

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Labor and Industry

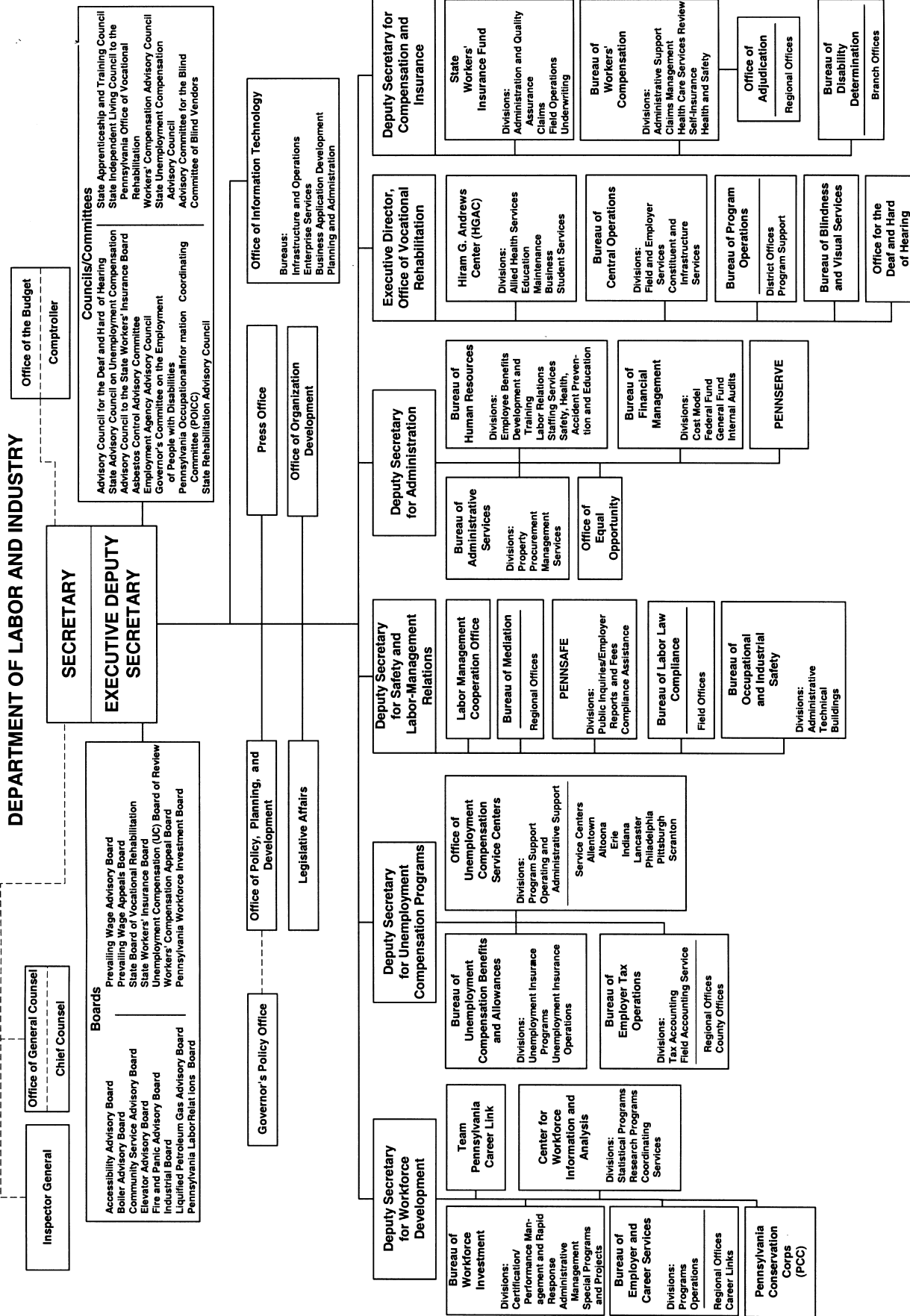
The Executive Board approved a reorganization of the Department of Labor and Industry effective February 1, 2002.

The organization chart at 32 Pa.B. 2225 (May 4, 2002) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code).

[Pa.B. Doc. No. 02-794. Filed for public inspection May 3, 2002, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY



Title 22—EDUCATION

PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

[22 PA. CODE CH. 233]

Bylaws

Purpose and Effect

On July 12, 1991, the Professional Standards and Practices Commission (Commission) first adopted its statement of policy (bylaws) to provide guidance to the members and staff of the Commission, the Department of Education (Department), professional educators and the public with respect to implementation of the Teacher Certification Law (24 P. S. §§ 12-1251—12-1268) providing for discipline of professional educators. Specifically, the bylaws delineated internal governance procedures, including the duties and responsibilities of Commission members and staff, as well as procedures for effecting a disciplinary system that comported with due process.

The bylaws were published at 21 Pa.B. 3827 (August 24, 1991) and were codified in Chapter 233. The Commission made subsequent amendments to the bylaws, which were designed to impose a committee structure for the Commission and to correct an error in the original bylaws.

The Professional Educator Discipline Act (act) (24 P. S. §§ 2070.1—2070.18a) significantly amended the previously entitled Teacher Certification Law, thereby necessitating these amendments to the Commission's bylaws. These amendments are intended to ensure that the Commission's bylaws comport with the changes to the act and allow for a restructuring and simplification of the bylaws to facilitate their use. As a result of the restructuring, a complete replacement of the bylaws was necessary. The most significant changes, however, are summarized as follows.

Summary

The original bylaws restated substantial portions of the Teacher Certification Law. In these amendments, when the restatement did not serve to enhance or clarify the provision, the Commission deleted the duplication and instead referenced the appropriate sections of the act. In addition, bylaws are amended to clarify that the entire chapter now applies to charter school staff members as well as professional educators.

In §§ 233.109, 233.112 and 233.113 (relating to methods of operation for Commission and committee meetings; public hearings; and disciplinary proceedings), the Commission adopted language to emphasize the distinction between Commission or committee meetings, public hearings and formal disciplinary proceedings.

In § 233.120 (relating to expedited hearing procedures), the Commission established modified hearing procedures for those cases that warrant an expedited result, including those cases contemplated by amendments to the act in which a professional educator has been indicted for one of several specified crimes and the Department believes that the professional educator poses a threat to the health, safety or welfare of students in a school.

The act also established limited reciprocity for professional discipline imposed by another state, territory or nation and § 237.121 (relating to reciprocity) establishes a procedure for the Department to provide a process for initiating the reciprocal process.

Revisions to § 233.123 (relating to reinstatement) concerning reinstatements of certificates suspended, surrendered or revoked, address the new class of disciplinary actions, surrenders in lieu of discipline, and insert the limitations on reinstatement established in the recent amendments to section 16(c) of the act (24 P. S. § 2070.16(c)). In addition, the Commission's procedure for automatic reinstatement is clarified for those cases in which the imposition of discipline was based solely on a criminal indictment or conviction, which was subsequently dismissed or overturned.

Affected Parties

This chapter primarily affects all professional educators and charter school staff members over whom the Commission has jurisdiction to discipline for misconduct. The amendments clarify the interpretation and administration of the act for these educators.

Cost and Paperwork Estimates

The amendments to the bylaws impose no additional reporting or paperwork requirements beyond those specified by the act or 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

Effective Date

These amendments are effective immediately upon publication in the *Pennsylvania Bulletin*.

Sunset Date

Although this chapter is not subject to sunset, the Commission will review the bylaws on an ongoing basis.

Regulatory Review

As a statement of policy, these amendments to the Commission's bylaws are not subject to the Regulatory Review Act (71 P. S. §§ 745.1—745.15). However, the Commission adopted the amendments after extensive consultation with interested representatives of affected parties at public committee meetings.

Contact Person

Interested persons are invited to submit written comments or suggestions to Carolyn Angelo, Executive Director, Professional Standards and Practices Commission, 333 Market Street, Harrisburg, PA 17126-0333.

CAROLYN ANGELO,
Executive Director

(*Editor's Note:* The regulations of the Commission, 22 Pa. Code Chapter 233, are amended by deleting §§ 233.1—233.18 and by adding §§ 233.101—233.126 to read as set forth in Annex A.)

Fiscal Note: 6-277. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART XIV. PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

CHAPTER 233. BYLAWS—STATEMENT OF POLICY

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§§ 233.1—233.18. (Reserved).

§ 233.101. Definitions.

The definitions in section 1.1 of the act (24 P. S. § 2070.1b) are incorporated by reference. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Professional Educator Discipline Act (24 P. S. §§ 2070.1—2070.18a).

Educator—When used in this chapter, a professional educator as well as a charter school staff member.

§ 233.102. Purpose.

The Commission is committed to providing leadership for improving the quality of education in this Commonwealth by establishing high standards for preparation, certification, practice and ethical conduct in the teaching profession.

§ 233.103. Powers and duties.

The powers and duties of the Commission are set forth in section 5 of the act (24 P. S. § 2070.5). In assessing the effectiveness of educator preparation programs to provide recommended changes to the State Board, the Commission may conduct site reviews of individual teacher preparation programs unilaterally or participate in site reviews conducted by the Department or other agencies and organizations.

(1) The Commission may recommend to the State Board changes in teacher education standards based on Commission conducted analyses of the Department program approval process.

(2) In recommending these changes, the Commission may organize and operate an annual review of and address the strengths and weaknesses of the program review process.

(3) Recommendations made by the Commission under section 5 of the act will be presented publicly at scheduled meetings of the State Board prior to State Board action on regulations, standards or guidelines affecting teacher certification, professional practices, accreditation of teacher education programs and long range plans.

(4) Recommendations will be made in a timely fashion to facilitate the work of the State Board.

§ 233.104. Membership and qualifications.

The membership and qualifications of the Commission are set forth in sections 3 and 4 of the act (24 P. S. §§ 2070.3 and 2070.4). When a vacancy on the Commission occurs, it is the duty of the Chairperson to notify the Governor of interim vacancies. The Chairperson will also

notify the Governor of the expirations of terms of commissioners at least 180 days before those expirations.

§ 233.105. Officers.

(a) *Governor's selection.* Under the act, the Governor will annually select a Chairperson from among the membership of the Commission.

(b) *Selection of Vice Chairperson.* At the first regular meeting held after the Governor's selection of a Chairperson, the Chairperson will select a Vice Chairperson for the calendar year, subject to the consent of the Commission.

(c) *Vacancies.* Permanent and temporary vacancies will be governed by the following:

(1) If there is a vacancy in the position of Chairperson, the Vice Chairperson will serve as Chairperson pro tempore until a new Chairperson is appointed by the Governor.

(2) If there is a vacancy in the position of Vice Chairperson, the Chairperson will select a new Vice Chairperson to fill the remainder of the original term subject to the consent of the Commission.

(3) If vacancies occur in the positions of the Chairperson and Vice Chairperson concurrently, the Executive Director of the Commission will conduct an election for replacements before further Commission business is conducted. The person elected as Chairperson will hold the office of Chairperson pro tempore until a Chairperson is named by the Governor, and the person will thereafter serve as the Vice Chairperson pro tempore until a Vice Chairperson is chosen by the Chairperson and confirmed by the Commission.

(4) In the absence of the Chairperson or Vice Chairperson or a person designated by the Chairperson or Vice Chairperson to serve temporarily as the Chairperson, the Commissioners will select a Chairperson pro tempore.

(d) *Duties of the Chairperson.*

(1) The Chairperson will preside at all meetings of the Commission in accordance with this chapter and, in the absence of appropriate bylaw provisions, in accordance with the latest edition of *Robert's Rules of Order*.

(2) Under the act, the Chairperson, or a Commission member designated by the Chairperson, is an ex officio member of the State Board without voting privileges or assignment to either council.

(3) The Chairperson will guide the Commission in the execution of its duties.

(4) The Chairperson will refer studies and investigations to the appropriate committee and will receive from it, for placement on the Commission's agenda, the findings and recommendations of the committees.

(5) The Chairperson will establish, when advisable or necessary, temporary committees to assist the Commission in carrying out its functions as prescribed by law.

(6) The Chairperson will prepare, in cooperation with the Executive Director, the agenda for meetings of the Commission.

(7) The Chairperson will advise the Executive Director between meetings of the Commission.

(8) The Chairperson, in cooperation with the Executive Director, will monitor the reimbursement of expenses incurred by the Commissioners.

(9) The Chairperson will represent the Commission before the public.

(10) The Chairperson will perform all duties ordinarily identified with the position of Chairperson.

(11) The Chairperson will serve as an ex officio member of all Commission committees.

(e) *Duties of the Vice Chairperson.*

(1) In the absence of the Chairperson, the Vice Chairperson or the designee of the Chairperson will assume the duties of the Chairperson.

(2) With the consent of the Commission, the Chairperson may remove the Vice Chairperson or appoint a new Vice Chairperson.

§ 233.106. Commission staff.

(a) *Executive Director of the Commission.* Under the act, there is an Executive Director of the Commission who serves as the executive officer and secretary of the Commission. The Commission and the Secretary 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 will provide adequate space and equipment to facilitate the activities of the Commission. The duties of the Executive Director are as follows:

(1) The Executive Director will serve as the executive officer of the Commission without the right to vote.

(2) The Executive Director will serve as the administrative liaison of the Commission with the legislature, agencies and bureaus of the Department and the State and Federal government, local education agencies and organizations with which the Commission has common interests.

(3) The Executive Director will manage the administrative details of meetings of the Commission and committees established by the Commission, including the preparation of agendas, minutes and records of action, and the proper circulation of notices of meetings of the Commission.

(4) The Executive Director will obtain, organize and provide information and materials pertinent to and prepare reports for the work of the Commission.

(5) The Executive Director will assist committees of the Commission involved in studies and hearings, research projects and literature reviews.

(6) The Executive Director will monitor and inform the Commission of actions of the State Board, the Department, and other agencies and organizations whose actions and interests are congruent with those of the Commission.

(7) The Executive Director will monitor and inform the Commission of legislation affecting the responsibilities of the Commission.

(8) The Executive Director will supervise Commission staff persons.

(9) The Executive Director will, with the advice and consent of the Commission's ad hoc budget committee, prepare and present budgets on behalf of the Commission to the State Board and the Department.

(10) The Executive Director will act as the public relations officer of the Commission, as directed by the Chairperson and the Commission.

(11) The Executive Director will perform related work as required by the Commission.

(b) *Commission counsel.* Under the act, the Governor, through the Office of General Counsel, will provide legal advice and assistance as the Commission may require.

§ 233.107. Meetings of the Commission.

(a) Under the act, meetings will be held at least five times per year at the call of the Chairperson or upon request in writing of a majority of the seated members of the Commission. Unless the Commission votes otherwise, regular meetings will be established so that they fall the day of and the day after the established meetings of the State Board. A majority of the Commission members then seated constitutes a quorum, and a majority of a quorum has authority to act upon any matter properly before the Commission unless otherwise specified in the act. Meetings of the Commission will be open to the public in accordance with 65 Pa.C.S. Chapter 7 (relating to the Sunshine Act), when applicable.

(b) The Commission will conduct its meetings in accordance with the act and 2 Pa.C.S. (relating to administrative law and procedure), when applicable. If an inconsistency arises, the provisions of the act are controlling. Any person is entitled to be heard at a Commission meeting in person, in writing or through a designated representative, in accordance with the act. The Commission will 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) The annual reorganization meeting will take place during the first meeting after the Governor appoints the Chairperson. At that meeting, a Vice Chairperson will be appointed by the Chairperson with the consent of the Commission.

(d) Notification of Commission meetings will be mailed to the commissioners at least 2 weeks in advance. An agenda and supportive data will be included with written notification.

(e) Upon the written request of a majority of the Commissioners, the Chairperson will call a special meeting within 5 days of the receipt of the request. Commissioners will be notified by phone and provided with the date, time, place and agenda. Written notification will follow.

(f) Meetings of the Commission are ordinarily held at the Department's Harrisburg offices. Meetings may be called at other locations to accommodate larger public groups or for other specific purposes.

(g) A roll call vote of the Commissioners present at a meeting is required for actions taken on recommendations to the State Board, for statements of policy and for actions taken in fulfillment of the duties of the Commission as prescribed by law. A voice vote is sufficient for all other matters unless a roll call vote is requested by two or more Commissioners. Unless otherwise required by law, a majority of those present and voting is sufficient for a motion to pass.

(h) Proxy voting will be permitted only if the following conditions are met:

(1) The Chairperson announces an intention to permit proxy voting and a majority of those Commissioners present do not object.

(2) The proxy vote applies only to questions that appear clearly on the meeting agenda or to motions that have been presented for consideration during the meeting.

(3) The Commissioner is present at the meeting but is required to leave prior to a vote.

(4) The Commissioner requests permission to vote by proxy.

(5) The Commissioner presents a proxy in writing to the Chairperson indicating how the vote is to be cast.

(6) Proxy voting will not be permitted in matters of discipline and reinstatement.

(i) The Commission may declare an executive session as allowed under 65 Pa.C.S. § 708 (relating to executive sessions) to the extent applicable. Executive sessions of the Commission will be held only in accordance with 65 Pa.C.S. Chapter 7.

(j) Rules and procedures not specifically adopted by the Commission will be in accordance with the latest edition of *Robert's Rules of Order*.

§ 233.108. Committees.

(a) Committees established by the Commission will make recommendations to the Commission. Committees do not establish policy for the Commission unilaterally. Recommendations requiring Commission action will be submitted in writing to all Commissioners prior to a Commission meeting.

(b) A majority of the appointed committee members shall be present to conduct the business of the committee. The Chairperson of the committee will, with the consent of the committee, set the meeting time and place. Minutes of each committee meeting will be recorded.

(c) Standing committees will report at each regularly scheduled Commission meeting. Minority reports of the committees may also be reported.

(d) Agendas for committee meetings will be established by the committee Chairperson and may be modified prior to or during the meeting by the Chairperson or the committee.

(e) Requirements for standing committees are as follows:

(1) Each Commissioner will serve on at least one standing committee.

(2) Each standing committee member will be appointed by the Chairperson subject to approval of the Commission. Each standing committee will consist of at least three Commissioners. Standing committee assignments will be made with the prior consent of the individual Commissioner. A Commissioner may request placement on a committee of choice. The Chairperson will appoint committee chairs.

(3) The standing committees are as follows:

(i) *Standards committee*. The committee will study and make recommendations concerning the duties stated in section 5(a)(1)—(8) of the act (24 P. S. § 2070.5(a)(1)—(8)), plus other duties as designated by the Commission Chairperson.

(ii) *Practices committee*. The committee will study and make recommendations concerning the duties stated in sections 5(a)(9)—(12) and (14) of the act, plus other duties as designated by the Commission Chairperson.

(4) The Chairperson or the Commission may establish, and the Chairperson may appoint members to special committees necessary to the work of the Commission.

§ 233.109. Methods of operation for Commission and committee meetings.

(a) The order of business for Commission and committee meetings is:

- (1) The call to order.
- (2) The review and acceptance of the agenda.
- (3) The welcoming of guests.
- (4) The approval of minutes of previous meeting.
- (5) The next Commission meeting.
- (6) The report of the Chairperson.
- (7) The report of the State Board ex officio member.
- (8) The report of the Executive Director.
- (9) The report of the Office of General Counsel.
- (10) The review of Commission-related correspondence.
- (11) The report of standing committees.
- (12) The report of special committees.
- (13) The public comment related to action items.
- (14) The action items.
- (15) The unfinished business.
- (16) The new business.
- (17) The conference reports.
- (18) The public comment.
- (19) The adjournment.

(b) Only matters assigned to the Commission by law will be considered as agenda items.

(c) Business will be conducted in accordance with this chapter and the latest edition of *Robert's Rules of Order*.

(d) Except as provided in paragraph (3), a person or organization, other than the Commissioners and the staff of the Commission, will not be permitted to participate in a Commission or committee meeting unless that person or organization has been placed on the agenda. The Commission or committee may establish limits to the content and length of speeches by persons who wish to address the Commission or committee.

(1) A person disturbing, interrupting or preventing the conduct of a public meeting may be requested to leave the meeting or may be removed upon failure to comply with the meeting rules of the Commission.

(2) Visitors to meetings are allowed to record the proceedings using audio or video recording equipment, but must first inform the Commission of their intent to record.

(3) For a brief period at each meeting, prior to consideration of the action items, time will be allotted on the agenda for hearing public comment. Public comments may be entertained at other times during a meeting at the discretion of the Chairperson. A Commissioner may request a member of the public who has spoken to an issue to clarify a position.

(e) The Commission and committees will receive and record into the minutes written proposals submitted by associations, individuals representing the teaching profession and other interested persons.

(f) The Commission or a committee may request the services of resource persons to facilitate the work of the Commission or committee.

(g) Action items may be submitted to the Commission or committee by agencies of the Commonwealth, a Commissioner or an interested party. The Commission or committee may take the item under advisement or may table, refer, dismiss or act upon the item.

(h) Any commissioner may submit agenda items for discussion or new business for the next Commission or committee meeting. This will not prohibit a commissioner from initiating items under new business in a current meeting.

(i) Public notice will be issued at least 36 hours prior to a meeting of the Commission or a committee and at least 24 hours before a reconvened or rescheduled Commission or committee meeting. Public notice is not required for emergency meetings. Emergency meetings are those called to deal with "a real or potential emergency involving a clear and present danger to life or property."

(j) Except when specifically prohibited by law, votes on action items taken at a Commission or committee meeting are publicly cast and, in the case of roll call votes, recorded in the minutes of the Commission or committee.

(k) Formal hearings will be conducted in accordance with 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and other rules or procedures which might be promulgated by the Commission.

(l) A copy of the minutes of Commission and committee meetings will be made available to any individual or organization so requesting.

(m) Materials and statements released in the name of the Commission will be approved by the Commission.

(n) Executive sessions will be held as follows:

(1) The Commission or committees may admit to an executive session persons necessary to carry out the purpose of the meeting. The persons may include staff persons, legal and technical advisors and individuals and their representatives who may be affected by matters to be discussed.

(2) An executive session may be held during an open meeting or at the conclusion of an open meeting, or may be announced for a future time at an open meeting.

(3) At the open meeting occurring immediately prior to or subsequent to an executive session, the Commission or committee will announce and include within its minutes, the date, time, location and purpose of an executive session. The purpose of an executive session may be explained by a general reference to the types or categories of subjects discussed at the session and need not identify with specificity persons or matters considered during the meeting.

(4) Unless otherwise provided by law, a meeting at which a quorum of the members of the Commission or committees takes official action with regard to matters discussed at an executive session will be open to the public.

(5) The Commission or committee will keep minutes of each executive session in the manner required for open meetings, but the minutes of executive sessions will not constitute records available for public inspection or copying.

§ 233.110. Expenses.

(a) Under the act, members of the Commission may not receive compensation for their services, but will be reim-

bursed for their actual and necessary expenses incurred in the performance of official Commission business.

(b) A member of the Commission, who is an employee of an agency of the Commonwealth, or its political subdivisions, including school districts, is permitted to attend Commission meetings and perform other Commission duties without loss of income or other benefits. A State agency or a political subdivision of the Commonwealth, including a school entity, required to employ a substitute for a member of the Commission who is absent from employment while performing Commission business, will be reimbursed by the Department, under the act, from funds appropriated for the general government operations of the Department for the actual amount of costs incurred upon presentation of a request for reimbursement and documentation of the cost.

(c) Under the act, a member of the Commission who is employed by a private employer will be reimbursed by the Department, from funds appropriated for the general government operations of the Department, for income lost as a result of attendance at Commission meetings or performance of other official Commission duties. Reimbursement is governed by guidelines established by the Commission and will be made upon presentation of a request for reimbursement and documentation of lost income.

(d) The Executive Director will verify the appointment of each member of the Commission with the member's respective employer and will advise the employer of the provisions of section 7 of the act (24 P. S. § 2070.7).

§ 233.111. Code of conduct and Commissioners' rights.

(a) *Code of conduct.* Members of the Commission will:

(1) Respect the rights and opinions of the Commission's constituencies.

(2) Enhance the public image and mission of the Commission.

(3) Assess the performance of the Commission.

(4) Prepare for, regularly attend and actively participate in Commission and committee meetings.

(5) Vote according to one's convictions, challenge the judgment of others when necessary, support the majority decisions of the Commission and work with other Commissioners to implement the majority decisions.

(6) Base judgments on what is best for the advancement of education as a whole and, in all of their deliberations, consider the public interest.

(7) Refrain from actions and involvements that might prove embarrassing to the Commission.

(8) Speak on behalf of the Commission and represent the Commission only when authorized to do so by the Chairperson, Executive Director or the Commission.

(9) Serve freely and without honoraria when representing the Commission.

(10) Abide by the legal and fiscal responsibilities of the Commission as specified by law, the bylaws, the Governor and the Governor's executive offices and the Department.

(11) Disclose fully the nature of a conflict of interest and abstain from voting when these conflicts arise.

(12) Conform to 65 Pa.C.S. Chapter 11 (relating to Public Official and Employee Ethics Act) and 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for

appointed officials and State employees), including the timely filing of required reports.

(b) *Rights of Commissioners.*

(1) A Commissioner may address groups or organizations concerning the work of the Commission but will not represent himself as an official spokesperson for the Commission unless so authorized by the Commission or the Chairperson or the Executive Director.

(2) A Commissioner may solicit or receive information from any group, organization or person.

(3) Commissioners may not accept gifts, remuneration or honoraria except as permitted by 65 Pa.C.S. Chapter 11 and 4 Pa. Code Chapter 7, Subchapter K. The Commission will adopt a policy pertinent to this subsection advising the circumstances when gifts, remuneration and honoraria are and are not permissible.

§ 233.112. Public hearings.

(a) The purpose of a public hearing, in contrast to a meeting or a disciplinary proceeding of the Commission, is to receive testimony from witnesses on proposed actions and recommendations of the Commission. Public hearings and deliberations of the Commission will take place in a public forum.

(b) Public hearings called will specify a date, time, place and purpose, and, if possible, be announced at least 30 days in advance. The call for a hearing will be advertised in accordance with law.

(c) The Commission may call a public hearing for a specific purpose or to receive testimony on a specific issue outside of the charges of the standing committees. Public hearings will be chaired by the Commission Chairperson or a designee.

(d) At least one Commissioner will preside and hear testimony at each public hearing.

(e) Within the limits of the budget, the Commission and its committees will strive to hold several public hearings on a particular issue at sites located throughout this Commonwealth. If only one public hearing for a specific issue is called, it will ordinarily be held in Harrisburg.

(f) Hearings will be arranged and supervised by the Executive Director.

(g) Testimony shall be submitted in writing at the time testimony is presented. Ample copies of testimony should be provided by witnesses for the Commissioners presiding and staff members present at the hearing.

(h) The Commission, committee or Chairperson of the public hearing may request the presence of legal counsel, Department or Commission staff persons.

(i) Unless otherwise modified by the Chairperson of the public hearing or the commissioner presiding, the following apply to public hearings:

(1) A person may be heard by the Commission or committee in person, in writing, or through a designated representative.

(2) Witnesses will be allotted 10 minutes each to present testimony.

(3) Only one witness will be heard from any one designated organization. When several hearings are held Statewide, the committee chairperson may limit testimony from an organization to one of the several hearing sites.

(4) Witnesses will be scheduled in advance but should appear at the public hearing site in time to allow for schedule changes.

(5) Persons, groups or organizations will be heard orally or through written testimony, or both. Commissioners, legal counsel or Department/Commission staff persons may question witnesses.

(6) Twenty-five copies of written testimony submitted in lieu of oral testimony should be provided to the Executive Director of the Commission in Harrisburg.

§ 233.113. Disciplinary proceedings.

(a) Disciplinary proceedings will be initiated and conducted in accordance with sections 9, 9.1 and 9.2 of the act (24 P. S. §§ 2070.9, 2070.9a and 2070.9b) and §§ 233.114—233.122.

(b) At any disciplinary proceeding conducted by or on behalf of the Commission, the affected educator is entitled to represent himself or be represented by legal counsel. No other designated representative other than legal counsel will be permitted to appear on behalf of the affected educator.

§ 233.114. Confidentiality and unauthorized release of information.

(a) Under section 10 of the act (24 P. S. § 2070.10), information relating to complaints, or proceedings relating to or resulting from complaints, will remain confidential unless discipline, other than a private reprimand, is ordered. If proceedings, after the exhaustion of all appeals, result in discipline, other than private reprimand, all records pertaining thereto will become public.

(b) Disclosure of information previously made public as a result of action by a school entity to dismiss an educator for cause or as a result of an educator having been formally charged with or convicted of a crime of moral turpitude or another offense requiring mandatory revocation of a certificate is permitted. The confidentiality provisions of the act are not intended to prohibit a school entity from using information previously known, or received through its own investigation, in fulfillment of its duties under the Public School Code of 1949 (24 P. S. §§ 1-101—27-2702), including those duties associated with local dismissal proceedings.

(c) Members, staff and employees of the Commission, the Department, local school entities and participants in disciplinary proceedings shall comply with the confidentiality requirements of the act. Correspondence between and among the Commissioners and staff persons containing confidential material will be marked as personal and confidential, and precaution will be taken to avoid unauthorized disclosure.

(d) Under section 17(a) of the act (24 P. S. § 2070.17(a)), a member, staff member or employee of the Commission, the Department or a local school entity who releases or gives out confidential information received at a Commission meeting or hearing or through a disciplinary proceeding conducted under the act, without authorization of the Commission, is guilty of a misdemeanor of the third degree.

(e) Under section 17(b) of the act, a material witness or a representative who releases or gives out confidential information received at a Commission meeting or hearing involving any Commission disciplinary proceeding under the act, or who releases or gives out information obtained as a result of direct involvement in the Department's confidential investigation of an educator, without authori-

zation of the Commission, is guilty of a misdemeanor of the third degree unless the information was known to the material witness or a representative prior to the aforementioned meeting, hearing or investigation.

(f) Petitions for authorization to release information under section 17 of the act shall be filed with the Commission in accordance with 1 Pa. Code § 35.17 (relating to petitions generally). Petitions shall be served on all interested parties, including the Department and the affected educator. Interested parties shall have 20 days or the number of days set by the Commission from the date of service to respond to the petition. In determining whether to grant the petition, the Commission will consider the public interest and the interests of all affected parties, including the petitioner, the educator and the Department.

(g) This section does not apply to reinstatement proceedings.

(h) Nothing in this section is intended to deny an educator access to information necessary to prepare a defense in a disciplinary proceeding or protect an individual from civil liability if the individual participated in the disciplinary process under the act maliciously or provided false information that the individual knew, or had reason to know, was false.

(i) The Commission, in releasing information to the public, will take all steps reasonably possible to protect the identity of any child or student involved in the disciplinary proceeding.

§ 233.115. Notice and hearings.

(a) *Written notice.* Upon determination to initiate hearing procedures, section 13(a) of the act (24 P. S. § 2070.13(a)) requires the Department, within 30 days, to send a written notice to the affected educator and to the governing board of the school entity in which the educator is or was last employed. The notice will be treated by the Commission as an order to show cause under 1 Pa. Code § 35.14 (relating to orders to show cause). The notice should contain a statement of the particulars of the charges against the educator, the right of the educator to respond and to request a hearing within 30 days after receipt of the notice of charges, and the right of the governing body of the school entity in which the educator is or was last employed to intervene under section 13(c)(4) of the act and 1 Pa. Code § 35.28 (relating to eligibility to intervene).

(b) *Docket number and notice.* After the Department files a copy of the notice of charges with the Commission, the Commission will immediately establish a docket number. The Commission will provide notice thereof to the Department, the educator and the governing board of the school entity by which the affected educator is or was last employed as soon as proof of service upon the educator is filed. The Commission will also provide to the governing board a copy of the notice of charges and will inform the governing board of its opportunity to file a petition to intervene under section 13(c)(4) of the act and 1 Pa. Code § 35.28.

(c) *Failure to respond.*

(1) If the educator fails to timely respond to the notice of charges, the educator is deemed in default under 1 Pa. Code § 35.37 (relating to answers to orders to show cause), and the Commission may, upon motion of any party, deem admitted the relevant facts stated in the notice of charges and proceed to consideration of discipline based upon the admitted facts and exhibits, if any, to the notice of charges.

(2) The Commission will not in these cases appoint a hearing officer or hold a hearing unless the Commission determines that the appointment of a hearing officer is necessary for the Commission to decide the matter. In these cases, the Commission will determine the scope of the hearing officer's authority.

(3) The Executive Director will provide notice to the parties of the meeting at which the Commission intends to consider the matter.

(d) *Right to an evidentiary hearing.*

(1) If the educator timely responds in writing to the notice of charges by specifically admitting or denying the allegations of the notice of charges, setting forth the facts upon which the educator relies, and stating concisely the matters of law relied upon in compliance with 1 Pa. Code § 35.37, the Commission will appoint a hearing officer to conduct proceedings in accordance with the act, 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) and other rules which the Commission might prescribe.

(2) If the educator timely responds in writing to the notice of charges but expressly waives the right to an evidentiary hearing under section 13(c)(3) of the act or fails to comply with 1 Pa. Code § 35.37, the Commission may appoint a hearing officer to conduct the proceedings as the Commission or its legal counsel might direct or, upon motion of a participant, the Commission may proceed directly to consider the matter of discipline based upon the notice of charges, the response to the notice of charges and other documents as might be part of the formal record.

(e) *Review of notice.* Whenever the Commission has determined, after review of the notice of charges and a certified copy of the verdict, judgment or sentence that an educator has been convicted of a crime involving moral turpitude, the Commission will direct the Department to revoke the educator's certificates or eligibility in accordance with section 9.2(2) of the act (24 P. S. § 2070.9b(2)). In determining whether a crime involves moral turpitude, the Commission may elect to consider the matter directly or may appoint a hearing officer to assist with disposition of the case.

§ 233.116. Petitions requiring action prior to appointment of hearing officer.

(a) The legal counsel to the Commission has the authority to decide upon an application, petition or motion requiring action prior to the appointment of a hearing officer, except that legal counsel may not enter an order which would constitute a final determination of the proceedings. The legal counsel may refer an application, petition or motion to the Commission for ultimate determination.

(b) An order issued by legal counsel may be reviewed by the Commission upon the filing of a petition of appeal under 1 Pa. Code § 35.20 (relating to appeals from actions of the staff), but neither orders issued by legal counsel nor the proceedings will be stayed pending review unless expressly ordered by the Chairperson or the legal counsel for the Commission.

§ 233.117. Hearing procedures.

Hearings will be held in accordance with the act and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), as follows:

(1) *Hearing officer appointed.* Within 45 days of the filing of a notice of charges and response thereto requir-

ing the services of a hearing officer, the Commission will appoint a hearing officer from a list of impartial third parties qualified to conduct hearings as provided by section 13(c)(1) of the act (24 P. S. § 2070.13(c)(1)).

(2) *Burden of proof.* Under section 13(c)(2) of the act, the burden of proof is on the Department, which acts as prosecutor, to establish that grounds for discipline exist.

(3) *Right to counsel.* Under section 13(c)(3) of the act, an educator against whom a charge is made has the right to be represented by legal counsel and to present evidence and argument under 1 Pa. Code Part II and other rules of procedure promulgated by the Commission.

(4) *Closed hearings.* Under section 13(c)(5) of the act, hearings will be closed, unless an affected educator requests that a hearing be open. If the hearing is open, the hearing officer may close any portion of the hearing for good cause shown. If the hearing is closed, only the Department, interveners, Commission members and staff, the affected educator and the educator's legal counsel, and material witnesses are permitted to attend. Students attending school in the district which employs the educator are not permitted to attend any hearing except as witnesses subpoenaed to testify with respect to the charges made.

(5) *Department recommendation.* Under section 13(c)(6) of the act, the Department may recommend to the hearing officer and Commission appropriate discipline.

§ 233.118. Hearing officer's decision and exceptions.

(a) The hearing officer will issue a decision concerning whether discipline should be imposed under section 13(c)(7) of the act (24 P. S. § 2070.13(c)(7)) within 60 days after the conclusion of the hearing, including the submissions of briefs and oral argument. A decision will include proposed findings of fact and conclusions of law, and will specify the discipline recommended.

(b) Under section 14(a) of the act (24 P. S. § 2070.14(a)), the decision of the hearing officer will become final unless excepted to by the Department or the educator within 30 days after the date of the recommended decision. If no exceptions are timely filed, the Commission will consider the decision and recommendation of the hearing officer and issue an order implementing the hearing officer's decision. The Commission cannot alter the hearing officer's decision without the filing of timely exceptions.

(c) After receiving the decision of the hearing officer, the written exceptions thereto and the written response to exceptions, the Commission will set the matter for oral argument before the Commission. The Executive Director will provide notice to the parties of the meeting at which the Commission intends to consider the matter.

(d) The Commission will promptly consider exceptions to the hearing officer's decision. The Commission, by a majority vote of its full membership, will accept, modify or reject the hearing officer's decision, except that, in the case of discipline of an administrator, exceptions will be reviewed by a special panel of nine members of the Commission selected by the Chairperson, which will include no more than three teachers.

(e) The Commission will issue a written opinion and order affirming, reversing or modifying the hearing officer's decision and imposing discipline, if any, within 45 days after receiving the decision from the hearing officer and the exceptions thereto, including oral argument on the exceptions.

§ 233.119. Appeal.

(a) *Educator or Department appeal.* Under section 15(a) of the act (24 P. S. § 2070.15(a)), an order of the Commission regarding discipline of an educator may be appealed only by the Department or the educator as an adjudication by a State agency in the manner provided by law.

(b) *Appeal stays discipline.* Under section 15(b) of the act, an appeal filed under section 15(a) of the act operates as a stay of the discipline until the determination of the appeal, except when 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.

§ 233.120. Expedited hearing procedures.

(a) Notwithstanding another provision of the act, if the Department determines that immediate discipline is necessary to protect the health, safety or welfare of students or other persons in the schools of this Commonwealth, section 13(b) of the act (24 P. S. § 2070.13(b)) permits the Department to request that the Commission modify the hearing procedures set forth in section 13(c) of the act and schedule an expedited hearing.

(b) A written request by the Department that the Commission modify the procedures in section 13(c) of the act will be treated by the Commission as a petition under 1 Pa. Code §§ 35.17 and 35.18 (relating to petitions generally; and petitions for issuance, amendment, waiver or deletion of regulations). An answer to the petition shall be filed with the Commission within 15 days after service of the petition, or at another time as directed by the Commission.

(c) If an educator is indicted for a crime set forth in section 111(e)(1)—(3) of the Public School Code of 1949 (24 P. S. § 1-111(e)(1)—(3)) and the Department believes that the educator poses a threat to the health, safety or welfare of a student or other individuals in a school, the Commission will expedite consideration of the suspension of the educator's certificate or eligibility under section 9.2(1) of the act (24 P. S. § 2070.9b(1)) as follows:

(1) The educator's response to the notice of charges is due within 15 days of service of the notice of charges. If the educator requests a hearing in his response, the Commission or a committee thereof shall hold a hearing within 15 days of filing the responsive pleading.

(2) Within 20 days after the conclusion of the hearing, including receipt of the transcript or the filing of briefs, the Commission or the committee will issue a decision.

(3) The educator may appeal the decision of the Commission as an adjudication of a State agency in accordance with section 15 of the act. An appeal of a suspension imposed under section 9.2(1) of the act does not operate as a stay of the discipline.

§ 233.121. Reciprocity.

(a) Upon receipt of certified copies of an adjudication from the licensing authority in another state, territory or nation imposing discipline for grounds, other than a conviction for crimes involving moral turpitude or crimes set forth in section 111(e)(1)—(3) of the Public School Code of 1949 (24 P. S. § 1-111(e)(1)—(3)), that are comparable to grounds for discipline under the act, the Commission will issue an order to show cause why the imposition of identical or comparable discipline would be unwarranted in this Commonwealth. The order to show cause will:

(1) Contain a statement of the particulars of the charges against the educator.

(2) Advise the educator of the right to respond within 30 days after receipt of the notice.

(b) The final adjudication by the licensing authority in another state, territory or nation shall be conclusive as to the misconduct of the educator.

(c) Within 30 days after filing of the educator's response or the time allotted for the educator to respond, the Commission may impose identical or comparable discipline unless the educator can demonstrate in his response to the order to show cause that one or more of the following applies:

(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.

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

§ 233.122. Expungement.

If the final decision of the Commission or appellate court of proper jurisdiction in a disciplinary proceeding conducted under the act is in favor of the educator, section 15(c) of the act (24 P.S. § 2070.15(c)) requires that the charges pertaining to the Commission's disciplinary proceeding be expunged from any personal or professional file of the educator maintained by the Department or the local school entity, or both.

§ 233.123. Reinstatements.

(a) *Application for reinstatement.*

(1) Under section 16 of the act (24 P.S. § 2070.16), an educator whose certificate or eligibility to serve in a charter school has been suspended, surrendered or revoked may apply to the Commission for an order lifting the suspension or reinstating the certificate or eligibility. The application should be filed with the Commission, served upon the Department in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), and be in the form prescribed by the Commission. The educator shall indicate expressly whether the educator wishes to invoke or waive the right to a hearing.

(2) The Commission will immediately assign a docket number and inform the educator, the Department and the governing board of the school entity by which the applicant was last employed.

(3) In accordance with section 16(b) of the act, the Commission will not consider any application for reinstatement of any educator whose certificate or eligibility was revoked or suspended as a result of a finding of guilt for sexual abuse or exploitation or who surrendered a certificate or eligibility in lieu of discipline for conduct related to sexual abuse or exploitation.

(4) In accordance with section 16(c) of the act, the Commission will not consider any application for reinstatement of a certificate or eligibility of an educator convicted of a crime under 18 Pa.C.S. (relating to the Crimes Code) set forth in section 111(e)(1)–(3) of the Public School Code of 1949 (24 P.S. § 1-111(e)(1)–(3)) for the time period established in that section.

(b) *Recommendation of the Department.*

(1) Under section 16 of the act, the Department may review the application and, based upon the investigation

and information it might deem appropriate, make a recommendation regarding the application within 90 days, or the time designated by the Commission, after its receipt of the application.

(2) The recommendation of the Department should be served upon the educator in accordance with 1 Pa. Code Part II.

(3) The Executive Director will verify that the Department has received the application for purposes of making a recommendation. If the Commission has not received the Department's recommendation or a request for additional time in which to respond within the time prescribed, the Commission will presume that the Department has no position on the application.

(4) The decision making of the Commission will be best served if the Department conducts an investigation of the justification and propriety of the relief requested by the educator and provides complete information to support its recommendation.

(c) *Notices.*

(1) The confidentiality provisions of section 10 of the act (24 P.S. § 2070.10) do not apply to applications for reinstatement. It is the policy of the Commission to conduct proceedings involving applications for reinstatement in public and to provide the public with a full opportunity to comment upon these applications.

(2) If the Department recommends approval of the application or fails to make a recommendation, the Executive Director of the Commission will publish in the *Pennsylvania Bulletin* a notice of opportunity for hearing consistent with the format prescribed by 1 Pa. Code § 11.31 (relating to sample notice of opportunity for hearing). The notice will describe the application and the Department's recommendation and will state that the Commission may act upon the application, without hearing, unless within 30 days an interested party or entity files a petition to intervene or files a protest to the application with the Commission under 1 Pa. Code §§ 35.23 and 35.24 (relating to protests).

(3) If the Department opposes the application, but the applicant has waived the opportunity for hearing and the Department has not requested a hearing, the Executive Director of the Commission will publish in the *Pennsylvania Bulletin* a notice of opportunity for hearing consistent with the format prescribed by 1 Pa. Code § 11.31. The notice will describe the application and the Department's recommendation and will further state that the Commission may act upon the application, without hearing, unless within 30 days an interested person or entity files a petition to intervene or files a protest to the application with the Commission under 1 Pa. Code §§ 35.23 and 35.24.

(4) If the Department opposes the application and the applicant or the Department has requested a hearing, or if the Commission determines to hold a hearing without request, the Executive Director will publish in the *Pennsylvania Bulletin* a notice of hearing consistent with the format prescribed by 1 Pa. Code § 11.32 (relating to sample notice of hearing). The notice will describe the application and the Department's recommendation and will state that a hearing officer has been appointed to conduct hearing proceedings in accordance with the act, 1 Pa. Code Part II and other rules and procedures the Commission might promulgate. The notice will further provide interested persons and entities 30 days within which to petition to intervene or file protests with the Commission.

(5) The Executive Director will provide copies of all notices prescribed by this subsection to the applicant educator, the Department and the governing board of the school entity by which the applicant was last employed, if known.

(d) *Waiver of hearing.* Notwithstanding the educator's waiver of a hearing, the Department may request a hearing or the Commission may appoint a hearing officer to prepare a proposed report or proceed directly to consider the application

(e) *Hearing procedures.*

(1) *Hearing officer appointed.* If it has been determined that a hearing will be held, the Commission will appoint a hearing officer from a list of impartial third parties qualified to conduct hearings from the list agreed upon jointly by the Governor's General Counsel and at least two-thirds of the Commission under section 13(c)(1) of the act.

(2) *Burden of proof.*

(i) *Burden of proof on applicant.* The burden of proof is on the applicant to establish that the relief the applicant seeks is just and proper.

(ii) *Just and proper standard.* For purposes of determining whether it is just and proper to lift a suspension or reinstate a certificate, at a minimum, the Commission may consider the following:

(A) The conduct which resulted in discipline or which led to the surrender.

(B) Other past conduct of the applicant.

(C) The applicant's current attitude towards past conduct.

(D) Rehabilitation efforts and activities.

(E) References and letters of support or opposition.

(3) *Right to counsel.* An applicant has the right to be represented by counsel and to present evidence and argument in accordance with 1 Pa. Code Part II and other rules of procedure promulgated by the Commission.

(4) *Hearing officer's decision.* Within 60 days after the conclusion of the hearing, including briefing and oral argument, the hearing officer will issue a decision concerning whether relief should be granted. A decision will include proposed findings of fact and conclusions of law, and will specify the relief, if any, proposed.

(5) *Exceptions to hearing officer's decision.*

(i) The decision of the hearing officer will become final unless excepted to by a party within 30 days after the filing and service of the recommended decision. If no timely exceptions are filed, the Commission will at its next regularly scheduled meeting consider the report of the hearing officer and issue an order implementing the hearing officer's decision.

(ii) If timely exceptions are filed, the Commission, within a reasonable time, will consider the exceptions and by a majority vote of its full membership, will accept, modify or reject the hearing officer's decision. The Commission will issue a written opinion and order announcing its decision within 45 days of receiving the exceptions or brief on exceptions and hearing oral argument.

(6) *Automatic reinstatement.*

(i) Any professional certificate or eligibility suspended or revoked pursuant to a criminal indictment or conviction under section 9.2 of the act (24 P.S. § 2070.9b) will be reinstated upon notice to the Commission that the criminal indictment has been dismissed or that the conviction was overturned and the underlying charges dismissed.

(ii) Notice to the Commission means the filing of court records reflecting the dismissal. The court records shall be certified or bear comparable written indicia of validity.

(iii) Upon receipt of the notice, the Commission will provide the Department and the governing board of the school entity by which the educator was last employed with a copy of the notice. Within 10 days from the receipt of the notice, the Department may challenge the validity of the court records. In the absence of challenge, the Commission will direct the Department to immediately reinstate the certificate or eligibility.

(iv) The Commission authorizes its legal counsel to enter reinstatement orders. Legal counsel shall report all reinstatement orders to the Commission at its regularly scheduled meetings.

§ 233.124. Power of subpoena.

In all investigations and disciplinary proceedings, the Commission is authorized by section 18(b) of the act (24 P.S. § 2070.18(b)) 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. Petitions for the issuance of subpoenas shall be filed with the hearing officer, if one has been appointed, or with the Commission under 1 Pa. Code § 35.142 (relating to subpoenas). Objections to a petition for the issuance of subpoenas, which shall be filed within 5 days from service, will be ruled upon by the hearing officer or, if none has been appointed, by the legal counsel to the Commission. A decision of the legal counsel may be appealed to the Commission under 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

§ 233.125. Amendments.

Amendments to this chapter may be adopted by a two-thirds vote of the Commission at a meeting for which a notice of amendments has been given to the Commission members at least 14 days before the meeting. Amendments may not be inconsistent with the act or another statute, regulation, executive order or other order or directive binding upon the Commission.

§ 233.126. Reporting requirements.

Under section 5(a)(9.1) of the act (24 P.S. § 2070.5(a)(9.1)), the Commission will direct the Department to report annually, or more frequently if so needed, on the educator misconduct complaint system, including the number of and the processing of complaints. The report will be in a form that will allow the Commission to assess the efficacy of the system.

[Pa.B. Doc. No. 02-795. Filed for public inspection May 3, 2002, 9:00 a.m.]