

THE ETHICAL EDUCATOR AND PROFESSIONAL PRACTICES: FREQUENTLY ASKED QUESTIONS

WHAT IS THE PROFESSIONAL STANDARDS AND PRACTICES COMMISSION (“PSPC”)?

The PSPC was established in December of 1973 with the belief that educators, as a profession, should be self-governing. The PSPC is an independent appointed body whose 13 members represent practicing educators and administrators, the general public, and teacher preparation programs. One of the statutory responsibilities of the PSPC is to oversee the educator discipline system, including the imposition of state level discipline against the certification and/or employment eligibility of educators who are guilty of professional misconduct. The PSPC works closely with the Pennsylvania Department of Education (“PDE”), which is responsible for receiving and investigating misconduct complaints against educators and for prosecuting disciplinary cases before the PSPC. The PSPC imposes discipline against approximately 200 Pennsylvania educators annually.

WHAT ARE THE LAWS THAT GOVERN THE CONDUCT OF EDUCATORS IN PENNSYLVANIA?

General principles of conduct can be found in Pennsylvania’s **Code of Professional Practice and Conduct for Educators** (“Code”) (22 Pa. Code § 235.1 *et seq.*). The **Educator Discipline Act** (“Act”) (24 P.S. §§ 2070.1a *et seq.*) sets forth the types of misconduct that can result in educator discipline, the procedures to be followed when an educator is accused of misconduct and the mandatory reporting responsibilities of educators and chief school administrators.

WHAT IS AN ETHICAL EDUCATOR?

The ethical educator is a person who accepts the requirements of membership in the education profession and acts at all times in ethical ways. In so doing, the ethical educator considers the needs of students, the school community, and the profession.

The ethical educator, in fulfilling obligations to students, will:

- value the worth and dignity of every student;
- strive to ensure that every student receives the highest quality of service;
- always place student needs or interests above personal needs or interests;
- honor appropriate adult boundaries with students in conduct and conversations at all times;
- protect students from conditions that are threatening or harmful; and
- serve as a positive role model for students.

The ethical educator, in fulfilling obligations to the school community, will:

- apply for, accept, offer or assign a position of responsibility only on the basis of professional qualifications and will adhere to the conditions of a contract or the terms of appointment;
- strive for continued improvement and professional growth;
- respect the rights of all persons without discrimination;
- interact with colleagues and parents in a respectful and professional manner;
- use school property, equipment, materials and resources appropriately and only for educational purposes;
- maintain confidentiality within the workplace;
- refrain from accepting gifts or favors that might impair or appear to impair professional judgment; and
- conduct himself or herself in and out of school in a way that reflects well on the school and avoid activities that may be disruptive to the school community or erode the educator's effectiveness.

The ethical educator, in fulfilling obligations to the profession, will:

- know and obey all pertinent federal, state, and local laws, rules, and policies and will exemplify personal integrity and honesty at all times;
- extend equal treatment to all members of the profession in the exercise of their professional rights and responsibilities;
- accept responsibility for holding oneself and other educators responsible for ethical conduct;
- communicate openly with colleagues and immediately address any concerns regarding a colleague's behavior;
- cooperate fully in all investigations and proceedings; and
- not threaten, coerce, or discriminate against any individual who in good faith reports or discloses actual or suspected misconduct.

DO ONLY CERTIFICATED EDUCATORS COME UNDER THE JURISDICTION OF THE PSPC?

The PSPC has jurisdiction to impose discipline against any educator who holds public or private academic school certification, including administrators, as well as non-

certificated charter school staff members and contracted educational provider staff members who hold positions that require certification in a traditional public school.

WHAT HAPPENS WHEN A COMPLAINT IS FILED WITH PDE?

- PDE reviews the complaint to determine if the facts alleged are legally sufficient to warrant discipline under the Act;
- If legally sufficient, the educator and employer are notified of the complaint and asked to respond to the allegations;
- PDE conducts an investigation to determine whether the allegations are factual;
- After the investigation, PDE may dismiss the complaint, enter into a settlement agreement with the educator or begin the formal hearing process by filing a written Notice of Charges with the PSPC.

WHAT PROTECTIONS ARE IN PLACE TO ENSURE THAT THE DISCIPLINE SYSTEM IS FAIR?

The PSPC is committed to ensuring that the disciplinary process is fair and efficient. The Act provides for certain procedural safeguards including the requirement that complaints be in writing and verified by the complainant subject to the penalties associated with unsworn falsification; the right to written notice of a complaint and the right to written charges; the right to counsel and the right to a hearing. In addition, except for proceedings under section 9(b) (relating to discipline for criminal offenses) and section 9(e) (relating to reciprocal discipline), the disciplinary process remains confidential unless or until public discipline is imposed. The unauthorized release of confidential information is a misdemeanor of the third degree.

WHAT HAPPENS WHEN AN EDUCATOR REQUESTS A HEARING?

PDE is represented by legal counsel from the Office of Chief Counsel. The educator may be represented by an attorney. Hearings are conducted by an impartial hearing officer appointed by the PSPC. Based on the evidence presented at the hearing, the hearing officer makes a recommendation to the PSPC regarding whether the educator has engaged in misconduct and whether discipline should be imposed. Both parties may appeal the recommendation to the PSPC, which can accept, modify or reject the recommendation. Decisions of the PSPC can be appealed to the Commonwealth Court.

WHAT IS PROFESSIONAL DISCIPLINE?

Professional discipline refers to action taken by the PSPC against an educator's certification or eligibility to work as a charter or cyber charter school staff member or contracted educational provider staff member as a result of misconduct. Discipline ordered by the PSPC is separate from any discipline that may be imposed by an employer. The PSPC may impose discipline in addition to any disciplinary action imposed by an employer for the same misconduct or even in the absence of local discipline.

WHAT ARE THE TYPES OF DISCIPLINE THAT CAN BE IMPOSED BY THE PSPC?

The PSPC may impose private reprimands, public reprimands, suspensions or revocations as disciplinary measures for misconduct. The PSPC may also accept certificates or employment eligibility surrendered by an educator and may include certain conditions with sanctions as well as impose fees, fines, or costs. In the case of non-certificated charter or cyber charter school staff members and contracted educational provider staff members, surrender, suspension or revocation means the termination of the individual's ability to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member.

WHAT TYPES OF CONDUCT CAN RESULT IN PROFESSIONAL DISCIPLINE?

Grounds for discipline under the Act include: arrests or convictions for crimes listed in section 111(e) of the Public School Code of 1949 (24 P.S. § 1-111(e)); convictions for crimes involving moral turpitude (a list of such crimes is available on the PSPC's website); conduct constituting immorality, incompetency, intemperance, cruelty, negligence, sexual misconduct or sexual abuse or exploitation (definitions of these terms can be found in section 1b of the Act and Ch. 237 of Title 22 of the Pennsylvania Code); violations of the Code; illegal use of a professional title as set forth in 24 PS. § 1231; failure to comply with duties under the Act, including mandatory reporting duties; any actions by an educator to threaten, coerce or discriminate or otherwise retaliate against any individual who participates or cooperates in good faith in the disciplinary system; founded reports of child abuse under the Child Protective Services Law; and discipline imposed by the licensing authority in another jurisdiction.

The actual activities that form the basis for discipline may include conduct occurring outside of school hours and off school property. There is no requirement that the conduct be directly related to the performance of professional duties on school grounds. Generally, any conduct that renders an educator unfit to perform his or her professional or ethical responsibilities can serve as a basis for discipline. Some examples include: unreasonable use of physical force against students or fellow employees; appearing on duty or at any school-sponsored activity while under the

influence of alcohol or drugs; knowing falsification of any document or intentional misrepresentation related to licensure, employment or professional duties; use of school resources to receive, store, produce or send sexually-explicit materials; engaging in acts constituting criminal conduct, such as driving under the influence of alcohol, theft or assault, even in the absence of a conviction.

Among the most serious allegations of misconduct are those involving **sexual misconduct or sexual abuse or exploitation** with students. Sexual misconduct in a school environment is much broader than the legal concepts of "sexual abuse" or "sexual harassment". The term encompasses any conduct, ranging from inappropriate comments or jokes to sexual intercourse that is intended to establish a romantic or sexual relationship with a child or student. **The Act defines sexual misconduct as:** 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. **"Sexual abuse or exploitation"** is an extreme form of sexual misconduct. The term is defined under the Child Protective Services Law and includes any physical, verbal, or visual sexual behavior between an educator and a child or student, as well as a number of sex-related crimes committed against a child. See 23 Pa.C.S.A. § 6303.

The consent of a child or student to engage in conduct constituting sexual misconduct or sexual abuse or exploitation may not be a defense or a mitigating factor in any disciplinary proceeding, regardless of the student's age.

ARE EDUCATORS REQUIRED TO REPORT MISCONDUCT TO PDE?

The Act requires chief school administrators to report to PDE within 15 calendar days any educator (1) who has been provided with notice of intent to dismiss or remove for cause, notice of removal from eligibility lists for cause, or notice of intent not to reemploy for cause; (2) who has been arrested or convicted of any crime that is graded a misdemeanor or felony; (3) against whom there are any allegations of sexual misconduct or sexual abuse or exploitation involving a child or student; (4) for whom there is reasonable cause to suspect the educator has caused physical injury to a child or student as the result of negligence or malice; (5) who has resigned or retired or otherwise separated from employment after a school entity has received information of alleged misconduct under the Act; (6) who is the subject of a report filed by the school entity under 23 Pa.C.S. Ch. 63 (relating to child protective services); and (7) who the school entity knows to have been named as a perpetrator of an indicated or founded report under 23 Pa.C.S. Ch. 63.

In addition, all educators must, within 15 calendar days of discovery, file a mandatory report with their immediate supervisor, the chief school administrator, and PDE whenever they know of any action, inaction or conduct by another educator that constitutes sexual misconduct or sexual abuse or exploitation.

WHAT ARE THE FACTORS FOR IMPOSING PROFESSIONAL DISCIPLINE?

The Act requires the PSPC to revoke the certificate and employment eligibility of any educator who is convicted of a crime involving moral turpitude or a crime listed in section 111(e) of the Public School Code or who has a founded report of child abuse, without regard to the conduct underlying the conviction or founded report or any mitigating factors. In all other cases, the PSPC may consider any of the following factors in fashioning disciplinary sanctions: the seriousness and circumstances surrounding the misconduct; the extent, severity, and imminence of any danger to students, other educators, or the public; whether the misconduct involved sexual misconduct or sexual abuse or exploitation; the status of the victim, if any, including the victim's age or special vulnerability; the harm or adverse impact to students or other persons; the harm or adverse impact to the educator's employer and to the profession; if the misconduct or violation is an isolated occurrence, part of a continuing pattern, or one of a series of incidents; the educator's state of mind at the time of the misconduct (i.e., negligent, reckless, intentional); the pecuniary benefit or other gain inuring to the educator by virtue of the misconduct; whether the conduct was criminal in nature; the likelihood of a recurrence of the misconduct or violation; the age and level of maturity of the students served by the educator; the danger that students will imitate the educator's behavior or use it as a model; the educator's level of experience; the educator's past performance and performance following the misconduct or violation; the educator's prior disciplinary record, including warnings, or absence of a prior disciplinary record; timely good faith effort to make restitution or to rectify the consequences of the misconduct; meaningful and sustained period of successful rehabilitation; impositions of other penalties or sanctions, including local disciplinary action; the educator's attitude and conduct during the disciplinary proceedings; the deterrence impact of the sanction; penalties imposed in other cases for similar violations; or any other extenuating circumstances or other factors bearing on the appropriate nature of a disciplinary sanction.

CAN A CERTIFICATE OR EMPLOYMENT ELIGIBILITY THAT IS SURRENDERED, SUSPENDED OR REVOKED EVER BE REINSTATED?

The PSPC has the authority to reinstate certificates or employment eligibility surrendered, suspended or revoked when to do so would be "just and proper." The Act, however, permanently prohibits reinstatement if the educator's conduct involved sexual abuse or exploitation or if the educator was convicted of a crime listed in section 111(e) of the Public School Code. In addition, the PSPC will generally not reinstate an

educator's certification or employment eligibility if the educator is ineligible for school employment under section 111(f.1) of the Public School Code for the time period set forth in that section.

WHAT CAN EDUCATORS DO TO AVOID COMPLAINTS BEING FILED WITH PDE?

Think about your interactions with students.

- Do you fail to maintain professional physical and emotional boundaries with students?
- Do you flirt with students?
- Do you discuss your personal life with students?
- Do you engage in personal electronic communications with students?
- Do you compliment or commend students without hugging or touching them?
- Do you avoid comments or compliments about a student's appearance or physical attributes?
- Do you let students know when they are overstepping your personal boundaries?
- Do you teach with your classroom door open?
- Do you meet with students alone or in isolated locations?
- Do you transport students in your personal vehicle?
- Do you get your principal's and parents' approval for all activities off school property?
- Do you fail to refer students in need of counseling to an appropriate resource?
- Do you give gifts to students?
- Do you ensure that all of your interactions with students serve an educational purpose and occur in a setting consistent with that purpose?
- Do you seek input from colleagues or other professionals if you are unsure about the appropriateness of your actions or plans?

Think about your knowledge of state law, school policies and procedures.

- Do you know the laws, district policies, school rules and your rights?
- Do you know the Pennsylvania child abuse reporting law?
- Do you know the policies in your school regarding handling of money and finances?
- Do you know about confidentiality requirements?
- Do you know your employer's Acceptable Use Policy regarding technology, including computers, email and internet access?

Think about your reputation in the community.

- Do you maintain a professional reputation in the community and school district?
- Do you communicate with parents in a professional manner and document that communication?
- Do you engage in behavior in the community that students may use as a positive model?

SOME CAUTIONARY TALES FROM THE CASES FILES OF THE PSPC:

The educator provided alcohol to an 18-year-old student on multiple occasions and allowed the student to operate the educator's vehicle while under the influence of alcohol and lied to police when the student struck a fire hydrant.

Sanction: Revocation

The educator used his school district issued laptop computer to view sexually explicit files at home.

Sanction: Suspension

The educator was convicted of Driving Under the Influence of Alcohol – Highest Rate of Alcohol – 3rd Offense and provided false information on two applications for certification.

Sanction: Surrender

The educator compromised the administration of the 8th grade PSSA test by completing portions of the test for students and providing false instructions to the students.

Sanction: Surrender

*A social studies teacher attempted to foster a sexual relationship with a 16-year-old female student by telling her that she was the most attractive girl in the school, by arranging private meetings with the student, physically embracing her and offering to help her improve her grades. **Sanction: Revocation***

A former assistant principal admitted to having sex with a 16-year-old female student. The assistant principal drove the girl to area hotels for sex at least ten times. The two had sex for the first time just one-and-a-half weeks after the assistant principal began working at the high school.

Sanction: Revocation

For assistance or if you have any questions, please contact:
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