



Senate Education Committee

Senator Mike Folmer
Chairman

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BILL SUMMARY

Senate Bill 34, Printer's No. 713
Prime Sponsor: Senator Smucker

A. SYNOPSIS:

SB34 would amend the Professional Educator Discipline Act to establish a comprehensive system under which professional educators are investigated and disciplined for misconduct in Pennsylvania.

B. BILL ANALYSIS:

In addition to making several technical amendments, SB34 would make the following substantive amendments to the Educator Discipline Act (EDA):

Jurisdiction and Grounds for Discipline

1. Expands the jurisdiction of the Pennsylvania Standards and Practices Commission (PSPC) to include educators holding private academic school certification and educators working for independent contractors that provide direct educational services to a school entity.
2. Expands the bases for discipline to include (1) founded and indicated reports of child abuse and founded and indicated reports for a school employee; (2) sexual misconduct, which is defined broadly to include "grooming" behaviors designed to establish a romantic or sexual relationship with a child or student; (3) failure to comply with mandatory reporting duties under the EDA; and (4) threats, coercion, discrimination or retaliation against one who reports suspected misconduct or against a participant in a discipline proceeding.
3. Eliminates the current one-year statute of limitations for the filing of misconduct complaints.
4. Clarifies that allegations discovered by PDE in investigating a misconduct complaint can be used to prosecute an educator even if the allegations were not contained in the original misconduct complaint filed.

5. Permits individual members of PSPC who uncover evidence of educator misconduct in their personal capacity or while carrying out their professional responsibilities to file a complaint with PDE.
6. Clarifies that PDE may pursue discipline against an educator who has been acquitted of criminal charges or who has participated in an alternative disposition program, for whom criminal charges were withdrawn or dismissed, or for whom a founded or indicated report of child abuse was reversed or determined to be unfounded.

Mandatory Reporting

SB 34 expands mandatory reporting by a chief school administrator to PDE to include reporting:

1. Any educator who has been provided with notice of intent to dismiss or remove for cause, notice of nonrenewal for cause, notice of removal from eligibility lists for cause or notice of a determination not to reemploy for cause (required to be reported within 15 days after notice is provided);
2. Any educator who has been arrested, indicted for or convicted of any misdemeanor or felony, including having pled guilty or nolo contendere (required to be reported within 15 days of discovery of the arrest, indictment or conviction);
3. Any educator against whom allegations have been made that the educator has committed sexual abuse or exploitation or engaged in sexual misconduct with a child or student (required to be reported within 15 days of discovery of the allegations of misconduct);
4. Any educator who there is reasonable cause to believe has caused physical injury to a student or child as a result of negligence or malice (required to be reported within 15 days of discovery of the information);
5. Any educator who has resigned, retired or otherwise separated from employment after a school entity has received notice of alleged misconduct (required to be reported within 15 days of separation from employment);
6. Any educator who is the subject of a report filed by the school entity under Title 23 Ch. 63 (relating to child protective services) (required to be reported within 15 days of the filing of the child protective services report);
7. Any educator who has been named as the perpetrator of an indicated or founded report of child abuse or named as an individual responsible for injury or abuse in an indicated or founded report for a school employee (required to be reported within 15 days of the filing of the child protective services report);
8. It also expands the requirements for educators to report when the educator is arrested, indicted for or convicted of certain enumerated crimes to the employing school entity within 72 hours of the arrest, indictment or conviction.
9. The educator must file a mandatory report with PDE when the educator has knowledge of any action, inaction or conduct that constitutes sexual misconduct or sexual abuse or exploitation. The educator must also report such misconduct to his chief administrative officer and immediate supervisor (required to be filed within 15 days of the discovery of the sexual abuse or exploitation or sexual misconduct).

Discipline

1. Specifies that an educator may be required to participate in supplemental sanctions as a form of discipline. An educator required to submit to the evaluation or care, counseling or treatment of a physician, psychologist, therapist or psychiatrist or enter an impaired educator program would be required to do so at the educator's own expense.
2. Requires PSPC direct PDE to revoke the certificate and employment eligibility of an educator who has been convicted of certain serious crimes outlined in the School Code or the attempt, solicitation or conspiracy to commit any such crime.
3. Requires PSPC direct PDE to impose discipline against any educator for conduct found by PSPC to constitute one of the following: immorality; incompetency; intemperance; cruelty; negligence; sexual misconduct; sexual abuse or exploitation; a violation of the code for professional practice and conduct; illegal use of professional title; failure to comply with duties under EDA; or actions taken to threaten, coerce or discriminate or otherwise retaliate against an individual who in good faith reports actual or suspected misconduct or against complainants, victims, material witnesses or other individuals participating or cooperating in discipline proceedings.
4. Requires PSPC direct PDE to discipline and revoke the certificate and employment eligibility of an educator who is named as the perpetrator of a founded report of child abuse or named as an individual responsible for injury or abuse in a founded report for a school employee.
5. Requires PSPC direct PDE to discipline an educator who is named as the perpetrator of an indicated report of child abuse or named as an individual responsible for injury or abuse in an indicated report for a school employee, and to issue an order to show cause why imposition of discipline should be unwarranted.
6. Requires PDE to immediately reinstate an educator when a founded or indicated report is reversed or determined to be unfounded.

Hearing Procedures

1. Permits issuance of investigatory subpoenas and subpoenas to compel the attendance and testimony of witnesses and the production of evidentiary materials.
2. Eliminates provisions requiring that the discipline of an administrator be overseen by a special panel.
3. Requires PDE to notify a school entity of any complaint, investigation and charges when the school entity has not been previously notified so the school entity may exercise its duties under the EDA.
4. Clarifies that the current or former school entity in which an educator is or was employed may intervene as of right in a discipline proceeding.
5. Clarifies the standard of proof that misconduct has occurred to be "a preponderance of the evidence."
6. Allows PSPC to permit a parent or guardian to be present when a child or student is testifying as a witness during a hearing.

7. Allows PDE to grant a school entity an extension of time to complete a report on a misconduct investigation.
8. Allows PSPC to initiate a review of the hearing officer's proposed report even if neither party to the hearing has filed exceptions or to reopen the proceeding to receive further evidence.
9. Requires PDE and the local school entity to expunge the charges from the educator's file when PSPC finds no misconduct has occurred unless the school entity is pursuing local disciplinary action.
10. Requires PSPC to make all adjudications imposing discipline, other than a private reprimand, available via a publicly accessible website. PSPC also shall maintain a publicly accessible central online registry of staff members from charter and cyber charter schools as well as contracted educational providers whose employment eligibility has been suspended, revoked or otherwise disciplined under EDA.
11. Prohibits a member of PSPC from voting in any case where the commissioner has filed a misconduct complaint against the educator or has personal and independent knowledge of the educator or issues in the case that would compromise the commissioner's ability to make an impartial decision.
12. Clarifies that the consent of a child or a student to engage in sexual abuse or exploitation may not be a defense or a mitigating factor in a discipline proceeding.

Reinstatement

1. Allows PSPC, when considering whether to reinstate an educator's certificate or employment eligibility, to consider recommendations from the school entity in which the educator was employed and to consider whether the educator has complied with any conditions imposed as part of the discipline.
2. Allows reinstatement of the certificate and employment eligibility of an educator if the educator is admitted into an accelerated rehabilitative disposition (ARD) program. If the educator was indicted for a sexual offense, the educator cannot be reinstated until completion of an ARD program and the criminal charges are dismissed.

Immunity from Liability

Provides civil immunity to school entities providing accurate references, which may involve professional misconduct, for employees and to individuals who file a mandatory report or complaint with PDE or who provide information to or cooperate with PDE or PSPC unless a person or school entity acts maliciously or provides information that the person or school entity knows, or has reason to know, is false.

Confidentiality

1. Clarifies that EDA confidentiality requirements do not prevent PDE or a school entity from providing information to law enforcement, child protective services or licensing agency of the Commonwealth or another state or jurisdiction.
2. Clarifies that a person is not prohibited from disclosing information that is available independently of the discipline proceeding.

3. Clarifies that the confidentiality provisions do not apply to information developed in the course of investigations conducted by school entities.
4. Clarifies that individuals contacted during PDE's investigation or prosecution of a complaint are subject to the confidentiality provisions.
5. Prohibits a school entity from entering into agreements that would interfere with its mandatory reporting obligation.

Miscellaneous

1. Modify PSPC membership to include six classroom teachers (at least five from public schools), three administrators (at least two from public schools), one administrator from an institution of higher education offering approved teacher preparation programs, two members of the general public (at least one being a school board member), and an educational specialist.
2. Allows PSPC to establish and participate in alternative dispute resolution programs.
3. Allows PSPC to develop outreach programs, professional development and courses designed to improve the quality of practice and ethical conduct in the teaching profession.
4. Provide that an educator misconduct complaint is subject to penalties for unsworn falsification to authorities.
5. Provides that all fees, fines and civil penalties must be paid into the State Treasury through PDE and credited to a restricted revenue account in the General Fund which may be used to implement duties under EDA.

SB 34 would take effect 60 days after enactment.

Amendment A00697 to SB 34:

Amendment A00697 deletes a reference to a deleted subsection of the School Code and replaces it with the appropriate subsection.