

## No. 2000-123

## AN ACT

## HB 2189

Amending the act of December 12, 1973 (P.L.397, No.141), entitled "An act relating to certification of teachers in the public schools of the Commonwealth and creating a Professional Standards and Practices Commission," providing for a short title; further providing for definitions relating to professional standards and requirements, for the Professional Standards and Practices Commission, for its membership and qualifications, for its powers and duties, for its organization and meetings and for complaints; providing for the imposition of discipline against professional educators; further providing for confidentiality, for duties of local school board officials, for department action after investigation, for hearings, for decisions by hearing officers, for appeals, for reinstatement and for unauthorized release of information; providing for immunity from liability; further providing for commission proceedings and procedures; and providing for charter school staff members.

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

Section 1. Section 1 of the act of December 12, 1973 (P.L.397, No.141), referred to as the Teacher Certification Law, is repealed.

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

**Section 1.1. Short Title.**—*This act shall be known and may be cited as the Professional Educator Discipline Act.*

**Section 1.2. Definitions.**—*When used in this act, the following words and phrases shall have the following meanings:*

**"Administrator"** shall mean a person who is a commissioned officer or holds a valid administrative certificate.

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

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

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

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

- (1) Issue a private reprimand.
- (2) Issue a public reprimand.

(3) *Direct the department to suspend the certificate of a professional educator.*

(4) *Direct the department to revoke the certificate of a professional educator.*

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

(6) *Accept a professional certificate surrendered in lieu of discipline. The commission may require a professional educator to meet certain conditions or take corrective action in conjunction with any discipline.*

*"Educational specialist" shall mean a person who holds an educational specialist certificate issued by the Commonwealth, including a certificate endorsed in the area of elementary school counselor, secondary school counselor, social restoration, school nurse, home and school visitor, school psychologist, dental hygienist, instructional technology specialist or nutrition service specialist.*

*"Professional educator" shall mean a person who is certificated as a teacher, educational specialist or an administrator in the Commonwealth.*

*"School entity" shall mean a school district, intermediate unit or area vocational-technical school, charter school, Scotland School for Veterans' Children, Scranton State School for the Deaf and Thaddeus Stevens College of Technology.*

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

*"Sexual abuse or exploitation" shall mean the employment, use, persuasion, inducement, enticement or coercion of a child or student to engage in or assist any other person to engage in any sexually explicit conduct or a simulation of any sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of any sexually explicit conduct or conduct that constitutes an offense under 18 Pa.C.S. Ch. 31 (relating to sexual offenses) or section 6312 (relating to sexual abuse of children) or other forms of sexual exploitation of children or students.*

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

*"Teach" shall mean to engage in the practice of teaching in the public schools of the Commonwealth or to provide related educational specialist, administrative or supervisory services in such schools.*

*"Teacher" shall mean a person who holds a valid Pennsylvania teaching certificate.*

Section 3. Section 3 of the act, amended April 11, 1990 (P.L.122, No.33), is amended to read:

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

(b) The term of office of members of the commission shall be three years except that:

(1) the terms of office of *four* members appointed in the calendar year [1990] 2000 shall expire on the third Tuesday of January [1993.] 2001;

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

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

(c) Vacancies shall be filled for an unexpired term in the same manner as original appointments. No person shall serve for more than two consecutive terms as a member of the commission. 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. Sections 4, 5, 6 and 9 of the act, amended or added December 14, 1989 (P.L.612, No.71), are amended to read:

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

(1) Seven classroom teachers, including one educational specialist, broadly representative of the teaching profession from public schools.

(2) Three administrators from public schools, at least one of whom shall be a commissioned officer and one a principal.

(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.

(b) Except for the representatives of the general public, the Governor in making appointments shall consider recommendations from panels of nominees submitted by Statewide organizations of professional educators 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 public school 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 [or whose employment status changes to a category different from that for which he was appointed] 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.*

(d) The chairman of the State Board of Education, or a member of the 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.

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 of Education 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 of Education 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 of Education rules and regulations providing for the Department of Education 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 establishing 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 teacher, 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 of Education as indicated by such evaluations.

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

(5) To recommend to the State Board of Education 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 of Education 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 of Education 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 conducting hearings pursuant to section 13 and for hearings regarding reinstatement of certificates.

*(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 [by July 1, 1991,] *and maintain* a code for professional practice and conduct, 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 the suspension or revocation of a certificate, 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," provided that the code may specify those sections the violation of which may constitute a basis for reprimand.

(11) To discipline[, as **provided hereunder,**] any professional educator *or charter school staff member* found guilty upon hearings *before the commission* of immorality, incompetency, intemperance, [**habitual use of drugs or narcotics,**] cruelty or negligence or for violation of any provision of the act of May 29, 1931 (P.L.210, No.126), entitled, as amended, "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[.]" [**and to direct the department to suspend the certificate of any professional educator indicted for a crime or misdemeanor involving moral turpitude or as a drug addict whenever a certified copy of such indictment shall have been filed with the commission and to revoke the same upon conviction thereof whenever a certified copy of the verdict or judgment or sentence of the court shall have been filed with the commission, and to direct reinstatement of such certificate by the department in any case where after hearing the commission shall deem the same just and**

proper.] The commission shall establish definitions consistent with this clause.

***(11.1) To direct the department to suspend or revoke the certificate of a professional educator or charter school staff member in accordance with section 9.2.***

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

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

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

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 **[at the time this act goes into effect] on the effective date of this amendatory act** 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 of Education 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 of Education 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. In the case of the discipline of an administrator, the commission shall act by a majority vote of a special panel of at least nine members selected by the chairman, to include no more than three teachers.*** The first meeting of the commission shall be

held within six months of the effective date of 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 9. Complaints.—(a) A proceeding to discipline a professional educator shall be initiated by the filing of a complaint with the department by any interested party within one year from the date of the occurrence of any alleged action specified under section 5(a)(11), or from the date of its discovery. *Complaints involving sexual abuse or exploitation of a child or a student may be filed beyond the date of the alleged occurrence or date of its discovery up until five years after the child or student reaches 18 years of age.* If the alleged action is of a continuing nature, the date of its occurrence is the last date on which the [practice] *conduct* occurred.

**[(b) Commissioned officers in school entities shall report promptly to the department each instance:**

**(1) where the school entity has dismissed a certified employee for cause; and/or**

**(2) where the commissioned officer is aware that one of his school entity's present certificated employees has been formally charged or convicted of a crime of moral turpitude or some other offense requiring mandatory suspension or revocation of certificate under this act.}]**

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

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

(2) specify the nature and character of the charges; and

(3) be verified under oath by the complaining party or a duly authorized agent of the complaining party.

(d) The commission, and its individual members, may not file a complaint or initiate a disciplinary proceeding on their own motion, except that if, in the performance of commission business, the commission, or any of its individual members, uncovers evidence that would appear to require discipline, the commission may transmit such evidence to the department where such evidence will be treated as a complaint in accordance with the provisions of this act.

**[(e) The department shall assemble any information relevant to the complaint. The department shall then conduct a preliminary review of the allegations and record. If the department believes that disciplinary action may be appropriate, or that further investigation is called for, it shall forward the record and its recommendations to the chief counsel of the department.]**

**(f) Upon receipt of a complaint [by the chief counsel of the department, he shall promptly determine whether the complaint alleges facts which, if true, are sufficient to require discipline.], the department shall promptly review it and all other complaints and information relating to the professional educator.**

(1) If the facts alleged are not sufficient *to warrant discipline*, the department shall dismiss the complaint and provide written notice of such dismissal to the complaining party and to the affected professional educator.

(2) If the facts alleged are deemed sufficient [**by the department, it**] *to warrant discipline, the department* shall notify the affected professional educator and the complaining party in writing of the sufficiency of the complaint[. **Except as provided below in the case of a complaint initiated by a governing board, the department shall then**] *and* 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, any documents it may reasonably require in pursuit of its *preliminary* investigation. Such request shall be made in writing to the professional educator [**and/or his employer, a copy of which shall be filed with the commission.**] *or the current or prior employer.*

(3) If the department determines that probable cause does not exist, it shall issue a written notice to the affected professional educator, the complaining party and the *current or prior* employer if the employer was notified of the complaint. If a finding of probable cause is made, the department shall so notify the affected professional educator and the complaining party and [**shall**] *may immediately conduct an investigation pursuant to section 12 or* transmit [**the complaint and**] its preliminary findings to the local school governing board of the school entity in which the affected professional educator is or was last serving, [**unless the local school board is the complaining party and has provided the report described in section 11. If the local school board is the complaining party and has already conducted hearings of record according to the procedures established by law or by collective bargaining agreement for adjudication of complaints against professional educators, and if the local board has provided a transcript of such hearing to the department together with the adjudication resulting from such hearing, and has also transmitted the report described in section 11, then no preliminary investigation shall be conducted, and the hearing procedures described in sections 12 and 13 shall be initiated within 30 days of the receipt of the complaint. Both parties shall be notified of the transmission of the complaint.**] *to allow the local school board to investigate and comment upon the appropriateness of professional discipline.*

Section 5. The act is amended by adding sections to read:

**Section 9.1. Reporting to Department.**—(a) *The superintendent, assistant superintendent, executive director of an intermediate unit, chief administrator of an area vocational-technical school, administrator of a charter school or their designees shall report any of the following to the department:*

(1) *The dismissal of a certificated employe for cause. The report shall be filed within 30 days after an administrative decision by an arbitrator or the local board of school directors.*

(2) *Conduct that has resulted in a criminal indictment or conviction 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 other crime that involves moral turpitude. The report shall be filed within 30 days of the receipt of information and shall include all available information relating to the conduct resulting in the charge or conviction.*

(3) *Information which constitutes reasonable cause to believe that a certificated employe has caused physical injury to a student or child as a result of negligence or malice or has committed sexual abuse or exploitation involving a student or child. The report shall be filed within 60 days of the receipt of the information.*

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

**Section 9.2. Imposition of Discipline.**—*The commission shall do all of the following regarding suspension or revocation of a professional certificate:*

(1) *Direct the department to immediately suspend the certificate of a professional 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," if the commission, after notice and hearing if requested, determines that the professional educator poses a threat to the health, safety or welfare of a student or other individual in a school in accordance with the following:*

(i) *Within 15 days of the receipt of notice of charges issued by the department, the professional educator may request a hearing before the commission. The commission or a committee of members of the commission shall hold a hearing within 15 days of the receipt of the request. The commission or committee shall issue a decision within 20 days after the conclusion of the hearing, including receipt of the transcript or filing of any briefs. The professional educator may appeal the decision of the commission pursuant to section 15.*

(ii) *The commission may elect not to suspend the certificate of a professional educator indicted for a crime under this subsection if the professional educator files an affidavit attesting that during the pendency of the criminal charge the professional educator will not be employed in a position that requires professional certification or involves direct contact with children.*

(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) *The commission may reinstate the certificate of a professional educator suspended under this paragraph or release the professional educator from an affidavit under subparagraph (ii) if the professional educator participates in accelerated rehabilitative disposition as a result of the indictment and the commission determines that the professional 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 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) where the victim is a minor.*

(2) *Direct the department to revoke the certificate of a professional educator who has been convicted of a crime set forth in section 111(e)(1) through (3) of the "Public School Code of 1949," or a crime involving moral turpitude, or an equivalent crime in Federal court or a court of another state, territory or nation, 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 upon receipt of certified court documents establishing that the conviction was reversed on appeal. For purposes of this paragraph, the term "conviction" shall include a plea of guilty or nolo contendere.*

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

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

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

Section 6. Sections 10, 11, 12, 13, 14, 15, 16 and 17 of the act, added December 14, 1989 (P.L.612, No.71), are amended to read:

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

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

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

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

Section 11. [Proceedings Before Local School Board] *Duties of Local School Board Officials.*—(a) Upon receipt of [a complaint] *the preliminary findings* from the department [in accordance with section 9], a local school board shall investigate and [determine within 90 days whether said complaint will be submitted to the] *may pursue the local disciplinary* procedures established by law or by collective bargaining agreement for adjudication of complaints against professional educators [and shall report such determination to the department]. *The local school board shall inform the department within 90 days of receipt of the preliminary findings whether the local school board will pursue disciplinary action and whether the board believes that professional disciplinary action by the commission is warranted.*

(b) The school board, when its [proceedings are] *local investigation* is completed, [shall report to the department its findings and a summary of the evidence, and any action taken, and] may make a definite recommendation concerning discipline. The school board shall notify the affected professional educator of any such recommendation[.] *and shall provide to the department:*

(1) *Its findings and a summary of evidence gathered.*

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

(c) *A school district, intermediate unit, area vocational-technical school or charter school, and any official or employe thereof, shall*

*cooperate with the department during all stages of the disciplinary process.*

Section 12. Department Action [Upon School Board Recommendations] *After Investigation*.—[Upon receipt of a copy of the findings, summary of evidence and recommendations of the school board,] *After completion of an investigation*, the department may [order the charges dismissed] *dismiss the charges*, determine that appropriate and sufficient punishment has been imposed by the local school board, or initiate hearing procedures. *If the complaint is dismissed or it is determined that appropriate and sufficient punishment has been imposed by the local school board, the department shall inform the professional educator, the complainant and the local school board of the determination.*

Section 13. Hearing.—(a) Upon determination to initiate hearing procedures, the department shall, within 30 days, send a written notice to the affected professional educator advising of the charges and of his right to request a hearing within 30 days of receipt of such notice. *A copy of the written notice of the charges shall be served upon the professional educator's current or prior employer.*

(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 shall request that the commission modify the procedure set forth in this section and schedule an expedited hearing [in accordance with subsection (c)].

(c) The hearing shall be held in accordance with the following procedures:

(1) [The] *Within 45 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 [ten] 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 that grounds for discipline exist.

(3) The professional educator against whom the charge is 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) The governing board of the school entity in which the affected professional educator is or was last employed may intervene, for cause shown, in accordance with 1 Pa. Code § 35.28.

(5) The hearing shall be closed, unless the affected professional educator requests that it be open *to the public*. If the hearing is open, the hearing officer, in his discretion, may close any portion of the hearing for good

cause shown. If the hearing is closed, only the department, commission members and staff, the affected professional educator and his or her representatives, *any intervenors if applicable*, and any material witnesses shall be permitted to attend. Students attending school in the district which employs the professional educator shall not be permitted to attend any hearing except as witnesses duly subpoenaed to testify with respect to the charges made.

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

(7) The hearing officer shall, within [30] 60 days after the conclusion of the hearing, issue a decision concerning whether discipline should be imposed. A decision shall include findings of fact and conclusions of law and specify the discipline.

Section 14. Decision by Hearing Officer.—(a) The decision of the hearing officer shall become final unless [excepted to by either] the professional educator or [by] the department *files exceptions or a brief on exceptions* within 30 days of the date of the recommended decision.

(b) The commission shall promptly consider exceptions to the hearing officer's decision. The commission by a majority vote of the full membership shall accept, modify or reject the hearing officer's decision, except that, in the case of discipline of an administrator, all exceptions shall be taken by a special panel of at least [five] *nine* members of the commission selected by the chairperson, which will [not] include *no more than three* teachers.

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

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

(b) An appeal filed under subsection (a) shall operate as a stay of the discipline until the determination of the appeal, except where 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.

(c) Where the [final decision] *commission's adjudication* is in favor of the professional educator, the charges pertaining to the [matter] *disciplinary proceeding* shall be expunged from any personal or professional file of the professional educator maintained by the department and/or the local school entity.

Section 16. Reinstatement.—(a) Any professional educator whose certificate has been suspended [or], 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 shall conduct hearings on the application at the request of the professional educator in accordance with procedures of this act. *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.*
- (5) *References and letters of support or opposition.*

(b) *The commission shall not lift the suspension or reinstate the certificate of a professional 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 in lieu of discipline for conduct relating to sexual abuse or exploitation.*

(c) *The commission shall not lift the suspension or reinstate the certificate of a professional educator convicted of an offense under 18 Pa.C.S. (relating to crimes and offenses) 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 17. Unauthorized Release of Information.—(a) **[Any] Except as otherwise provided in section 10, a member, staff member or employee of the commission, the Department of Education, or any local school entity who releases or gives out information received at a commission meeting or hearing or [through the investigation of a professional educator or] through any disciplinary proceedings conducted pursuant to this act, without authorization of the commission, is guilty of a misdemeanor of the third degree.**

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

Section 7. The act is amended by adding a section to read:

**Section 17.1. Immunity From Liability.—Notwithstanding any other provision of law, no person shall be subject to civil liability for filing a**

*complaint 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. This section shall not apply to malicious action by any person or the provision of false information if the person knew or had reason to know that the information was false.*

Section 8. Section 18 of the act, added December 14, 1989 (P.L.612, No.71), is amended to read:

Section 18. Commission Proceedings and Procedures.—(a) The commission shall conduct its proceedings in accordance with the provisions of this act and Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure); if any inconsistency arises, the provisions of this act shall be controlling. Any person is entitled to be heard by the commission in person, in writing, 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.

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

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

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

(2) the professional educator is a member of a Statewide professional educator organization of which the commissioner is an officer, director or employe.

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

*Section 18.1. 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 9.1 regarding both professional educators and charter school staff members. A violation of section 9.1 by a director or chief administrator of a charter school may result in the discipline of the director or chief administrator.*

Section 10. This act shall take effect in 60 days.

APPROVED—The 20th day of December, A.D. 2000.

THOMAS J. RIDGE