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May 17, 2019

Shane Crosby, Executive Director
Professional Standards and Practices Commission
333 Market Street, 14th Floor
Harrisburg, PA 17126-0333

Dear Mr. Crosby,

The Pennsylvania School Boards Association appreciates this opportunity to provide comments to the Professional Standards and Practices Commission (PSPC) on the proposed changes to the Code of Professional Practice and Conduct for Educators under 22 PA Code, Chapter 235, that were published in the April 20, 2019 issue of the *Pennsylvania Bulletin*.

PSBA supports the PSPC's work to revise the code and generally believes the proposed changes will more appropriately align it with changes in statute and current practice. As revised, the modernized code will be more relevant to current educators. It will set expectations by more fully addressing the ethical responsibilities of teachers, particularly relating to relationships with colleagues, student-teacher relationships, issues related to the use of technology, and commitment to the profession.

With this in mind, the association offers the following comments and suggestions that we believe will help to clarify various provisions under the draft.

Section 235.2 (c) – PSBA recommends amending the language of this paragraph to more clearly express what we understand to be the intent. We suggest the following modifications to what is proposed:

(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 under the act. Violations of specified sections of the code of professional practice and conduct may also be an independent basis for a public or private reprimand. Discipline for conduct that constitutes both an independent basis for suspension or revocation of an educator's certificate or employment eligibility and a violation of this chapter shall not be limited to public or private reprimand. Nothing in this chapter shall be construed to otherwise limit affect in any way the Department of Education's authority to initiate an action under the act to discipline an educator's certificate or employment eligibility, or both.

Section 235.5a (d) – PSBA suggests adding the word "others" for clarity and the deletion of everything after the word "misconduct" as it is not necessary since the Section 235.3a of the code now incorporates the act's definition of "sexual misconduct." See below:

In fulfillment of the commitment to students, educators:

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

Section 235.5a (j) – Language here sets expectations regarding the responsibility of educators to students. Subsection (j) prohibits educators from conducting inappropriate communications with students and includes a listing of "factors that may be considered in assessing whether the communication is inappropriate." Several of these are much more than simply factors to be considered and are patently inappropriate in and of themselves. PSBA suggests the following amendment to cure this:

(j) Shall refrain from inappropriate communication with a student or minor, including, but not limited to, inappropriate communication achieved by electronic communication. Inappropriate communications include but are not limited to communications that are sexually explicit, that include images, depictions, jokes, stories or other remarks of a sexualized nature, that can be reasonably interpreted as flirting or soliciting sexual contact or a romantic relationship, or that comment on the physical or sexual attractiveness or the romantic or sexual history, activities, preferences, desires or fantasies of either the educator or the student. Factors that may be considered in assessing whether other the communications are 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 involved disclosure of personal or family problems, relationships or secrets could be reasonably interpreted as soliciting sexual contact or a romantic relationship; and

(5) whether the communication encouraged or condoned the student's addressing the educator using terms of endearment, pet names or other overly familiar language 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.~~

Section 235.5b(c) – Language here sets expectations regarding the responsibility of educators with colleagues. PSBA suggests amending language here to replace “a colleague” with “others” in recognition that educators should not sexually harass anyone they come into contact with in the course of their profession. See below:

In fulfillment of the commitment to the profession, educators:

(c) Shall not sexually harass ~~a colleague~~ others.

Section 235.5c (a) – Language here sets expectations regarding the commitment of educators to the profession. PSBA suggests the following amendment for clarification:

In fulfillment of the commitment to the profession, educators:

(a) Shall apply for, accept or assign a position or a responsibility only on the basis of professional qualifications and abilities.

Section 235.5c (g) – PSBA fully supports new language more directly addressing test security, and recommends further strengthening this provision as follows:

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, providing unauthorized assistance to students, unauthorized alteration of test responses, results or data, and violating local school board or State directions for the use of tests.

Section 235.5c (l) PSBA suggests the following amendment for clarification:

In fulfillment of the commitment to the profession, educators:

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

Again, we appreciate the opportunity to present these comments regarding the proposed revisions to Code of Professional Practice and Conduct for Educators. If you wish to discuss these issues further, please contact me at stuart.knade@psba.org or (717) 506-2450, extension 3377.

Sincerely,



Stuart L. Knade Esq.
Senior Director of Legal Services