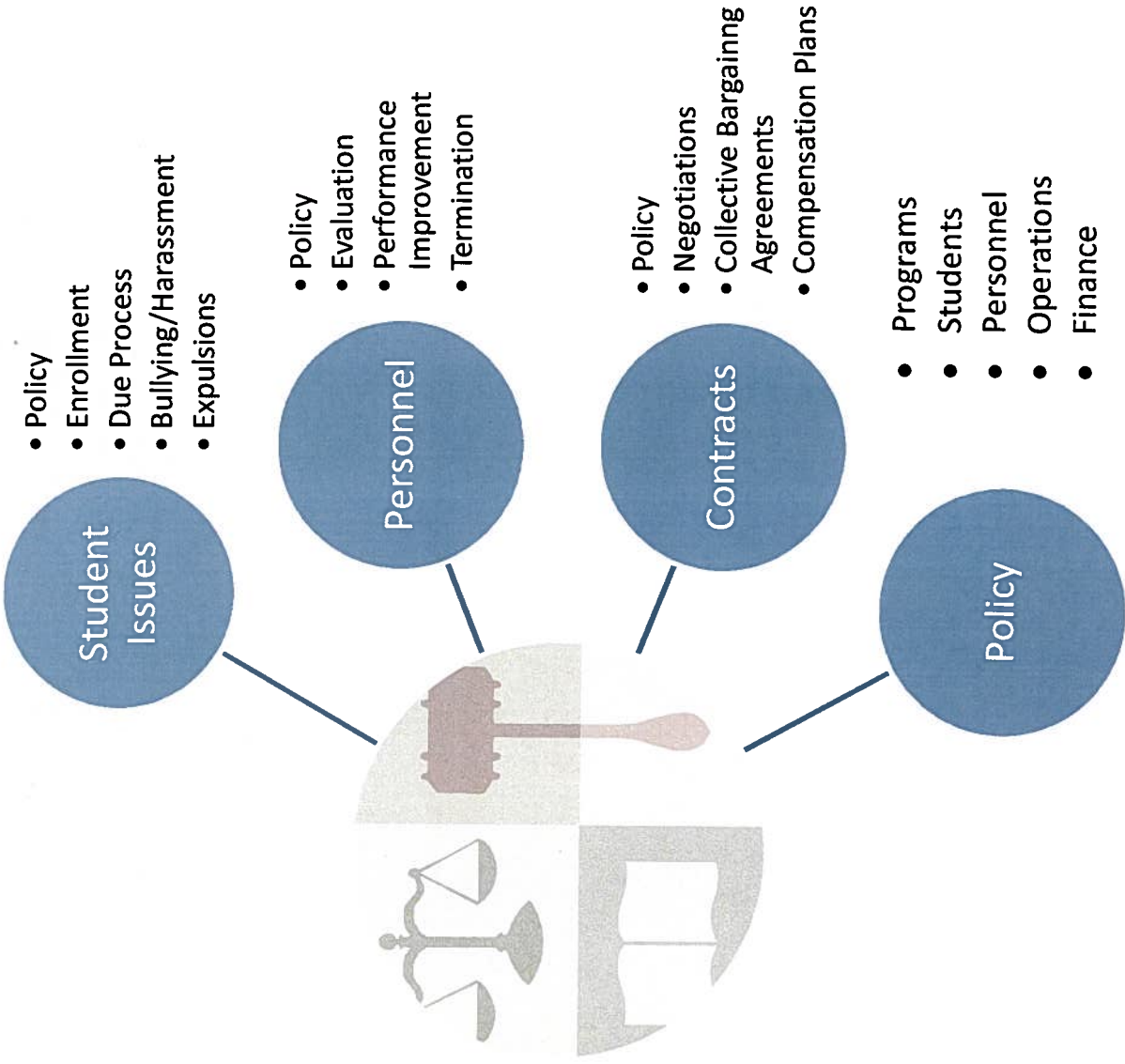


Legal Issues and Solicitor Resources



CUMBERLAND PERRY AREA VOCATIONAL TECHNICAL SCHOOL

Position Title: School Solicitor

GENERAL POSITION REQUIREMENTS

Education/Certification: Law Degree and Experience with School Law Required

Reports to: Joint Operating Committee

Supervises: None

Job Summary: The School Solicitor works serves the Joint Operating Committee by working in conjunction and collaboration with the Administrative Director to advise on legal matters that affect the total School operations. The School Solicitor serves as direct advisor to the Joint Operating Committee. He/she shall work with the Administrative Director to provide the legal framework for a positive working relationship among the Member School Districts, the community, school personnel and the School.

PRIMARY DUTIES AND RESPONSIBILITIES

Advises the Administrative Director and the Joint Operating Committee on matters related to the creation, revision, interpretation and implementation of School policy.

Serves as Legal Counsel for the Joint Operating Committee during student and personnel hearings.

Provides guidance for Executive Committee sessions.

Provides legal guidance to the Administrative Director related to student issues, including student handbook, student discipline and other student hearings, IEP meetings, due process rights, and implementation of individualized education and special education plans or other student issues.

Provides legal guidance related to enrollment policy, practices and procedures.

Provides guidance related to the interpretation of legal documents.

Provides legal guidance related to the interpretation, implementation and renewal of the Articles of Agreement.

Provides legal guidance to the Administrative Director related to personnel issues, including hiring, discipline, terminations, performance evaluations, interpretation of Compensation Plans/Conditions of Employment and the Collective Bargaining Unit Agreement.

Provides consultation services related to contract negotiations at the discretion of the Joint Operating Committee.

Provides consultation services to the Administrative Director and the Joint Operating Committee related to the preparation of legal contracts, bidding requirements, and general construction projects.

Attends Joint Operating Committee meetings on a regular basis or as requested by the Joint Operating Committee.

Other duties as assigned by the Joint Operating Committee.

TERMS OF EMPLOYMENT

- A. One, two, or three-year term that may be renewed at the discretion of the Joint Operating Committee.
- B. Compensation shall be approved as part of the terms of employment or annually as mutually agreed to between the School Solicitor and the Joint Operating Committee.

School Solicitor's Signature

Date

CUMBERLAND PERRY AREA VOCATIONAL TECHNICAL SCHOOL

REQUEST FOR PROPOSAL FOR SOLICITOR SERVICES

This Request for Proposal ("RFP") provides to those interested in submitting proposals sufficient information to enable them to prepare and submit proposals for the Cumberland Perry Area Vocational Technical School's (CPAVTS) consideration to fill the position of Solicitor.

The sole point of contact in the school for this RFP shall be:

Mary Rodman, Administrative Director, 717.697.0354, Ext. 105, mrodman@cpavts.org.
110 Old Willow Mill Road, Mechanicsburg, PA 17050.

School website address is www.cpvts.org

Please refer any and all inquiries and questions to Mary Rodman, Administrative Director.

CPAVTS reserves the right and sole discretion to reject any proposal received as a result of this RFP.

<u>Calendar of Events</u>	<u>Date</u>
Deadline to submit questions	April 6, 2009
Answers to any firm's questions posted to CPAVTS website	April 9, 2009
Receipt of proposal	1:00 p.m. April 17, 2009
Interviews with School Board	May 13, 2009 Time to be determined

To be considered for selection, hard copies of the Proposals must arrive at CPAVTS, 110 Old Willow Mill Road, Mechanicsburg, PA 17050, on or before the date and time specified in the RFP Calendar of Events. CPAVTS will not accept proposals via email or facsimile transmission. CPAVTS will notify the selected law firms in writing of their selection for interviews or negotiation after the Joint Operating Committee (JOC) has determined, taking into consideration the RFP, the Proposal that is the most advantageous to the CPAVTS.

Please submit complete information in concise detail as indicated:

Qualifications

- Present the names of attorneys who will be primarily responsible for providing legal services to the school and the attorney who will be the main point of contact.
- For the identified lawyers, please provide biographies of their experience in representing schools and school districts, their area of expertise in education law and a resume.
- Please present a typical letter of representation used for a school or school district and submit the Firm's listing in Martindale-Hubbell Law Directory.
- List the schools and school districts and dates for which your Firm has served as solicitor or labor counsel.
- Please describe your Firm's experience in handling the following specialized areas of school law – (1) local government taxation matters; (2) special education due process hearings; (3) students rights, suspensions and expulsions; (4) constitutional issues; (5) labor matters, including grievances, arbitrations, negotiations; (6) tort liability, civil rights actions and liabilities.
- Please submit a recent advisory opinion letter to a school or school district as a sample of your work product.
- Please distinguish your legal services from other firms representing schools and school districts.
- Explain your opinion on the necessity for the Solicitor's attendance at board meetings.

Costs

- List the charges, if any, for telephone calls, file review, copying, typing, printing, transmission, messenger services, etc.
- Present a detailed cost proposal, including an hourly fee schedule for partners, associates and paralegals who may perform work for the school. Indicate the retainer fee, if any. Indicate the fees for these services for the previous three years.
- In what increments of time will CPAVTS be billed?
- In what situations will CPAVTS be billed for more than one attorney's attendance at trials, meetings, depositions, witness interviews and conferences among attorneys?

Insurance

- Please submit the declaration page from the Firm's current professional liability insurance policy.

Cumberland Perry Area Vocational Technical School

Organization Description

Cumberland Perry Area Vocational Technology School (CPAVTS) is a part-time secondary area vocational technical school serving students enrolled in Grades 10-12 from 13 Member School Districts in a half-day delivery system. The area school was established in 1967 with 12 members. In 2000 Upper Adams School District was added as the 13th member of the CPAVTS consortium. The Member School Districts include Big Spring, Camp Hill, Cumberland Valley, East Pennsboro, Greenwood, Mechanicsburg, Newport, Northern York County, South Middleton, Susquenita, Upper Adams, West Perry and West Shore School District. These schools are located in Cumberland, Perry, Adams and York Counties. Tuition students, those who reside in a non-member school district are accepted based upon availability of space on a limited basis, as approved by the Joint Operating Committee. Tuition students must be approved by the JOC based upon a recommendation from administration that no member school district student is being displaced, that a tuition and contracted services agreement have been signed and is in place, and that the CPAVTS is an appropriate placement for a student with an IEP. The school website is located at www.cpaavts.org.

Joint Operating Committee

Representatives from each of the Member School District Boards of Education are appointed by their local Boards of Education to serve as members of the Joint Operating Committee (JOC). The JOC is delegated with the responsibility to approve the day-to-day operations of the school, including implementation of the annual budget. The responsibility that is retained separately by the Area Vocational Technical Board, which is comprised of all of the members of the School District Boards of Education, includes adoption of the annual budget, adoption of and amendments to the Articles of Agreement, and resolutions of the AVTS Board, including activation of the Board Authority for the purpose of buying or selling land and buildings. The Articles of Agreement is the legal document that governs the operations of an area vocational technical school or career and technology center. The terms of the Articles are those legal terms to which the Member School Districts agree when they enter into a consortium for the purpose of operating an area vocational technical school.

Articles of Agreement

The Articles of Agreement were renewed for a ten-year term in June 2007 and shall expire on June 30, 2017. Currently, each Member School District has one member represented on the JOC, with the exception of Big Spring, Cumberland Valley, West Perry and West Shore which have two members each. The additional JOC member is based upon the percentage of the CPAVTS' enrollment that each Member School District holds, as defined in the Articles of Agreement. Any Member School District in excess of 10% of the AVTS' enrollment is entitled to appoint two representatives to the JOC. The annual budget must be approved by a 2/3 majority of the Member School District Boards of Education, provided that the majority of the Member School District Boards vote in the affirmative to approve the annual General Fund Budget.

Local and Occupational Advisory Committees

Providing guidance and advice to the Administrative Director are members of the Local Advisory Committee. For the 2008-2009 school term, there are 27 members on this Committee. These individuals represented the Member School Districts, business and industry, and the community at large. This Committee meeting schedule is above and beyond the requirements (twice annually) under Chapter 339 of the Pennsylvania Code. CPAVTS schedules at least quarterly meetings during the school term in order for the Local Advisory to fulfill their purpose. This Committee served as the base

of participants for the strategic planning process. In addition, this Committee serves as the base of participants for the Carl D. Perkins plan. Additional participants provide input to the Carl Perkins Plan, such as the Member School District counselors, special education teachers and coordinators, parents and students.

CPAVTS also maintains, as required by Chapter 339, Occupational Advisory Committees (OAC) for each of the approved career and technical programs. These committees provide additional, specific guidance to each career and technical program. Each approved career and technical program has a separate OAC. These committees range in number from 10 to 50 members, and offer recommendations related to curriculum, industry certification, equipment, tools, safety, and facilities. In addition, they provide a valuable service by offering internships, job shadowing experiences, cooperative education worksites, field trips, and they serve as evaluators of student performance. Their participation is crucial to the vitality of the school program for which they serve.

Student Population

The student population is composed of approximately 1,000 students enrolled in Grades 10, 11 and 12, of whom approximately 38% in 2007-2008 were students with IEP's. This percentage has decreased slightly in the past few years along with a slight decrease in the overall enrollment.

CPAVTS maintains seven career and technical student organizations: SKillsUSA, HOSA, FBLA, FFA, Student Chapter of the NAHB, NTHS, and FCCLA. The primary focus of each student organization is the development of leadership skills and participation in competitive events. Students engage in a variety of fund raisers. Of particular note is the Student Chapter of the NAHB. The annual fund raiser for the previous three years has been the building of a log home that is auctioned off during the PA Home Show at the Farm Show Complex annually in March.

Staffing

The staff at CPAVTS is composed of the positions below:

- 28 career and technical program teachers
- 5 social studies teachers
- 2 special education teachers
- 1 school-to-work teacher
- 2 school counselors
- 9 instructional assistants
- 1 vocational administrative director
- 1 JOC secretary/administrative assistant
- 1 school principal
- 1 school assistant principal
- 1 supervisor of pupil personnel services/assistant principal
- 1 business administrator
- 1 building and grounds supervisor
- 1 assistant maintenance supervisor
- 3 custodians
- 7 cafeteria employees
- 1 cafeteria supervisor
- 10 secretarial support staff members
- Substitute teachers to staff day-to-day vacancies

The Collective Bargaining Agreement expires June 30, 2010. The Compensation Plan/Conditions of Employment for Classified Staff expires June 30, 2011. The Compensation Plan/Conditions of Employment for School Administrative Team expires June 30, 2011.

Academic Courses and Career and Technical Program Offerings

Students enrolled in approved career and technical education programs at CPAVTS are also enrolled in Grades 10 and 11 in social studies courses required to meet the requirements for graduation. All other core academic courses required for graduation are provided by the Member School Districts. The social studies courses were designed with an emphasis upon individual and group projects, research, teamwork, and structured with the primary goal of improving reading comprehension skills and performance on the PSSA for reading, US History and World History.

Students are enrolled in 1 of 22 approved career and technical program areas. Students in the career and technical programs participate in unpaid internships, and paid cooperative education work experiences, specific to each approved program. Students in the health occupations participate in clinical experiences at Bethany Village to fulfill the requirements of their nurse aide training program. Each program offers students the opportunity to work on trade-specific, state-of-the-art, high-tech equipment and computer technology.

Budget and Finances

About 80% of the 2008-2009 budget is contributed by the 13 Member School Districts. About 6% comes from federal sources, including the Carl D. Perkins allocation, about 11% comes from state sources, and the remaining 3% comes from local sources. State sources include social security reimbursement, retirement and vocational subsidy, which is passed through to the Member School Districts. Local sources include facility rental fees, adult education revenue, employee health care contributions, and tuition from non-member school districts.

The CPAVTS had an annual budget in 2007-2008 of \$6,378,914. The annual budget for 2008-2009 is \$6,648,024. This represents a 4.22% increase over the 2007-2008 budget. However, of this 4.22% increase (\$269,110), \$46,398 or 1.7% is due to an increase in the Carl D. Perkins allocation, classified as revenue with matching expenditures. The Carl Perkins allocation represents almost 100% of the school's budget for instructional equipment, professional education, career and technical program improvements and initiatives, such as industry accreditation of programs and industry certification of teachers. Perkins funds may not be used for remediation purposes, but to enhance the quality of the career and technical education programs. Including the Perkins funds, the school administration has annually secured between \$700,000 and \$900,000 in state and federal grants and allocations. These funds have been used to improve the quality of career and technical education through professional education activities for teachers and for activities that integrate Chapter 4 academic standards into the approved career and technical programs.

Core Purpose

Mission

Through collaboration with students, parents, and the business community, Cumberland Perry Area Vocational Technical School provides opportunities for students to achieve their goals for employment and for postsecondary education, to be productive citizens, and to be contributing members of a dynamic, changing society. CPAVTS summarizes the vision for our students: **Opportunities Unlimited!**

Vision

At CPAVTS, we believe that many students may benefit from participating in a career and technical education program for a term from one to three years. Opportunities are vast. Students completing a program will be well prepared for entry-level positions in high priority occupations with family-sustaining wages and a high demand for their skills. There are additional opportunities for those who continue their education beyond high school and complete apprenticeships, Associate's, Bachelor's or Master's degrees in high tech fields. CPAVTS offers a unique alternative to prepare high school students for postsecondary education and employment in a welcoming environment of acceptance, support and diversity.

CPAVTS School Solicitor

Current Rates
 \$110 – Meetings & General Consultation \$130 – Special Projects \$145 – Litigation \$9,900 Retainer
 1/10 of an hour increments; 1/5 of the subscription rate to the IDEA Law Reporter (she serves 5 districts)

Total Expenditures, Including Retainer		
	2007-2008	2006-2007
	2008-2009	2005-2006
	\$20,458	\$12,883
	Cyber Charter, PHRC, 2 pp	\$10,226

Firms and Solicitors to be Interviewed						
Firm	Location	Solicitor	Any CAIU Districts Served	Comments-Fees-Other	Liability Ins.	Interview
Hartman Underhill & Brubaker	Lancaster	Kim R. Smith 21 FT attorneys Assigns attorney based on expertise	CAIU Lebanon CTC Northern YCSD Annville-Cleona Eastern Lebanon Many in Lancaster	From \$60 to \$285 Reduces rates to meet an ave. of \$140 K. Smith \$235 \$60-\$110 paralegal Negotiations – Yes	\$10 M \$25,000 Ded. INA Prem.	Yes <input checked="" type="checkbox"/> May 13 4:30 p.m.
Johnson Duffie	Lemoyne	Michael J. Cassidy Largest firm in Cumberland Cty.	Cumberland Valley Camp Hill West Shore to 1999 Northern 1984 to 2007	\$140 for legal \$75 for paralegals Billings in 1/10 increments Negotiations - Yes	\$3 M \$25,000 Ded. \$43,184 Prem	Yes <input checked="" type="checkbox"/> 5:30 p.m.
Stock and Leader	York	*Philip Spare Stephen Russell Michael King Brooke Say Steven Hovis 6 attorneys	Bermudian, Big Spring , Newport, South Middleton , 12 districts, total	Partners \$175 Associates \$160 Negotiations – Yes Billings in 1/10 increments	\$4 M No stated deductive No prem stated	Yes <input checked="" type="checkbox"/> 6:30 p.m.

Phone Interview Responses From Superintendents

Firm Name		Stock and Leader
Questions		
Attorney assigned to CPAVTS		
Contact		
Which attorney is serving your district?		
How available is the solicitor to you?	Average; no cell phone #; will have to call several times for issues; sometimes the ? "gets buried" on his desk or response is that he was waiting to contact	Had his cell phone; called at night, on weekends; always very timely in returning calls or email; never had to wait
What is phone/email response time?	Not as timely Kim returned call for interview immediately	Immediate Returned call for interview immediately
Rate per hour?	Varies by attorney	\$140
Does the attorney attend Board mtgs.?	Yes	1 Yes 1 No
When are your mtgs.?	Thursday	1 st and 3 rd Monday
With how many others have you had to deal?	Many – That's the process	Only Phil Spare, although he consults with others
What is the most important quality in choosing a solicitor?	Accessibility; school law expertise in being able to answer questions accurately and in a timely manner; experience in school law; dedication of practice to school law; understands the history of the school/district/Board he is serving;	
What questions are most important to ask?	How accessible is the firm? Do you charge for unsolicited advice, such as mailings or "What's happening in the law?" Do you charge the regular hourly rate for travel time? Are your fees negotiable?	
Do you use another law firm for any aspect of the district's legal issues?	Bond counsel	Construction; bonds; Nothing except we have a Sp. Ed. relationship with Sweet & Tucker; Would feel comfortable using Spare for Sp. Ed.
Other Comments	Charges for every call, including those not initiated by admin. & Law Updates	Very knowledgeable and easy to work with

100 PROGRAMS**Adopted or Revised**

101	Philosophy of Education	2/2009
102	Educational Goals	2/2009
103	Nondiscrimination in School and Classroom Practices	1/2010
104	Nondiscrimination in Employment/Contract Practices	1/2010
105.1	Curriculum Development	12/2009
105.2	Curriculum Program Review	12/2009
106	Course Guides	4/2010
107	Adoption of Courses of Study	2/2010
108	Adoption of Textbooks	2/1020
109	Resource Materials	1/2010
110	Instructional Supplies	5/2010
111	Lesson Plans	5/2010
112	Guidance and Counseling	5/2010
113	Special Education	5/2010
113.1	Discipline of Students with Disabilities	10/2008
113.2	Special Populations	10/2006
114	Gifted Education	10/2006
116	Tutorial Instruction	6/2010
117	Homebound Instruction	6/2010
118	Cooperative Employment Program	8/2010
119	Field Work Transportation Procedures	8/2010
121	Field Trips	8/2010
122	Co-Curricular Activities	9/2010
125	Adult Education	9/2020
126	Class Size	9/2010
127	Evaluation of Education Program	10/2010
135	Project and Service Policy	1/2005
140	Computer Software Copyright Compliance Policy	10/1996
141	Automatic External Defibrillator (AED)	1/2003

200 PUPILS**Adopted or Revised**

201	Admission of Beginners	8/1006	
202	Eligibility of Nonresident Students and Certain Resident Students		10/1998
204	Attendance	8/1996	
208	Withdrawal From School	8/1996	
209	Health Examinations	8/1996	
210	Use of Medications	2/2009	
210a	Exposure to Bloodborne Pathogens	8/1996	
210.1	Possession/Use of Asthma Inhalers	6/2005	
211	Student Accident Insurance	8/1996	
212	Reporting Pupil Progress	8/1996	
213	Grading of Student Progress	8/1996	
216	Education Records	1/2009	
216b	Student Records - Exceptional Students	8/1996	
218	Student Discipline	4/2006	
218.1	Weapons	4/2006	
218.2	Terroristic Threats/Acts	10/2006	
219	Student Complaint Process	4/2006	
221	Dress and Grooming	2/1997	
222	Possession and Use of Tobacco	2/1997	
223	Student Transportation	8/1996	
224	Care of School Property	8/1996	
225	Student and the Police	8/1996	
226	Searches	2/2010	
227	Drug and Alcohol Awareness	8/1996	
229	Student Fund Raising	8/1996	
230	Public Performances by Students	8/1996	
231	Social Events and Class Trips	8/1996	
232	Participation in School Affairs	8/1996	
233	Suspension and Expulsion	8/1996	
234	Pregnant Student	8/1996	
235	Student Rights	5/2007	
246	Student Wellness	4/2008	
248	Unlawful Harassment	12/2004	
249	Bullying and Extortion	10/2008	
260	Sexual Harassment Policy	6/1994	

CSPG No. 15
July 1, 2004

MANDATORY REPORTING OF EDUCATOR MISCONDUCT

General Policies

In accordance with Section 2070.9a of the Professional Educator Discipline Act, mandatory reporting is the responsibility of any commissioned officer of a school entity, as well as Assistant Superintendents, Executive Directors of Intermediate Units, Chief Administrative Officers of Area Vocational Technical Schools and Administrators of Charter Schools. Until discipline is imposed, all information related to a complaint against, or a disciplinary proceeding involving, an educator remains confidential.

Requirements

1. The officials listed above are required to report (1) an educator who is dismissed for cause; (2) an educator who is charged or convicted of a crime involving moral turpitude; and (3) an educator who is believed to have caused physical injury to a child or student or to have committed sexual abuse or exploitation against a child or student.
2. Individuals who resign in lieu of facing dismissal charges or who have escaped criminal prosecution must also be reported by officials to the Department of Education in accordance with paragraph 1.
3. The failure to comply with the reporting requirement may result in discipline of the chief administrative officer or other official required to report under the Act.
4. The reporting requirements also apply to charter school staff members, regardless of whether or not they hold professional certification.
5. Professional discipline of educators under this Act is the responsibility of the Professional Standards and Practices Commission, an autonomous body appointed by the Governor.

Policies

1. Disciplinary proceedings against educators may be initiated with the filing of a mandatory report form and complaint form obtained from the Legal Assistant in the Office of Chief Counsel.
2. Professional discipline complaints may be filed with the Department of Education within one year of the date of the occurrence of the misconduct or from the date of its discovery. In cases of sexual abuse or exploitation, the filing deadline is extended up until five years after the child or student reaches 18 years of age.

CSPG No. 15
July 1, 2004

Reference: 24 P.S. §2070.1 et seq.

THIS REVISION SUPERSEDES ALL EARLIER CSPGS CARRYING THIS NUMBER AND/OR ADDRESSING THIS SUBJECT. PREVIOUS CSPG PRINTING DATES ON THIS SUBJECT: 1/87

MANDATORY REPORT FORM

The School Laws require school officials to report promptly to the Department of Education the following: 1) an educator who is **dismissed** for cause; 2) an educator who is **charged** with a crime involving moral turpitude; 3) an educator who is **convicted** of a crime involving moral turpitude or any other offense requiring mandatory suspension or revocation. (24 P.S. §2070.9(b)).

While the above situations are mandatory, the Department of Education strongly encourages school officials to similarly report educators who **resign to avoid dismissal** for cause, even if there is no dismissal proceeding, formal charge, or conviction. The Department is especially interested in learning of matters involving danger to students or others in the schools.

Send this completed form, with supporting documentation to: Pennsylvania Department of Education, Office of the Deputy Secretary for Postsecondary and Higher Education, 333 Market Street, 12th Floor, Harrisburg, PA 17126-0333.

1. SCHOOL ENTITY:

- A. Name and Address: _____

B. Contact Person: _____
C. Telephone Number: _____

2. COUNTY/STATE WHERE CONDUCT OCCURRED: _____

3. EDUCATOR'S INFORMATION:

- A. Name: _____
B. Social Security Number: _____
C. Date of Birth: _____
D. Most Recent Position: _____
E. Telephone Number (Home): _____ (Work): _____
F. Home Address: _____

4. CURRENT STATUS OF EDUCATOR:

- | | |
|---|---|
| <input type="checkbox"/> In classroom | <input type="checkbox"/> Temporarily Reassigned |
| <input type="checkbox"/> Suspended with pay on _____
Date | <input type="checkbox"/> Resigned on _____
Date |
| <input type="checkbox"/> Suspended without pay on _____
Date | <input type="checkbox"/> Dismissed on _____
Date |

MANDATORY REPORT FORM

5. [] DISMISSED FOR CAUSE OR [] RESIGNED IN ORDER TO AVOID BEING DISMISSED:

A. Check the reason(s) the educator was dismissed or would have been dismissed:

- | | |
|---|--|
| <input type="checkbox"/> Immorality | <input type="checkbox"/> Drugs or Narcotics |
| <input type="checkbox"/> Intemperance | <input type="checkbox"/> Cruelty |
| <input type="checkbox"/> Incompetence | <input type="checkbox"/> Negligence |
| <input type="checkbox"/> Persistent and Willful
Violation of School Laws | <input type="checkbox"/> Forged or Altered Certificate |
| <input type="checkbox"/> Other: | |

B. Briefly describe the facts surrounding the dismissal and the act or behavior of the educator.

C. If a dismissal hearing or arbitration hearing was held, indicate the date(s) of the hearing(s) and the date of the final decision:

D. Attach the following supporting documentation when applicable:

1. Certified copies of ratings.
2. Copies of applicable policies and/or directives.
3. Certified copies of applicable Board minutes.
4. Copy of educator's resignation, any resignation agreements, and evidence of the Board's acceptance of the resignation.

Note: There is no need to forward transcripts. The Department will request copies if necessary.

6. CHARGED WITH, OR CONVICTED OF, A CRIME OF MORAL TURPITUDE:

- A. List the crime(s): _____
- B. List the county in which the educator was charged/convicted: _____
- C. List the docket number: _____
- D. List the date of the charge/conviction/sentencing: _____
- E. List the name of the district magistrate: _____
- F. Enclose a copy of any available criminal court documents.

(Signature of Chief School Administrator)

(Date)

HOW THE COURTS HAVE DEFINED THE "11 SINS" IN SECTION 1122 OF THE SCHOOL CODE

-- GENERAL--

1. Section 1122 of the School Code sets forth the substantive grounds for the dismissal of professional employees as follows:

The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employee shall be

- (1) immorality
 - (2) incompetency
 - (3) unsatisfactory teaching performance based on two consecutive ratings of the employee's teaching performance that are to include classroom observations, not less than four months apart, in which the employee's teaching performance is rated as unsatisfactory
 - (4) intemperance
 - (5) cruelty
 - (6) persistent negligence in the performance of duties
 - (7) willful neglect of duties
 - (8) physical or mental disability as documented by competent medical evidence, which after reasonable accommodation of such disability as required by law substantially interferes with the employee's ability to perform the essential functions of his employment
 - (9) advocacy of or participating in un-American or subversive doctrines
 - (10) conviction of a felony or acceptance of a guilty plea or nolo contendere therefore
 - (11) persistent and willful violation of or failure to comply with school laws of this Commonwealth (including official directives and established policy of the board of directors)
2. None of the descriptive words or phrases used in Section 1122 is defined. Therefore, it is necessary to rely on case law interpretation of various fact situations to determine the meaning of the 11 reasons enumerated above.
 3. Once the district meets its burden of proof and establishes a violation of Section 1122, it is unnecessary for the school district to prove that the employee is unfit to teach. Evidence of the employee's rehabilitation is not a defense to dismissal.

--IMMORALITY--

4. Immorality is generally defined as a course of conduct which offends the morals of the community and sets a bad example for the youth whose ideals the teacher is obligated to foster and evaluate.
5. The school board, as a body of elected officials, speaks on behalf of the community it represents. It can take what is in effect "judicial notice of community standards" and measure them against the conduct of the professional employee appearing before the school board.
6. A single incident is sufficient to support a dismissal for immorality, even in the face of a long period of employment with an unblemished record.
7. The concept that a teacher may be dismissed for conduct which offends the morals of the community is consistent with the notion that a teacher has a duty to conduct himself in such a way as to command the respect and good will of the community even if the result may be to deprive the teacher of the same freedom of action enjoyed by non-teachers.

--INCOMPETENCY--

8. Incompetency is generally defined as an incapacity to teach arising out of either a lack of substantive knowledge of the subjects to be taught, a lack of ability or a lack of desire to teach according to proper methodology. It also encompasses deficiencies in personality, composure, judgment and attitude.
9. Incompetency encompasses both physical and mental deficiencies.
10. Various types of specific conduct have supported charges of incompetency and unsatisfactory ratings of professional employees:
 - (a) Failure to maintain proper relationship with students
 - (b) Lack of classroom control
 - (c) Deficient content and quality of required reports
 - (d) Failure to give sufficient or proper tests
 - (e) Deficient lesson plans
 - (f) Deficient student records
 - (g) Inability to motivate students
 - (h) Failure to maintain good working relationship with clerical and teaching staffs
 - (i) Carelessness with confidential student records
 - (j) Failure to maintain proper teaching pace
 - (k) Excessive unexplained absenteeism
 - (l) Inability to respond appropriately to situations
 - (m) Use of poor English

11. Anecdotal records. Anecdotal records are required by regulation to accompany all unsatisfactory ratings. The lack of anecdotal records will render an unsatisfactory rating ineffective and, without two consecutive, unsatisfactory ratings, charges of incompetency will not result in dismissal.
12. Numerical scores. Numerical scores should be set forth on the rating form for each area of evaluation. However, the absence of numerical scoring will not invalidate an unsatisfactory rating supported by strong anecdotal references.
13. Approval of unsatisfactory rating by superintendent. The School Code requires approval of unsatisfactory ratings by the school district superintendent. However, the superintendent need not have personal knowledge of the facts underlying the unsatisfactory rating and may rely on the recommendations of subordinates.

-- INTEMPERANCE --

14. Intemperance cases involve a loss of self-control, including the employee's use of excessive force and a teacher who shouted at a vice principal in the hallway in the presence of students.

-- CRUELTY --

15. Cruelty has been defined as the intentional and malicious infliction of physical suffering on human beings; the wanton, malicious, and unnecessary infliction of pain on the human body or mind. A single incident of sufficient severity may support a charge of cruelty and result in dismissal.
16. The following conduct has been held to constitute cruelty:
 - (a) Assaulting a student
 - (b) Paddling students. An isolated incident of minor paddling that could be described as a "love tap" does not rise to the level of cruelty. However, numerous paddlings in conjunction with other types of physical assaults of students will support a charge of cruelty
 - (c) Verbal abuse of a student
 - (d) Confining a student in a closet

-- PERSISTENT NEGLIGENCE --

17. Persistent negligence is an employee's failure to do what he should be doing as an employee. Courts define the phrase as a continuing or constant failure or refusal to comply with directions in violation of the School Code. To be persistent, a series of individual incidents or one incident must be carried on for a substantial period of time. Incidents over a period of one

months are sufficient to be considered persistent. Intent can be presumed from the employee's actions.

18. Examples of persistent negligence include the following:

- (a) Disregard of pupil disciplinary policy
- (b) Failure to attend meetings
- (c) Failure to comply with student testing and record-keeping requirements
- (d) Repeated lateness
- (e) Improper release of students from class
- (f) Failure to prepare or file lesson plans
- (g) Refusal to comply with superior's directives
- (h) Failure to submit reports
- (i) Refusal to answer supervisor's questions
- (j) Failure to comply with residency requirement
- (k) Refusal to accept assignment
- (l) Failure to control class
- (m) Unprofessional behavior
- (n) Excessive absenteeism
- (o) Sleeping in class
- (p) Failure to provide sickness or disability certification as authorized by Section 1154 of the School Code
- (q) Teaching improper subjects
- (r) Disregarding school district policy on classroom temperature settings
- (s) Failure to report to work after a request by the employee for a leave of absence has been denied by the school district.
- (t) Failure to refrain from conducting religious activities in school
- (u) Failure to comply with purchasing policy
- (v) Giving wine to students, allowing students to drink wine and driving students at an excessive rate of speed
- (w) Failing to properly store dangerous chemicals

-- MENTAL DERANGEMENT --

19. Section 1418 of the School Code allows the district to "require a special medical examination for any school employee at anytime." This includes psychiatric examinations. Refusal to comply would probably constitute "persistent and willful violation of the school laws."

-- WILLFUL & PERSISTENT NEGLIGENCE --

A policy need not be formally adopted by the school board to be used as a basis of a dismissal on the grounds of persistent and willful violation of school law. Even simple requests of supervisors, if reasonable, are considered to be school law for dismissal purposes.

Persistence denotes either a series of individual incidents, or one incident carried on for a substantial period of time.

The word "willful" has been interpreted to suggest the presence of intention which may be inferred from actions of the employee.

Through judicial interpretation, the phrase "persistent and willful violation of school law" has come to mean essentially the same as "persistent negligence".

- (1) Failure to keep lesson plans as required by the school district;
- (2) Improper release of student from class;
- (3) Verbal outbursts directed to supervisors;
- (4) Refusal to report to assignments;
- (5) Disciplining children in violation of school district policy;
- (6) Failure to report to school;
- (7) False statements in aid of an attempt to misuse personal days or sick days;
- (8) Wearing religious garb;
- (9) Repeatedly reporting late to school;
- (10) Driving students at an excessive rate of speed;
- (11) Transporting students in violation of district policy;
- (12) Violating district policy pertaining to the propriety of teacher/student relationships; and
- (13) Leaving classroom during portions of scheduled classes.