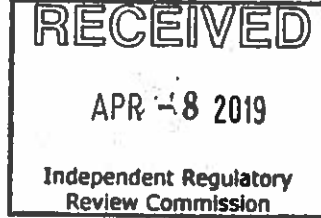


Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**



(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency
Professional Standards and Practices Commission

(2) Agency Number: 006
Identification Number: 6-340

IRRC Number: **3233**

(3) PA Code Cite: **22 Pa. Code Chapter 235**

(4) Short Title: **Code of Professional Practice and Conduct for Educators**

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: **Shane Crosby, Executive Director/Legal Counsel, 717-787-6576, shcrosby@pa.gov**
Secondary Contact: **Adam Young, Asst. Executive Director/Legal Counsel 717-787-6576, advyoung@pa.gov**

(6) Type of Rulemaking (check applicable box):

- | | |
|---|--|
| <input checked="" type="checkbox"/> Proposed Regulation | <input type="checkbox"/> Emergency Certification Regulation; |
| <input type="checkbox"/> Final Regulation | <input type="checkbox"/> Certification by the Governor |
| <input type="checkbox"/> Final Omitted Regulation | <input type="checkbox"/> Certification by the Attorney General |

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)
The Code of Professional Practice and Conduct for Educators ("Code") sets forth to the profession and the public it serves standards of professional practice and conduct applicable to all educators. The proposed amendments are designed to update and revise the Code to include technology related standards and to expound upon the ethical responsibilities of an educator to students, colleagues, and the profession.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The amendments are authorized under section 5(a)(10) of the Educator Discipline Act (24 P.S. § 2070.5(a)(10)).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Section 5(a)(10) of the Educator Discipline Act (24 P.S. § 2070.5(a)(10)) specifically directs the Commission to adopt and maintain a code for professional practice and conduct for educators.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Section 5(a)(10) of the Educator Discipline Act (24 P.S. § 2070.5(a)(10)) directs the Commission to adopt and maintain a code for professional practice and conduct applicable to all educators. The Commission adopted the current Code of Professional Practice and Conduct for Educators in 1992. The Code identifies the ethical responsibilities of educators and lists what educators shall do, should do, and may not do, as well as the consequences for violating the Code. The Commission resolved to revise the Code with the goal of updating it to address the ethical implications of shifts in both technology and society since its adoption in 1992 and to make it relevant and applicable to current educators.

The Commission disciplines approximately 300 educators annually. In many instances, technology plays an important role as either evidence of misconduct or as the source of the misconduct. Many of the proposed revisions focus explicitly on ethical responsibilities pertaining to educators' increased use of technology. These responsibilities include: using electronic communication with students for educational purposes only and only as frequently as necessary to accomplish the educational purpose; refraining from inappropriate communications with students; and avoiding professional or personal activity, including activity online, which would reduce the educator's effectiveness within the school community. In addition to adding technology related standards, the amendments present new or expanded guidelines addressing the following key concepts: the fiduciary relationship; role modeling; dual or multiple relationships; boundaries; maintaining the integrity of standardized tests; improper gifts; drug and alcohol use; non-discrimination and respect for cultural and other differences; and reporting and cooperation during investigations.

There is a compelling public interest in requiring educators to comply with standards of professional practice and ethical conduct. All educators will benefit from the regulation by receiving notice of the standards of professional practice and conduct that they must adhere to and by having a tool to help guide their decision making. All consumers of education will benefit by being protected from educators who practice unethically.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no federal licensure standards for educators.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Other states have regulations pertaining to professional conduct and codes of ethics. In revising its current Code, the Commission looked at other states' codes of conduct and ethics, including Alabama, Alaska, Arkansas, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Michigan, Minnesota, Mississippi, Ohio, Oklahoma, Rhode Island, Texas, and Vermont. This regulation is consistent with the codes of these and other states and will not put Pennsylvania at a competitive disadvantage. Proposed section 235.5a(j) is modeled on Standard 3.9 of the Texas Administrative Code.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will not affect existing or proposed regulations of the Commission or other agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Beginning in January 2017, the Commission held a series of public committee meetings to discuss revisions to its existing Code with interested parties and stakeholders. In March 2017, the Commission sent a preliminary draft of the revisions to interested parties for comment. Second and third drafts were sent to interested parties in September 2017 and January 2018, respectively. Four interested parties submitted written comments. The Commission reviewed and considered all comments and suggestions received by interested parties. Most of the suggestions were incorporated prior to finalization. The interested parties included the following: Pennsylvania Department of Education, Pennsylvania State Education Association, Pennsylvania School Boards Association, Pennsylvania Federation of Teachers, Pennsylvania Principals Association, Pennsylvania Association of School Administrators, Pennsylvania Association of School Personnel Administrators, Pennsylvania Coalition of Public Charter Schools, Pennsylvania Association of School Business Officials, Pennsylvania Association of Independent Schools, Pennsylvania Association of Intermediate Units, Pennsylvania Association of School Social Work Personnel, Pennsylvania Association of Career and Technical Administrators, and Pennsylvania Catholic Conference. The public will be afforded the opportunity to comment on this proposed regulation during the 30-day public comment period.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

All certificated educators, as well as all non-certificated charter school staff members and contracted educational provider staff members, will be affected by the proposed regulation, in that they must adhere to the Code of Professional Practice and Conduct for Educators. According to the Department of Education, there are approximately 752,961 certificated educators (approximately 147,330 actively employed in public schools) and 957 non-certificated educators. There are no perceived people or groups of people who would be adversely affected by the proposed regulation.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with

the regulation. Approximate the number that will be required to comply.

All certificated educators and all non-certificated charter or cyber charter school staff members and contracted educational provider staff members will be required to comply with the proposed regulation. Currently, there are approximately 752,961 certificated educators and approximately 957 non-certificated educators. According to the Department of Education, there are on average approximately 22,000-25,000 applicants for certification each year.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There will be numerous benefits to educators, students, and to the general public for compliance with these ethical standards. The Code of Professional Practice and Conduct for Educators articulates the shared beliefs of the teaching profession in Pennsylvania, serves to educate the general public and members of the profession regarding established principles to which educators are accountable, notifies educators of expected standards of conduct, guides educational practice, and inspires professional excellence.

All these goals benefit the profession, students, and the general public.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There will be no adverse effects or costs associated with compliance with the regulation.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There will be no costs or savings associated with complying with the regulation.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments resulting from the regulation.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to the state government in implementing the regulation.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork,

including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Not applicable

(22a) Are forms required for implementation of the regulation?

No

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

Not applicable.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	None	None	None	None	None	None
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	None	None	None	None	None	None
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	None	None	None	None	None	None

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Not applicable

Program	FY -3	FY -2	FY -1	Current FY

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

This regulation will not have an adverse impact on small business because the Code regulates the conduct of educators, not small businesses.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions are required to address any particular group.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Because the proposed regulation will not burden the regulated community, this is the least burdensome alternative. Further, no other alternative regulatory provisions were considered because the proposed regulation will not burden the regulated community.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

This regulation will not have any adverse impact on small business.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No data forms the basis for this regulation.

(29) Include a schedule for review of the regulation including:

A. The length of the public comment period: **30 days**

B. The date or dates on which any public meetings or hearings will be held: **The Commission holds bi-monthly public meetings at which information relative to all rulemaking is discussed. Meetings are held at the Department of Education Building at 333 Market Street, Harrisburg, PA. 2019 meeting dates are: May 13; July 15; September 16; and November 18, 2019.**

C. The expected date of delivery of the final-form regulation: **Fall 2019**

D. The expected effective date of the final-form regulation: **Upon publication of the final form rulemaking in the Pennsylvania Bulletin**

E. The expected date by which compliance with the final-form regulation will be required: **Upon publication of the final form rulemaking in the Pennsylvania Bulletin**

F. The expected date by which required permits, licenses or other approvals must be obtained:

N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Commission will review the Code of Professional Practice and Conduct for Educators on an ongoing basis and similarly will solicit comments from affected parties on an ongoing basis.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

RECEIVED
APR 8 2019
Independent Regulatory
Review Commission

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: <u><i>C. M. Elbert</i></u> (DEPUTY/ATTORNEY GENERAL)</p> <p>MAR 15 2019 DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>Education-Professional Standards and Practices Commission (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>6-340</u></p> <p>DATE OF ADOPTION: _____</p> <p><u><i>[Signature]</i></u></p> <p>BY: _____ Chairperson Pro Tempore</p> <p>TITLE _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u><i>[Signature]</i></u></p> <p>MAR 11 2019 DATE OF APPROVAL</p> <p>Deputy General Counsel (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

22 Pa. Code, Chapter 235

Code of Professional Practice and Conduct for Educators

PREAMBLE - PROPOSED RULEMAKING

Title 22. EDUCATION

PART XIV.

PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

CHAPTER 235. CODE OF PROFESSIONAL PRACTICE AND CONDUCT FOR
EDUCATORS

Purpose and Effect

The Professional Standards and Practices Commission (“Commission”) proposes to amend Chapter 235 (relating to code of professional practice and conduct for educators) to read as set forth in Annex A.

The General Assembly has charged the Commission with adopting and maintaining a code for professional practice and conduct applicable to all educators. 24 P.S. § 2070.5(a)(10). The Commission adopted the Code of Professional Practice and Conduct for Educators (“Code”) in 1992 and it has not been updated since. These amendments are designed to update and revise the Code to include technology related standards and to make the Code relevant and applicable to current educators. In addition to technology related guidelines, the amendments present new or expanded guidelines addressing educators’ ethical responsibilities to students, colleagues, and the profession. Below is a summary of the amendments.

Summary

Throughout the regulation, the term “professional educator” is replaced by the term “educator” to make the regulation consistent with the Educator Discipline Act (“Act”) (24 P.S. § 2070.1a-§ 2070.18).

Section 235.2(c) clarifies that the inclusion of specified violations of the Code as an independent basis for a public or private reprimand does not preclude the Department of

Education (“Department”) from pursuing discipline, including suspension or revocation, on other available grounds.

Section 235.3(c) clarifies that the purpose of the Code is to set expectations for educators; guide educational practice; and inspire professional excellence.

Section 235.3a adds definitions for the following key terms: “boundaries”; “dual or multiple relationships”; “educator”; “electronic communication”; “fiduciary relationship”; “harm”; “safe environment”; “safety”; “school entity”; “sexual misconduct”; and “transparency”.

Section 235.4 sets forth professional practices that all educators are expected to adopt and maintain throughout their careers. The amendments to subsection (b)(1) specify that educators are expected to comply with *all* laws and written school entity policies rather than certain enumerated laws. The expectation that educators abide by all laws and school entity policies is consistent with the Commission’s definition of duty in 22 Pa. Code § 237.8, the breach of which may support a finding of negligence and the imposition of discipline. Specifically, that section provides in pertinent part that a duty may be established by law or by school rules, policies, or procedures. Existing section 235.4(9) has been deleted to avoid inconsistency with proposed section 235.5a(c). The amendments also present new or expanded guidelines addressing the following key concepts: the fiduciary relationship; boundaries; dual or multiple relationships; non-discrimination and respect for cultural and other differences; role modeling; maintaining the dignity and integrity of the profession; and educators’ use of social media and other forms of electronic communication.

Section 235.5 specifies those sections of the Code that, if violated, may constitute an independent basis for a public or private reprimand. Existing sections 235.6-235.11 have been replaced by proposed sections 235.5a, 235.5b, and 235.5c. However, much of the existing

language has been maintained. Existing section 235.6 (legal obligations) has been incorporated into proposed section 235.4(b)(1). Existing sections 235.7-235.11 have been incorporated into proposed sections 235.5a, 235.5b, and 235.5c virtually without change. The purpose of the restructuring is to frame the educator's ethical responsibilities within the contexts of the educator's commitment to students, colleagues, and the profession, thereby highlighting the key principles underpinning good practice in the field.

Section 235.5a sets forth standards for professional conduct in fulfillment of the educator's commitment to students. The amendments emphasize the importance of fostering a positive learning environment and protecting students from all forms of harm. The amendments also add standards addressing an educator's use, possession, or distribution of alcoholic beverages or illegal or unauthorized drugs, and maintenance of confidentiality. Subsection (d) has been updated to reflect and correspond to the addition of "sexual misconduct" in the Act. Sub-section (j) defines and prohibits inappropriate communication, including inappropriate communication achieved through electronic communication, with a student or minor.

Section 235.5b sets forth standards for professional conduct in fulfillment of the educator's commitment to colleagues. This section includes prohibitions against sexual harassment; intentional distortion of evaluations; threats, coercion, or discrimination against colleagues who report violations; the use of improper means to influence professional decisions; and the unauthorized disclosure of confidential health or personnel information.

Section 235.5c sets forth standards for professional conduct in fulfillment of the educator's commitment to the profession. The amendments add and/or expand standards addressing: misrepresentation and document fraud; reporting and cooperation during official investigations and proceedings; security of standardized testing; non-discrimination; and

improper personal or financial gain. Proposed section 235.5c(g) maintains the anti-discrimination language found in existing section 235.8 (civil rights), while adding color and gender identification or expression to the list of bases of discrimination. This section is consistent with the Pennsylvania Human Relations Act (PHRA). While the PHRA does not explicitly enumerate sexual orientation or gender identity or expression, in guidelines released in August 2018, the Pennsylvania Human Relations Commission stated explicitly that it interprets the existing protections against sex discrimination to include protections for sexual orientation and gender identity or expression. The proposed section 235.5c(g) eliminates section 235.8's requirement that discrimination be found to exist by an agency of proper jurisdiction to be considered an independent basis for discipline. The Commission proposes to eliminate this requirement because enforcement of the Code should not be dependent on the action or inaction of another agency.

Statutory Authority

The proposed amendments are authorized by section 5(a)(10) of the Act (24 P.S. § 2070.5(a)(10)).

Affected Parties

This chapter affects all educators who have been certified by the Pennsylvania Department of Education, as well as all non-certified charter or cyber charter school staff members and contracted educational provider staff members who work in positions for which certification would be required in a traditional public school but who are legally exempted from the certification requirements.

Fiscal Impact and Paperwork Requirements

These amendments have no fiscal impact and impose no additional reporting or paperwork requirements on affected parties.

Effective Date

This regulation will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Sunset Date

There is no sunset date. The effectiveness of the regulation will be reviewed and evaluated on an ongoing basis.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 8, 2019, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (“IRRC”) and to the Chairpersons of the Senate Education Committee and the House Education Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if the IRRC has any comments, recommendations, or objections to any portion of the proposed regulation, it may notify the Commission and the Committees within 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly, and the Governor, of any comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed rulemaking to Shane Crosby, Executive Director, Professional Standards and Practices Commission, 333 Market Street, 14th Floor, Harrisburg, PA 17126-0333, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Persons needing additional information regarding this proposal may contact Shane Crosby at 717-787-6576.

By the Professional Standards and Practices Commission:

Myron Yoder
Chairperson Pro Tempore

ANNEX A

TITLE 22. EDUCATION

PART XIV. PROFESSIONAL STANDARDS AND PRACTICES COMMISSION CHAPTER 235. CODE OF PROFESSIONAL PRACTICE AND CONDUCT FOR EDUCATORS

§ 235.1. Mission.

The Professional Standards and Practices Commission (PSPC) 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.

§ 235.2. Introduction.

(a) Professional conduct defines interactions between the individual educator and students, the employing agencies and other professionals. Generally, the responsibility for professional conduct rests with the individual [professional educator] educator. However, in this Commonwealth, [a Code of Professional Practice and Conduct (Code) for certificated educators is required by statute and violation of specified sections of the Code may constitute a basis for public or private reprimand. Violations of the Code may also be used as supporting evidence, though may not constitute an independent basis, for the suspension or revocation of a certificate. The Professional Standards and Practices Commission (PSPC) was charged by the act of December 12, 1973 (P. L. 397, No. 141) (24 P. S. § § 12-1251—12-1268), known as the Teacher Certification Law, with adopting a Code by July 1, 1991. See 24 P. S. § 12-1255(a)(10).] the PSPC is charged with the duty to adopt and maintain a code for professional practice and conduct that shall be applicable to any educator. See section 5(a)(10) of the Act; 24 P.S. § 2070.5(a)(10).

(b) This chapter makes explicit the values of the education profession. When individuals become educators in this Commonwealth, they make a moral commitment to uphold these values.

(c) Violations of any of the duties prescribed by this chapter may be used as supporting evidence in disciplinary proceedings conducted by or on behalf of the PSPC pursuant to the Act. Violations of specified sections of the Code may also be an independent basis for a public or private reprimand. Nothing in this chapter shall be construed to affect in any way the Department of Education's authority to initiate an action under the Act to discipline an educator's certificate and/or employment eligibility.

§ 235.3. Purpose.

(a) [Professional Educators] Educators in this Commonwealth believe that the quality of their services directly influences the Nation and its citizens. [Professional educators] Educators recognize their obligation to provide services and to conduct themselves in a manner which places the highest esteem on human rights and dignity. [Professional educators] Educators seek to ensure that every student receives the highest quality of service and that every [professional] educator maintains a high level of competence from entry through ongoing professional development. [Professional educators] Educators are responsible for the development of sound educational policy and are obligated to implement that policy and its programs to the public.

(b) [Professional educators] Educators recognize their primary responsibility to the student and the development of the student's potential. Central to that development is the [professional educator's] educator's valuing the worth and dignity of every person, [student] student, and colleague alike; the pursuit of truth; devotion to excellence; acquisition of knowledge; and democratic principles. To those ends, the educator engages in continuing professional development and keeps current with research and technology. Educators encourage and support the use of resources that best serve the interests and needs of students. Within the context of professional excellence, the educator and student together explore the challenge and the dignity of the human experience.

(c) The purpose of this chapter is to set expectations for educators; guide educational practice; and inspire professional excellence.

§ 235.3a. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

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

Boundaries—The verbal, physical, emotional, and social distances between an educator and a student.

Dual or multiple relationships—Dual or multiple relationships occur when the educator engages in multiple or ongoing interactions with a student or members of the student's family in more than one context, whether professional, social, or personal.

Educator—As defined in section 1b of the act (24 P.S. § 2070.1b).

Electronic communication—A communication transmitted by means of an electronic device such as a telephone, cellular telephone, computer, computer network, personal data assistant, or pager. "Electronic communications" include emails, text messages, instant messages, and communications made by means of an Internet website, such as social media and social networking websites, or mobile device applications.

Fiduciary relationship—A fiduciary relationship is one in which a person justifiably places confidence in another whose aid, advice, or protection is assumed.

Harm—The impairment of learning or any physical, emotional, psychological, sexual, or intellectual damage to a student or a member of the school community.

Safe environment—A school setting which promotes the well-being of all members of the school community and is characterized by the absence of harm.

Safety—Freedom from harm.

School Entity—As defined in section 1b of the act (24 P.S. § 2070.1b).

Sexual Misconduct—As defined in section 1b of the act (24 P.S. § 2070.1b).

Transparency—Openness and accountability with respect to one's behaviors, actions, and communications as an educator.

§ 235.4. [Practices.] Professional Practices.

(a) Professional practices are behaviors and attitudes that are based on a set of values that the [professional] education community believes and accepts. These values are evidenced by the [professional educator's] educator's conduct toward students and colleagues, and the educator's employer and community. When teacher candidates become [professional educators] educators in this Commonwealth, they are expected to abide by this section.

(b) [Professional educators] Educators are expected to abide by the following:

(1) [Professional educators shall abide by the Public School Code of 1949 (24 P. S. § § 1-101—27-2702), other school laws of the Commonwealth, sections 1201(a)(1), (2) and (4) and (b)(1), (2) and (4) of the Public Employe Relations Act (43 P. S. § § 1101.1201(a)(1), (2) and (4) and (b)(1), (2) and (4)) and this chapter.] Educators shall comply with all federal, state, and local laws and regulations and with written school entity policies.

(2) [Professional educators] Educators shall be prepared, and legally certified, in their areas of assignment. Educators may not be assigned or willingly accept assignments they are not certified to fulfill. Educators may be assigned to or accept assignments outside their certification area on a temporary, short-term, emergency basis. [Examples:] Examples of temporary, short term, emergency basis assignments: a teacher certified in English filling in a class period for a physical education teacher who has that day become ill; a substitute teacher certified in elementary education employed as a librarian for several days until the district can locate and employ a permanent substitute teacher certified in library science.

(3) [Professional educators] Educators shall maintain high levels of competence throughout their careers.

(4) Educators shall respect the dignity, worth, and uniqueness of each individual student, including, but not limited to, actual and perceived gender, gender expression, gender identity, civil status, family status, sexual orientation, religion, age, disability, race, ethnicity, socio-economic status, and culture.

(5) Educators should seek to understand students' educational, academic, personal, and social needs as well as students' values, beliefs, and cultural background.

[(4)] (6) [Professional educators] Educators shall exhibit consistent and equitable treatment of students, fellow educators and parents [. They] and shall respect the civil rights of all [and not discriminate on the basis of race, national or ethnic origin, culture, religion, sex or sexual orientation, marital status, age, political beliefs, socioeconomic status, disabling condition or vocational interest. This list of bases or discrimination is not all-inclusive.]

[(5)] (7) [Professional educators] Educators shall accept the value of diversity in educational practice. Diversity requires educators to have a range of methodologies and to request the necessary tools for effective teaching and learning.

[(6)] (8) [Professional educators] Educators shall impart to their students principles of good citizenship and societal responsibility.

[(7)] (9) [Professional educators] Educators shall exhibit acceptable and professional language and communication skills. Educators shall communicate with students in a clear, respectful, and culturally-sensitive manner. Their verbal and written communications with parents, students and staff shall reflect sensitivity to the fundamental human rights of dignity, privacy and respect.

[(8)] (10) [Professional educators] Educators shall be open-minded, knowledgeable and use appropriate judgment and communication skills when responding to an issue within the educational environment.

[(9)] Professional educators shall keep in confidence information obtained in confidence in the course of professional service unless required to be disclosed by law or by clear and compelling professional necessity as determined by the professional educator.]

[(10)] (11) [Professional educators] Educators shall exert reasonable effort to protect the student from conditions which interfere with learning or are harmful to the student's health and safety.

(12) Educators shall be cognizant that the relationship between educator and student is a fiduciary relationship and as such requires the educator to exercise his or her rights and powers in good faith and for the benefit of the student.

(13) Educators shall promote the health, safety, and well-being of students by establishing and maintaining appropriate verbal, physical, emotional, and social boundaries. Educators shall interact with students with transparency, at appropriate times and in appropriate settings.

(14) Educators shall avoid dual or multiple relationships with students where such relationships would impair objectivity and increase risk of harm to students or decrease educator effectiveness.

(15) Educators shall behave in a professional manner, cognizant of the public trust vested in the teaching profession and realizing that one's actions reflect directly on the status and substance of the profession. Educators shall serve as positive role models to both students and adults and are responsible for preserving the dignity and integrity of the profession and for practicing the profession according to the highest ethical standards.

(16) Educators should refrain from professional or personal activity, including activity online, which would reduce the educator's effectiveness within the school community.

(17) Educators shall exercise caution, sound judgment and transparency when using social media and other forms of electronic communication on and off duty. Educators shall maintain appropriate professional boundaries when communicating electronically with students, regardless of whether the communication methods are provided by the school entity or the educator uses his or her own personal electronic communication methods. Educators should use electronic communication with students for educational purposes only and only as frequently as necessary to accomplish the educational purpose.

§ 235.5. Conduct.

Individual professional conduct reflects upon the practices, values, [integrity] integrity, and reputation of the profession. In recognition of the magnitude of the responsibility inherent in the education process and by virtue of the desire to maintain the respect and confidence of their colleagues, students, parents and the community, educators are to be guided in their conduct by their commitment to their students, colleagues, and profession. [Violation of §§ 235.6—235.11 may constitute an independent basis for private or public reprimand, and may be used as supporting evidence in cases of certification suspension or revocation.] Violations of §§ 235.5a – 235.5c may constitute an independent basis for private or public reprimand.

§ 235.5a. Commitment to Students.

The primary professional obligation of educators is to the students they serve. The educator must strive to help each student realize his or her potential as a worthy and effective member of society. The educator must work to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. An educator's responsibility includes nurturing the intellectual, physical, emotional, social, and civic potential of all students and providing a safe environment.

In fulfillment of the commitment to students, educators:

(a) Shall not knowingly or intentionally distort or misrepresent evaluations of students or facts regarding students.

(b) Shall not knowingly or intentionally misrepresent subject matter or curriculum.

(c) Shall respect a student's right to privacy and comply with all federal and state laws and regulations, and local policies concerning student records and confidential communications of students. Information received in confidence from a student may be revealed without the student's consent to the student's parents or guardians, the principal, or other appropriate authority when the health, welfare, or safety of the student or other persons is clearly in jeopardy. An exception to this is information revealed by a student concerning child abuse or neglect, which the recipient is under a legal duty to report to the authorities.

(d) Shall not sexually harass or engage in sexual misconduct, including sexual relationships, with students.

(e) Shall not intentionally, knowingly, or recklessly treat a student in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student.

(f) Shall not intentionally expose a student to embarrassment or disparagement.

(g) Shall not be on school premises or at a school-related activity involving students, while under the influence of, possessing, or consuming alcoholic beverages or illegal or unauthorized drugs.

(h) Shall not furnish, provide, or encourage students or underage persons to use, possess or unlawfully distribute alcohol, tobacco, vaping products, illegal or unauthorized drugs or knowingly allow any student or underage person to consume alcohol, tobacco, vaping products, or illegal or unauthorized drugs in the presence of the educator.

(i) Shall maintain appropriate professional relationships and boundaries with all students at all times, both in and outside the classroom.

(j) Shall refrain from inappropriate communication with a student or minor, including, but not limited to, inappropriate communication achieved by electronic communication. Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:

(1) the nature, purpose, timing, and amount/extent of the communication;

(2) the subject matter of the communication;

(3) whether the communication was made openly or the educator attempted to conceal the communication;

(4) whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;

(5) whether the communication was sexually explicit; and

(6) whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student.

§ 235.5b. Commitment to Colleagues.

The educator is committed to collaborating with colleagues in the interest of student learning. The educator should always maintain a professional relationship with colleagues, both in and outside the classroom.

In fulfillment of the commitment to colleagues, educators:

- (a) Shall not knowingly and intentionally deny or impede a colleague in the exercise or enjoyment of a professional right or privilege in being an educator.
- (b) Shall not knowingly and intentionally distort evaluations of colleagues.
- (c) Shall not sexually harass a colleague.
- (d) Shall not use coercive means or promise special treatment to influence professional decisions of colleagues.
- (e) Shall not threaten, coerce, or discriminate against a colleague who in good faith reports or discloses to a governing agency actual or suspected violations of law, agency regulations or standards.
- (f) Shall respect a colleague's right to privacy and comply with all federal and state laws and regulations, and local policies concerning confidential health or personnel information.

§ 235.5c. Commitment to the Profession.

The education profession is vested by the public with a trust and responsibility requiring the highest ideals of professional service. In order to assure that the quality of the services of the education profession meets the expectations of the Commonwealth and its citizens, the educator shall exert every effort to raise professional standards, fulfill professional responsibilities with honor and integrity, promote a climate that encourages the exercise of professional judgment, achieve conditions which attract persons worthy of the trust to careers in education, and assist in preventing the practice of the profession by unqualified persons.

In fulfillment of the commitment to the profession, educators:

- (a) Shall apply for, accept, or assign a position or a responsibility on the basis of professional qualifications.
- (b) Shall not knowingly assist entry into or continuance in the education profession of an unqualified person or recommend for employment a person who is not certificated appropriately for the position.

(c) Shall not intentionally or knowingly falsify a document or intentionally or knowingly make a misrepresentation on a matter related to education, criminal history, certification, employment, employment evaluation, or professional duties.

(d) Shall not falsify records or direct or coerce others to do so.

(e) Shall accurately report all information required by the local school board or governing board, state education agency, federal agency or state or federal law.

(f) Shall not knowingly or intentionally withhold evidence from the proper authorities and shall cooperate fully during official investigations and proceedings.

(g) Shall comply with all local, state or federal procedures related to the security of standardized tests, test supplies or resources. Educators shall not intentionally or knowingly commit, and shall use reasonable efforts to prevent, any act that breaches test security or compromises the integrity of the assessment, including copying or teaching identified test items, publishing or distributing test items or answers, discussing test items, and violating local school board or state directions for the use of tests.

(h) Shall not discriminate against a student or colleague on any basis including race, color, National or ethnic origin, culture, religion, sex or sexual orientation, gender identification or expression, marital status, age, political beliefs, socioeconomic status, disabling condition or vocational interest.

(i) Shall not interfere with a student's or colleague's exercise of professional, political, or civil rights and responsibilities.

(j) Shall not accept or offer gratuities, gifts or favors that impair or appear to influence professional judgment, decisions, or actions or to obtain special advantage. This section shall not restrict the acceptance of *de minimis* gifts or tokens offered and accepted openly from students, parents of students, or other persons or organizations in recognition or appreciation of service.

(k) Shall not exploit professional relationships with students, parents or colleagues for personal gain or advantage.

(l) Shall not knowingly misappropriate, divert, or use monies, personnel, property, or equipment committed to their charge without proper authorization for personal gain or advantage.

§ 235.6. [Legal obligations.] (Reserved).

[(a) The professional educator may not engage in conduct prohibited by the act of December 12, 1973 (P. L. 397, No. 141) (24 P. S. § § 12-1251—12-1268), known as the Teacher Certification Law.

(b) The professional educator may not engage in conduct prohibited by:

(1) The Public School Code of 1949 (24 P. S. § § 1-101—27-2702) and other laws relating to the schools or the education of children.

(2) The applicable laws of the Commonwealth establishing ethics of public officials and public employes, including the act of October 4, 1978 (P. L. 883, No. 170) (65 P. S. § § 401—413), known as the Public Official and Employee Ethics Law.

(c) Violation of subsection (b) shall have been found to exist by an agency of proper jurisdiction to be considered an independent basis for discipline.]

§ 235.7. [Certification.] (Reserved).

[The professional educator may not:

(1) Accept employment, when not properly certificated, in a position for which certification is required.

(2) Assist entry into or continuance in the education profession of an unqualified person.

(3) Employ, or recommend for employment, a person who is not certificated appropriately for the position.]

§ 235.8. [Civil rights.] (Reserved).

[The professional educator may not:

(1) Discriminate on the basis of race, National or ethnic origin, culture, religion, sex or sexual orientation, marital status, age, political beliefs, socioeconomic status; disabling condition or vocational interest against a student or fellow professional. This list of bases of discrimination is not all-inclusive. This discrimination shall be found to exist by an agency of proper jurisdiction to be considered an independent basis for discipline.

(2) Interfere with a student's or colleague's exercise of political and civil rights and responsibilities.]

§ 235.9. [Improper personal or financial gain.] (Reserved).

[The professional educator may not:

(1) Accept gratuities, gifts or favors that might impair or appear to impair professional judgment.

(2) Exploit a professional relationship for personal gain or advantage.]

§ 235.10. [Relationships with students.] (Reserved).

[The professional educator may not:

- (1) Knowingly and intentionally distort or misrepresent evaluations of students.
- (2) Knowingly and intentionally misrepresent subject matter or curriculum.
- (3) Sexually harass or engage in sexual relationships with students.
- (4) Knowingly and intentionally withhold evidence from the proper authorities about violations of the legal obligations as defined within this section.]

§ 235.11. [Professional relationships.] (Reserved).

[The professional educator may not:

- (1) Knowingly and intentionally deny or impede a colleague in the exercise or enjoyment of a professional right or privilege in being an educator.
- (2) Knowingly and intentionally distort evaluations of colleagues.
- (3) Sexually harass a fellow employe.
- (4) Use coercive means or promise special treatment to influence professional decisions of colleagues.
- (5) Threaten, coerce or discriminate against a colleague who in good faith reports or discloses to a governing agency actual or suspected violations of law, agency regulations or standards.]



Commonwealth of Pennsylvania

Professional Standards and Practices Commission

333 Market Street, Harrisburg, PA 17126-0333 Phone (717) 787-6576 TTY (717) 783-8445 FAX (717) 783-0734

April 8, 2019

George D. Bedwick, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101
VIA HAND DELIVERY

Dear Chairman Bedwick:

Enclosed please find Proposed Regulation #6-340 issued by the Professional Standards and Practices Commission. The proposed regulation amends Chapter 235 of Title 22 (Code of Professional Practice and Conduct for Educators). Please feel free to contact my office with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "SFC", written over a horizontal line.

Shane F. Crosby
Executive Director

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 6-340

SUBJECT: Code of Professional Practice and Conduct for Educators

AGENCY: DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions



FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

HOUSE COMMITTEE ON EDUCATION

4/8/19 Christine M. Crowl

MAJORITY CHAIR Hon. Curtis G. Sonney

4/8/19 April McClintock

MINORITY CHAIR Hon. James R. Roebuck, Jr.

SENATE COMMITTEE ON EDUCATION

4-8-19 Jane Long

MAJORITY CHAIR Hon. Ryan Aument

4-8-19 Deane

MINORITY CHAIR Hon. Andrew Dinniman

4/8/19 K Cooper

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

4-8-19 Quinn Brown

LEGISLATIVE REFERENCE BUREAU (for Proposed only)