

# Summary of Federal and State Legislation/Regulations that Impact SAP

(The summary below is for informational purposes only and should not be construed as legal advice.)

[Act 211 of 1990 \( P.S. § 15-1547 of the PA School Code\)](#) was enacted which required each school district to establish and maintain a program to provide appropriate drug and alcohol education as well as counseling and support services to students who experience problems related to the use of drugs, alcohol, and dangerous controlled substances. On April 19, 1991, the Pennsylvania Secretary of Education named the Commonwealth Student Assistance Program (K-12) to fulfill the requirement to "...identify high risk students who are having problems due to alcohol or drug use, depression, or other mental health problems; and intervene and refer these students to appropriate community services."

[Drug and Alcohol Education, Counseling and Support Services Basic Education Circular \(BEC\) \(P.S. § 15-1547 of the PA School Code\)](#) was issued by the Pennsylvania Department of Education to clarify the mandate from Act 211 that every student K-12 receive instruction in alcohol, tobacco and other drug prevention every year; in-services for all those whose responsibilities include teaching alcohol, tobacco and other drug prevention curriculum; and drug and alcohol counseling and support services (SAP).

[Chapter 12 \(22 PA School Code § 12.42\)](#) was amended to include the planning and provision of Student Assistance Programs for all school entities.

[FERPA -Family Educational Rights and Privacy Act \(20 U.S.C. § 1232g; 34 CFR Part 99\)](#) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
  - School officials with legitimate educational interest
  - Other schools to which a student is transferring
  - Specified officials for audit or evaluation purposes
  - Appropriate parties in connection with financial aid to a student
  - Organizations conducting certain studies for or on behalf of the school
  - Accrediting organizations

- To comply with a judicial order or lawfully issued subpoena
- Appropriate officials in cases of health and safety emergencies
- State and local authorities, within a juvenile justice system, pursuant to specific state law.
- Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

**PPRA -Protection of Pupil Rights Amendment (20 U.S.C. § 1232h; 34 CFR Part 98)** applies to programs that receive funding from the U.S. Department of Education (ED).

PPRA is intended to protect the rights of parents and students in two ways:

- It seeks to ensure that schools and contractors make instructional materials available for inspection by parents if those materials will be used in connection with an ED-funded survey, analysis, or evaluation in which their children participate; and
- It seeks to ensure that schools and contractors obtain written parental consent before minor students are required to participate in any ED-funded survey, analysis, or evaluation that reveals information concerning:
  - Political affiliations;
  - Mental and psychological problems potentially embarrassing to the student and his/her family;
  - Sex behavior and attitudes;
  - Illegal, anti-social, self-incriminating and demeaning behavior;
  - Critical appraisals of other individuals with whom respondents have close family relationships;
  - Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
  - Religious practices, affiliations or beliefs of the student or student's parents; or
  - Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

Parents or students who believe their rights under PPRA may have been violated may file a complaint with ED by writing the Family Policy Compliance Office. Complaints must contain specific allegations of fact giving reasonable cause to believe that a violation of PPRA occurred.

**Individual with Disabilities in Education Improvement ACT of 2004 (IDEIA)** the law promotes accountability for results, enhances parent involvement, uses proven practices and materials, provides more flexibility, and reduces paperwork burdens for teachers, states and local school districts. Many sections of the new law took effect on July 1, 2005. The regulations took effect on October 13, 2006.

The law is organized into four parts: Part A: Administration; Part B: school-age and preschool programs for children with disabilities; Part C: birth to 3 years –infants and toddlers; and Part D: national studies, technical assistance investments, personnel preparation investments, and research investments.

IDEIA maintains the basic principles of the law, a free appropriate public education (FAPE) for all students with disabilities, in the least restrictive environment; however, there are many

changes and modifications to the IEP process and other aspects of the identification and evaluation of students with disabilities. The purpose of the changes and modifications are:

- Aligning No Child Left Behind (NCLB) with IDEIA
- More federal direction to state level activities
- Prioritizing specific monitoring outcomes
  - Graduation/dropout rates
  - Disproportionality
  - Participation/performance on statewide assessments
  - FAPE in the least restrictive environment
- Less adversarial dealings between parents and schools

**ACT 145 of 1997 (Use of Tobacco in School)** A pupil who possesses or uses tobacco in a school building, a school bus, or on school property owned by, leased by or under the control of a school district commits a summary offense. A pupil who commits an offense under this section shall be subject to prosecution initiated by the local school district and shall, upon conviction, be sentenced to pay a fine of not more than \$50 for the benefit of the school district in which such offending pupil resides, and to pay court costs. When a pupil is charged with violating subsection (A), the court may admit the offender to an adjudication alternative as authorized under 24 Pa. C.S. Section 1520 (relating to adjudication alternative program) in lieu of imposing the fine. A summary offense under this section shall not be a criminal offense of record; shall not be reportable as a criminal offense of record; shall not be reportable as a criminal act and shall not be placed on the criminal record of the offending school-age person if any such record exists.

**Definitions:**

**Pupil-** A person between the ages of 6 and 21 years who is enrolled in school.

**School-** A school operated by a joint board, board of directors or school board where pupils are enrolled in compliance with Article XIII the Act of March 10, 1949 (P.L. 30, No. 14), known as the Public School Code of 1949, including area vocational-technical schools and intermediate units.

**Tobacco** - A lighted or unlighted cigarette, cigar, pipe or other lighted smoking product and smokeless tobacco in any form.

**Professional Code of Professional Practice and Conduct for Educators (22 Pa. Code §§2351.11)**

**Section 1. Mission**

The Professional Standards and Practices Commission 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.

**Section 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. 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).
- (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.

### **Section 3. Purpose**

(a) Professional educators in this Commonwealth believe that the quality of their services directly influences the nation and its citizens. Professional 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 seek to ensure that every student receives the highest quality of service and that every professional maintains a high level of competence from entry through ongoing professional development. Professional educators are responsible for the development of sound educational policy and obligated to implement that policy and its programs to the public.

(b) Professional 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 valuing the worth and dignity of every person, 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.

### **Section 4. 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 conduct toward students and colleagues, and the educator's employer and community. When teacher candidates become professional educators in this Commonwealth, they are expected to abide by this section.

(b) Professional 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 Employee Relations Act (43 P. S. § § 1101.1201(a)(1), (2) and (4) and (b)(1), (2) and (4) and this chapter.

(2) Professional 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: 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 shall maintain high levels of competence throughout their careers.

(4) Professional educators shall exhibit consistent and equitable treatment of students, fellow educators and parents. They 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) Professional 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) Professional educators shall impart to their students principles of good citizenship and societal responsibility.

(7) Professional educators shall exhibit acceptable and professional language and communication skills. Their verbal and written communications with parents, students and staff shall reflect sensitivity to the fundamental human rights of dignity, privacy and respect.

(8) Professional 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) Professional 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.

### **Section 5. Conduct**

Individual professional conduct reflects upon the practices, values, integrity and reputation of the 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 and revocation.

### **Section 6. Legal Obligations**

(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 employees, 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.

### **Section 7. Certification**

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.

### **Section 8. Civil Rights**

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.

### **Section 9. Improper Personal or Financial Gain**

(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.

### **Section 10. Relationships with Students**

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.

### **Section 11. Professional Relationships**

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 employee.
- (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.

### **Federal Drug and Alcohol Abuse Confidentiality Regulations 42 CFR Part 2**

The regulations prohibit disclosure of any information written or oral that may identify a person/student as either an alcohol and/or drug abuser or user, or if the person/student has received a screening, referral to treatment, diagnosis, and or treatment from a program unless the person/student has given his/her consent.

### **Pennsylvania Drug and Alcohol Abuse Control Act 63**

All records shall remain confidential and only disclosed with consent of the person receiving treatment. The consent of parents or legal guardian is not necessary for a minor to seek or receive treatment. A minor may give consent to authorize his/her own medical care, assessment or treatment.

### **Involuntary Commitment of Minors Act 53 of 1997**

A parent or legal guardian may petition the Court of Common Pleas for the commitment of a minor to involuntary drug and alcohol treatment services, if the minor is incapable of accepting or willing to accept voluntary treatment. Parents or legal guardians are financially responsible for the court costs, attorney's fees, and the cost of the treatment services unless the court finds the parents or legal guardian is without financial resources.

### **42 Pa. CSA 8337: Civil Immunity Law**

Any officer or employee of a school who, in the scope of official duty, reports drug or alcohol abuse involving a student to another officer or employee of the school, to a parent, legal guardian or spouse of the student or who refers a student for treatment or counseling or for disciplinary action by school authorities relating to drug or alcohol abuse shall not be liable to the student or the parents, legal guardian or spouse of the student for civil damages as a result of any negligent statements, acts or omissions undertaken in good faith for the purposes set forth in this section. This subsection shall also apply to school authorities who have been designated to handle disciplinary cases for negligent statements, acts or omissions undertaken in good faith in reporting a student for drug or alcohol abuse to a law enforcement officer in accordance with school policy or procedures and based upon a reasonable belief that a crime has been, is being or will be committed. This subsection does not apply to any statement, acts or omissions which are intentionally designed to harm or which are grossly negligent and result in harm to the student.

### **Mental Health Procedures Act 55 PA Code**

The regulations protect the records of persons receiving treatment. The regulations prohibit disclosure of the record without written consent. If a minor under age of fourteen is receiving treatment, the minor's parents or guardian controls the release of the record. If a minor fourteen

to eighteen year old seeks treatment, the regulations provide for notice of this treatment be given to the parent or guardian. Parents have a right to challenge this treatment. When a minor, age fourteen or older is receiving treatment, he/she controls the release of the record.

### **Amendment to the Pennsylvania Mental Health Procedures Act – Act 147 of 2004**

A juvenile age fourteen to eighteen can consent to outpatient mental health examination and treatment or inpatient for himself/herself without parental consent. Control over the release of records resides with the person who has provided the consent to treatment.

### **Mental Health Procedures Act - 302 Involuntary Commitment**

An involuntary commitment is an application for emergency evaluation and treatment for persons who are "dangerous" to themselves or others due to a mental illness. Dangerousness is determined based on the following criteria:

- Danger to self shall be shown by establishing that within the previous 30 days:
  - the person would be unable without the care, supervision and assistance of others to satisfy his/her need for nourishment, personal or medical care, shelter or self-protection or safety and that death or serious physical debilitation would occur within 30 days unless treatment was provided;
  - the person has attempted suicide or the person has made threats to commit suicide and committed acts in furtherance of the threats; or
  - the person has mutilated himself/herself or the person has made threats to mutilate and committed acts in furtherance of the threats.
- Danger to others shall be shown by establishing that within the previous 30 days the person has inflicted or attempted to inflict serious bodily harm on another or has threatened serious bodily harm and has committed acts in furtherance of the threat to commit harm to another.

Because this commitment is involuntary it may require the assistance of family, crisis professionals, police, ambulance and any other person involved in the crisis. In every 302, a petitioner is required to sign the 302 and appear at a hearing, if necessary. A petitioner must have first-hand knowledge of the dangerous conduct and be willing to go to an emergency room. The petitioner may be required to testify at a hearing regarding the dangerous conduct that he or she witnessed. Once a 302 is authorized, the individual will be taken to an emergency room by the police or ambulance for an evaluation by a physician to determine if they need to be admitted for involuntary psychiatric inpatient treatment. If the individual is admitted they may be kept no longer than 120 hours.

### **Child Protective Services Laws**

The Pennsylvania Child Protective Services laws state that school administrators, school teachers and nurses are mandated to report suspected child abuse. Other sections of this law deal with such issues as the definitions of abuse, reporting procedures, good faith immunity from liability, and penalties for failing to report. It also includes specific procedures when abuse of a student is suspected by a school employee. Please see the most current version of these laws at the Pennsylvania Child Welfare Resource Center website at <http://www.pacwrc.pitt.edu/>