

STATEMENTS OF POLICY

Title 22—EDUCATION

PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

[22 PA. CODE CH. 233]

Bylaws

The Professional Standards and Practices Commission (Commission) amends Chapter 233 (relating to bylaws—statement of policy) to read as set forth in Annex A.

Chapter 233 delineates the Commission's internal governance procedures, including the duties and responsibilities of Commission members and staff, and procedures for the Commission's adjudication of educator misconduct complaints and applications for reinstatement. The Educator Discipline Act (act) (24 P. S. §§ 2070.1a—2070.18c) was significantly amended by the act of December 18, 2013 (P. L. 1205, No. 120), thereby necessitating amendments to the Commission's bylaws. These amendments are intended to ensure the Commission's bylaws reflect the changes to the act, streamline procedures, and provide guidance to the Department of Education (Department), educators and the public with respect to the Commission's interpretation and administration of the act. The most significant changes are summarized as follows.

Summary

Section 233.113(c) (relating to disciplinary proceedings) sets forth the purposes of professional discipline and the factors the Commission considers in crafting disciplinary sanctions. The factors are intended to promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives. They are also intended to assist Department prosecutors and educators in the negotiation of settlement agreements and hearing officers in issuing proposed adjudications by informing the parties as to the considerations that the Commission believes are relevant to any sanctioning decision.

Section 233.113(d) clarifies the Commission's interpretation and administration of the act with regard to settlement agreements and, specifically, the necessity of Commission approval of settlement agreements. The act contemplates that the Commission, as the body charged with overseeing the educator discipline system and as the adjudicator with exclusive authority to impose professional discipline, must approve settlement agreements entered between the Department and educators prior to implementation.

In § 233.123 (relating to reinstatements), the Commission streamlined the procedures regarding reinstatement of certificates suspended, surrendered or revoked by simplifying the rules for providing public notice of reinstatement applications.

Affected Parties

Chapter 233 affects primarily educators 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 Chapter 233 do not impose additional reporting or paperwork requirements beyond those

specified by the act or 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and will not engender additional costs.

Effective Date

These amendments are effective upon publication.

Sunset Date

Although not subject to sunset, the Commission will review Chapter 233 on an ongoing basis.

Regulatory Review

As a statement of policy, Chapter 233 is not subject to the Regulatory Review Act (71 P. S. §§ 745.1—745.14). The Commission adopted the amendments after consultation with interested representatives of affected parties at public meetings.

Contact Person

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

SHANE F. CROSBY,
Executive Director

(Editor's Note: Title 22 of the Pennsylvania Code is amended by amending statements of policy in §§ 233.101, 233.102, 233.106, 233.107, 233.109, 233.113—233.115 and 233.117—233.124 to read as set forth in Annex A.)

Fiscal Note: 6-335. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART XIV. PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

CHAPTER 233. BYLAWS—STATEMENT OF POLICY

§ 233.101. Definitions.

The definitions in section 1.2 of the act (24 P. S. § 2070.1b) are incorporated by reference. The following word, when used in this chapter, has the following meaning, unless the context clearly indicates otherwise:

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

§ 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. As the body charged with the oversight and enforcement of the educator discipline system, the primary goal of the Commission is to ensure the health, safety and welfare of students and other individuals in schools in this Commonwealth while facilitating the fair, efficient and transparent adjudication of complaints against educators.

§ 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 Commis-

sion 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 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. 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 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. 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*.

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

(a) The order of business for Commission meetings will be set forth in an agenda, which will reflect all action items.

(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.

§ 233.113. Disciplinary proceedings.

(a) Disciplinary proceedings will be initiated and conducted in accordance with sections 9 and 9.2—9.5 of the act (24 P. S. §§ 2070.9 and 2070.9b—2070.9e) 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.

(c) The Commission considers allegations of misconduct on a case-by-case basis, taking into consideration the details specific to each case. The overall purposes of the educator discipline system and the Commission's responsibility in imposing sanctions are as follows: protecting the public from educators who are unfit to discharge their professional duties and ensuring the safety and security of students and others in schools in this Commonwealth; preserving the integrity and reputation of the teaching profession and the public's confidence in the profession; declaring and upholding proper standards of conduct and performance; determining the continued fitness of an educator to remain in the profession and, whenever possible, rehabilitating the educator; and deterring further unethical conduct. The discipline, if any, to be imposed in a particular case will depend upon the facts and circumstances of the case, will be fashioned in light of the purposes of educator discipline in this subsection and will take into account aggravating or mitigating circumstances. The Commission strives to ensure that similar violations result in similar outcomes and that the sanction or combination of sanctions that it decides to impose is both sufficient and no more than is necessary to achieve the purposes of sanctions. When applying these principles and crafting appropriate sanctions, the Commission may consider one or more of the following factors, as it deems appropriate:

(1) The seriousness and circumstances surrounding the misconduct.

(2) The extent, severity and imminence of danger to students, other educators or the public.

(3) Whether the misconduct involved sexual misconduct, or sexual abuse or exploitation.

(4) The status of the victim, if any, including the victim's age or special vulnerability.

(5) The harm or adverse impact to students or other persons.

(6) The harm or adverse impact to the educator's employer and to the profession.

(7) If the misconduct or violation is an isolated occurrence, part of a continuing pattern or one of a series of incidents.

(8) The educator's state of mind at the time of the misconduct (that is, negligent, reckless or intentional).

(9) The pecuniary benefit or other gain inuring to the educator by virtue of the misconduct.

(10) Whether the conduct was criminal in nature.

(11) The likelihood of a recurrence of the misconduct or violation.

(12) The age and level of maturity of the students served by the educator.

(13) The danger that students will imitate the educator's behavior or use it as a model.

(14) The educator's level of experience.

(15) The educator's past performance and performance following the misconduct or violation.

(16) The educator's prior disciplinary record, including warnings, or absence of a prior disciplinary record.

(17) Timely good faith effort to make restitution or to rectify the consequences of the misconduct.

(18) Meaningful and sustained period of successful rehabilitation.

(19) Impositions of other penalties or sanctions, including local disciplinary action.

(20) The educator's attitude and conduct during the disciplinary proceedings.

(21) The deterrence impact of the sanction.

(22) Penalties imposed in other cases for similar violations.

(23) Other extenuating circumstances or other factors bearing on the appropriate nature of a disciplinary sanction.

(d) After completion of a preliminary or full investigation, the Department may enter into a written settlement agreement with the educator.

(1) Settlement agreements will be presented to the Commission or a panel of members of the Commission for approval or disapproval.

(2) The Commission will promptly approve the settlement agreement if it is deemed by the Commission to be fair and just and the interests of the parties and the public interest have been considered.

(3) Once approved by the Commission, a settlement agreement will become a final order of the Commission.

(4) If the Commission disapproves a settlement agreement, the agreement will not be enforceable and the parties retain all rights they had prior to the execution of the agreement.

(5) Admissions made by an educator in a settlement agreement that is ultimately rejected by the Commission

may not be used against the educator in a formal disciplinary proceeding. This subsection does not prevent the Department from offering, at a formal disciplinary hearing, other evidence to prove factual matters disclosed in a settlement agreement.

(6) Whenever an educator surrenders his educator certification or employment eligibility, the Department will request an order from the Commission accepting the educator's surrender.

§ 233.114. Confidentiality and unauthorized release of information.

(a) Under section 17.2 of the act (24 P. S. § 2070.17b), information relating to complaints, or proceedings relating to or resulting from complaints, including the identity of the complainant, will remain confidential unless discipline, other than a private reprimand or a supplemental sanction deemed private by the Commission, is ordered. If proceedings, after the exhaustion of all appeals, result in discipline, other than a private reprimand or a supplemental sanction deemed private by the Commission, all records pertaining thereto will become public. Records relating to immediate discipline are public at the time the immediate discipline is imposed.

(b) Disclosure of information previously made public as a result of action by a school entity to discipline or dismiss an educator for cause or as a result of an educator having been formally charged with or convicted of a crime 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 17.2 of the act, a person who releases or gives out information deemed confidential under the act, without the authorization of the Commission or as authorized by the act, commits a misdemeanor of the third degree, unless the information was known to the person or available independently of the disciplinary proceeding.

(e) Petitions for authorization to release information under section 17.2 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.

(f) This section does not apply to reinstatement proceedings or to proceedings under section 9.2 or 9.5 of the act (24 P. S. §§ 2070.9b and 2070.9e).

(g) Nothing in this section is intended to deny an educator access to information necessary to prepare a

defense in a disciplinary proceeding or to 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.

(h) 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 service 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. 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 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 or a crime listed in section 111(e)(1)—(3) of the Public School Code of 1949 (24 P. S. § 1-111(e)(1)—(3)), the Commission will direct the Department to revoke the educator's certificates or employment eligibility in accordance with section 9.2(a)(2) of the act (24 P. S. § 2070.9b(a)(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.

§ 233.117. 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 15 days of the filing of a notice of charges and response thereto requiring 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 by a preponderance of the evidence 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, and only the Department, Commission members and staff, the educator and his counsel, any intervener or its counsel, and witnesses will be permitted to attend. When a witness is a child or student, the Commission or its hearing officers may in their discretion permit a parent or guardian to be in attendance during the testimony of the child or student.

(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) Under section 13(c)(7) of the act (24 P. S. § 2070.13(c)(7)), the hearing officer will issue a proposed report concerning whether the Department has met its burden of establishing that misconduct has occurred and whether discipline should be imposed within 90 days after the conclusion of the hearing, including the submissions of briefs and oral argument. A proposed report 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 proposed report is mailed or unless the Commission initiates a review of the proposed report in the absence of exceptions or reopens the proceeding for the reception of further evidence within 60 days of the date the proposed report was mailed.

(c) The Commission will promptly consider exceptions to the hearing officer's proposed report. After receiving the proposed report 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) When exceptions are filed or when the Commission initiates a review of the proposed report in the absence of exceptions, the Commission, by a majority vote of its full membership, will accept, modify or reject the hearing officer's proposed report.

§ 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 or reinstatement 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 grounds for discipline include sexual misconduct or sexual abuse or exploitation, the Commission's decision to discipline is accompanied by a finding that immediate discipline is necessary to protect the health, safety or welfare of students or other persons in the schools of this Commonwealth, or when the discipline imposed is the result of a negotiated settlement between the parties or is imposed under section 9.2 of the act (24 P. S. § 2070.9b).

§ 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(a)(1) of the act (24 P. S. § 2070.9b(a)(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 30 days of the receipt of the request for hearing. If the educator fails to request a hearing, the Commission or a panel of members of the Commission promptly will convene a meeting to consider the request for immediate suspension. The meeting may be conducted by telephone.

(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 that are comparable to grounds for discipline under the act, the Department may 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) The Commission may direct the Department to impose identical or comparable discipline unless the educator demonstrates 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 does not find educator misconduct, 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 and the local school entity, unless the school entity has taken or is pursuing local disciplinary action against the educator.

§ 233.123. Reinstatements.

(a) *Application for reinstatement.*

(1) Under section 16 of the act (24 P. S. § 2070.16), an educator whose certificate or employment eligibility has been suspended, surrendered or revoked may apply to the Commission for an order lifting the suspension or reinstating the certificate or employment 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 or entities where the educator was employed at the time the misconduct occurred, as well as the school entity by which the applicant was last employed, if different.

(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 employment eligibility was revoked or suspended as a result of a finding of guilt for sexual abuse or exploitation, or who surrendered a certificate or employment eligibility 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 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 and local school entity.*

(1) Under section 16 of the act, the Department and the school entity or entities in which the educator was employed at the time of the misconduct may review the application and, based upon the information in the application and any investigation the Department or school entity or entities might deem appropriate, make a recommendation regarding the application within 90 days, or the time designated by the Commission, after their receipt of the application.

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

(3) The Executive Director will verify that the Department and the school entity or entities in which the educator was employed at the time of the misconduct have received the application for purposes of making a recommendation. If the Commission has not received the Department's or the school entity's or entities' recommendation or a request for additional time in which to respond within the time prescribed, the Commission will presume that the Department or the school entity or entities 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 17.2 of the act (24 P. S. § 2070.17b) 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 by publishing the appropriate notice in the *Pennsylvania Bulletin* consistent with the format prescribed by 1 Pa. Code §§ 11.31 and 11.32 (relating to sample notice of opportunity for hearing; and sample notice of hearing). The notice will describe the application and will provide interested

persons and entities 30 days within which to petition to intervene or file protests with the Commission.

(2) The Executive Director will provide copies of all notices prescribed by this subsection to the applicant educator, the Department, the school entity or entities where the misconduct occurred, 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 (24 P. S. § 2070.13(c)(1)).

(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. The applicant may not contest the allegations of misconduct that resulted in the revocation, suspension or surrender of the applicant's certificate or employment eligibility.

(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 proposed report.* Within 90 days after the conclusion of the hearing, including briefing and oral argument, the hearing officer will issue a proposed report concerning whether relief should be granted. A proposed report 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 proposed report of the hearing officer will become final unless excepted to by a party within 30 days after the date the proposed report was mailed or unless the Commission initiates a review of the hearing officer's proposed report in the absence of exceptions or reopens the proceeding for the reception of further evidence within 60 days of the date the proposed report was mailed. If no timely exceptions are filed and the Commission does not initiate a review of the proposed report in the absence of exceptions or reopen the proceeding for the reception of further evidence, 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 proposed report.

(ii) If timely exceptions are filed or the Commission initiates a review of the proposed report in the absence of exceptions or reopens the proceeding for the reception of further evidence, the Commission, within a reasonable time, will by a majority vote of its full membership accept, modify or reject the hearing officer's proposed report and issue a written decision.

(6) *Automatic reinstatement.*

(i) Any certificate or employment 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) The Commission authorizes its legal counsel to enter reinstatement orders under this subsection. 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 for the purposes of assisting the Department in reviewing complaints and investigating educator misconduct and 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).

[Pa.B. Doc. No. 15-1647. Filed for public inspection September 11, 2015, 9:00 a.m.]