

Discipline of Administrators by the Professional Standards and Practices Commission

When a member becomes involved in the unpleasant circumstance of being disciplined for alleged misconduct, the ripple effect of the multiple processes involved is often stressful and overwhelming. Most of our members are aware that they are entitled to a hearing before the local board of school directors and an appeal from any decision to dismiss or demote to the Secretary of Education. Often, they are not aware that the misconduct can lead to a complaint being filed with the Professional Standards and Practices Commission ("PSPC") of the Pennsylvania Department of Education ("PDE") under the Professional Educator Discipline Act, 24 P.S. §§ 2070.1a-2070.18a.

This complaint process is a separate track; resolution before the school board does not necessarily resolve the matter before PDE. In many cases, the matter has been resolved by the school district when the administrator receives an investigatory letter and request for information from the Office of Chief Counsel of PDE. The letter is often sent to both the administrator and the school district advising that a complaint has been filed and asking for specific information with regard to the complaint. Often, after this first round of submission of documents, the matter is ended by a determination that probable cause does not exist for discipline. The complainant, administrator and employer are notified that the complaint is dismissed. However, if PDE finds probable cause, it is authorized to issue what is called a "show cause" order and schedule a hearing where the same matters that were before the local board or entirely new allegations may again be presented at a formal hearing.^[1]

The result of the formal hearing before the independent hearing officer ("IHO") is potentially more serious than the hearing before the school board. The IHO is empowered to suspend or revoke the professional certification of the administrator. Either the administrator or PDE may file exceptions to the IHO's opinion; within 45 days, at least five members of the Commission shall issue an opinion. The opinion may be appealed to Commonwealth Court.

Any interested party may file a complaint; this includes a disgruntled parent. If the school district has dismissed a certificated administrator for cause, then the superintendent has a statutory duty to report the dismissal to PDE.^[2] If the superintendent is aware that a certificated administrator has been indicted or convicted of a crime of moral turpitude or some other offense requiring mandatory suspension or revocation of a certificate, he or she also has a statutory duty to report to PDE.

When PDE receives a complaint, it is reviewed using the following standard: whether, if the facts alleged in the complaint are true, they are sufficient to require discipline. If they are, PDE notifies the administrator that the complaint was filed and that a preliminary investigation is being conducted to determine whether there is **probable cause** to believe that grounds for discipline exist. If probable cause is determined to exist after submissions from the employer and the administrator, the complaint and PDE's preliminary findings are given to the school board. If the local school board is the complaining party or has already conducted hearings against the administrator, then PDE reviews the punishment imposed by the board and determines whether it is appropriate and sufficient or whether it will initiate a hearing. If PDE determines to initiate proceedings, a written notice is sent advising of the charges and the right to request a hearing.

A recent example of these multi-layered processes may be helpful. PAESSP has recently had several cases dealing with the interrelationships of these procedures in the context of driving under the influence ("DUI"). The Commonwealth Court has decided that one offense of DUI is a serious mistake and that more than one offense is necessary to constitute "immorality" under Section 1122 of the School Code.^[3] In *Zelno*, the Commonwealth Court rejected the employee's defense that a third offense of DUI did not constitute immorality. The Court stated, "*a third offense indicates not a single act of misjudgment, but rather a pattern of conduct that is not only damaging to herself but also puts the public in serious danger.*" In several matters in which PAESSP was involved, we argued before PDE that one charge of DUI, no aggravating circumstances, and acceptance into an ARD program does not constitute grounds for dismissal under Section 1122. This is consistent with the fact that DUI is not a crime set forth in 24 P.S. § 1-111(e)(1)(3) disqualifying a prospective employee from public employment. The regulations of PSPC at 22 Pa. Code § 237.9(c) explicitly enumerate the crimes or misdemeanors involving moral turpitude and do not include conviction under the Motor Vehicle Code for DUI. Consequently, there is no mandatory reporting by a superintendent to PDE. Finally, in practice, PSPC does not suspend or revoke a certificate for one charge of DUI unless there are aggravating circumstances, there is a pattern of DUI, or reckless endangerment is part of the charge/conviction.

If this is not enough of a legal minefield, PAESSP members were confronted with a new legal wrinkle. The Bureau of Teacher Certification and Preparation ("Bureau") denied Administrative II certificates by making a determination that

applicants were not of "good moral character" if they were charged with DUI. Question #15 in the PDE general application for certification is: *"Have you ever been convicted of a crime classified as a misdemeanor or felony, or are criminal charges pending against you?"* If the answer to that question is "yes," the Bureau followed up with a request for additional information including certified copies of court documents (the arrest report, affidavit of probable cause, bill of information, sentence, parole, probation orders and plea agreements). In addition, the Bureau requested a letter from the parole or probation officer indicating that the applicant successfully completed all requirements and a letter from the rehabilitation counselor or psychologist if treatment was required as part of the court proceedings. In addition, the Bureau required five letters of reference since the date of the incident from individuals who could attest to the applicant's moral character with full knowledge of the incident.

PAESSP successfully argued to the Office of Chief Counsel that an educator who holds an active and valid certificate should not be denied an Administrative II based solely on admission into ARD for one DUI offense. In response to PAESP letters, PDE has determined that any action held against a valid active certificate should be handled through a complaint referral to the disciplinary unit of the Office of Chief Counsel and the PSPC. For the purposes of the certification application, the superintendent's certification to good moral character should be sufficient. Of course, we recognize that the next battleground may be the refusal of the superintendent to attest to good moral character.

The good news is that PAESSP was able, through the cooperation of the Office of Chief Counsel, to eliminate one unnecessary procedural hurdle in the disciplinary process. This success, however, does not eliminate the serious secondary concern related to a dismissal hearing. If an administrator risks the disciplinary process before the school board, the ripple effect may very well be a second hearing before PDE with regard to the suspension/revocation of the administrator's professional certificates. The reasons for discipline set forth under the powers of PSPC include immorality, incompetency, intemperance, habitual use of drugs or narcotics, cruelty, negligence or for violation of any provision of the certification provisions of the School Code. PDE must suspend the certificate of any professional educator indicted for a crime or misdemeanor involving moral turpitude or as a drug addict whenever a certified copy of such indictment is filed with PSPC and must revoke upon conviction whenever a certified copy of the verdict or judgment of sentence is filed with PSPC. Specific crimes or misdemeanors involving moral turpitude are defined to mean the offenses listed under 24 P.S. § 1-111(e)(1); an offense designated as a felony under the Controlled Substance Drug Device and Cosmetic Act; and any offense of criminal law of the Commonwealth or the Federal Government, an element of which offense is delivery of a controlled substance or possession of a controlled substance. As a companion to this article, we have posted in the *Legal Corner* the definitions of the various grounds for discipline under the Professional Educator Discipline Act.

^[1] PDE transmits the complaint and its preliminary findings to the school district if the local board has not already acted.

^[2] 24 P.S. § 2070.9a.

¹ PDE transmits the complaint and its preliminary findings to the school district if the local board has not already acted.

² 24 P.S. § 2070.9a.

^[3] *Zelno v. Lincoln I.U. No. 12, 786 A.2d 1022 (Pa. Cmwlth. Ct. 2001).*