make a recommendation concerning discipline under this act. The department, upon request by a school entity, may extend the 90-day reporting period. In reporting the outcome of its investigation, the school entity shall provide the department with:

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

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

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

(c) A school entity and any official or employe thereof shall cooperate with the department during its review, investigation or prosecution and promptly shall provide the department with any relevant information and documentary and physical evidence that the department may reasonably request.

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

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

Section 12. Department Action After Investigation.-- After completion of a preliminary or full investigation, the department may dismiss the complaint, determine that appropriate and sufficient punishment has been imposed by school entity, participate in alternative dispute resolution process, enter into a written settlement agreement with the educator or initiate the formal adjudicatory hearing process with the filing of charges with the commission. If the complaint is dismissed or otherwise resolved without the filing of charges with the commission, the department shall inform the educator, the complainant and the school entity of its resolution of the complaint.

Section 13. Hearing.--(a) Upon determination to initiate the formal adjudicatory hearing process, the department shall within 30 days send a written notice to the educator advising of the charges and of his right to request a hearing within 30 days of service of such notice. A copy of the written notice of the charges shall be served upon the current and former school entity in which the educator is or was employed. The notice of charges shall set forth all acts or omissions which the department asserts constitute misconduct and warrant discipline, which need not be limited to the allegations in the complaint or complaints, and may include allegations of misconduct that were discovered in the course of the department's investigation of a complaint or complaints.

(b) Notwithstanding any other provision of this act, if the department in its discretion determines

that immediate discipline is necessary to protect the health, safety or welfare of students or other persons in the schools of this Commonwealth, it may request that the commission modify the procedure set forth in this section and schedule an expedited hearing.

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

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

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

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

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

(5) The hearing shall be closed and only the department, commission members and staff, the educator and his or her counsel, any intervener or its counsel, if applicable, and any witnesses shall be permitted to attend. Where a witness is a child or student, the commission or its hearing officers may in their discretion permit a parent or guardian to be in attendance during the testimony of the child or student.

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

(7) Within 90 days after the conclusion of the hearing, receipt of the transcript and submission of written legal memoranda, the hearing officer shall issue a proposed report concerning whether the department has met its burden of establishing that misconduct has occurred and whether discipline

should be imposed. The proposed report shall include findings of fact and conclusions of law and specify the recommended discipline.

Section 14. Proposed Report by Hearing Officer.--(a) The proposed report of the hearing officer shall be accepted by the commission unless:

(1) the educator or the department files exceptions in accordance with 1 Pa. Code §§ 35.211 (relating to procedure to except to proposed report) and 35.212 (relating to content and form of briefs on exceptions) within 30 days of the date the proposed report was mailed;

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

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

(b) After consideration of exceptions to the hearing officer's proposed report or further evidence or its review under this section, the commission shall accept, modify or reject the hearing officer's proposed report.

Section 15. Appeal.--(a) An order of the commission regarding discipline or reinstatement of an educator may be appealed only by the department or the educator as an adjudication by a Commonwealth agency in the manner provided by law.

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

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

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

(3) the discipline imposed is the result of a negotiated settlement between the parties or is imposed under section 9b.

(c) Where the commission's adjudication finds no educator misconduct under this act, the charges pertaining to the disciplinary proceeding shall be expunged from any personal or professional file of the educator maintained by the department and the school entity unless the school entity has

taken or is pursuing local disciplinary action against the educator.

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

Section 16. Reinstatement.--(a) An educator whose certificate or employment eligibility has been suspended, revoked or surrendered may apply to the commission for an order lifting the suspension or reinstating the certificate. The commission shall order the lifting of the suspension or reinstatement if the commission determines it would be just and proper. The commission shall seek and consider recommendations from the department prior to ordering the lifting of the suspension or reinstatement of the certificate and employment eligibility and shall conduct hearings on the application at the request of the educator in accordance with procedures established by the commission in accordance with this act. The commission shall also seek and may consider recommendations from the school entity or entities in which the educator was employed at the time of the misconduct. For purposes of determining whether it is just and proper to lift a suspension or reinstate a certificate, the commission may consider:

- (1) The conduct which resulted in discipline.
- (2) Other past conduct of the applicant.
- (3) The applicant's current attitude toward past conduct.
- (4) Rehabilitation efforts and activities.
- (4.1) Evidence of compliance with any conditions imposed as part of the discipline.
- (5) References and letters of support of or in opposition to reinstatement.

(b) The commission shall not lift the suspension or reinstate the certificate or employment eligibility of an educator if the suspension or revocation resulted from any of the following:

- (1) A finding of guilt by the commission for sexual abuse or exploitation.
- (2) Surrender of a certificate or employment eligibility for conduct relating to sexual abuse or exploitation.

(c) The commission shall not lift the suspension or reinstate the certificate or employment eligibility of an educator convicted of an offense set forth in section 111(e)(1) through (3) of the act of March 10, 1949 (P.L.30, No.14), known as the "Public School Code of 1949" for the time period set forth in that section.

Section 17a. Immunity From Liability.--(a) Notwithstanding any other provision of law, no person shall be subject to civil liability for filing a complaint or a report or for providing information to or cooperating with the department or the commission in the course of an investigation or proceeding conducted under this act.

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

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

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

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

(c) This section shall not prohibit any person from disclosing information previously made public as a result of action by a school entity to discipline or dismiss an employe for cause or as a result of an employe's having been formally indicted for or convicted of a crime or from disclosing information

that was known or available independently of the disciplinary proceeding.

(d) The provisions of this section shall not apply to information relating to reinstatements or to proceedings under section 9b or 9e.

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

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

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

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

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

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

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

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

taken by the commission and every official act of the commission.

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

(1) the educator who is the subject of the proceeding is employed by the same school entity as the commissioner;

(2) the educator who is the subject of the proceeding is a member of a Statewide educator organization of which the commissioner is an officer, director or employe;

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

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

Section 18a. Charter School Staff Members.--(a) Except as otherwise provided in this section, this act shall apply to charter school staff members.

(b) The commission may require a charter school staff member to meet certain conditions or take corrective action as an element of any discipline.

(c) When an order is issued prohibiting or suspending the employment of a charter school staff member by a charter school, the charter school staff member may apply for reinstatement in accordance with section 16. For a charter school staff member, reinstatement shall mean the lifting of an order to permit the person to be employed in a charter school.

(d) The director or chief administrator of a charter school shall comply with section 9a regarding both professional educators and charter school staff members. A violation of section 9a by a director or chief administrator of a charter school may result in the discipline of the director or chief administrator.

Section 18b. Subpoenas.--(a) The commission or its legal counsel, as its designee, shall have the power:

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

(2) To issue subpoenas after the filing of charges as provided for under the provisions of this act,

commission bylaws and 2 Pa.C.S. (relating to administrative law and procedure) to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidentiary material.

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

Section 18c. Disposition of Fees and Fines Collected.--All fees, fines, costs and civil penalties shall be paid into the State Treasury through the department and credited to a restricted receipts account in the General Fund that shall be known as the Professional Educator Discipline Account, which is hereby established. Funds in the account may be utilized to the extent of expenditures incurred by the department and the commission in the implementation of their respective duties under this act.

Section 19. This act shall take effect in 60 days.