

# Educator Discipline Report - 2015

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*July 2016*



**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION**

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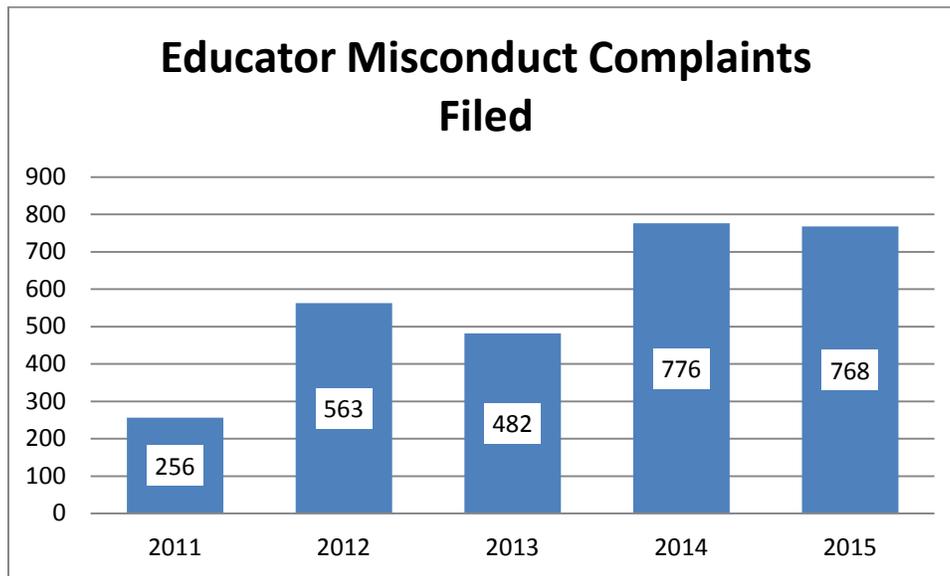
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## Reporting on the Rise

The Pennsylvania Department of Education (“Department”), Office of Chief Counsel (“OCC”) prosecutes educator discipline cases in accordance with the Educator Discipline Act (24 P.S. §§ 2070.1a–2070.19) and supporting regulations. More specifically, the OCC receives, reviews, and investigates pre-complaint referrals and educator misconduct complaints. In order to effectuate complaint resolutions, the Department prosecutes educators before the Professional Standards and Practices Commission (“Commission”) (see “Discipline Process Overview”). In 2015, the Department received approximately 768 educator misconduct complaints, a **200 percent** increase from the number of complaints filed in 2011.



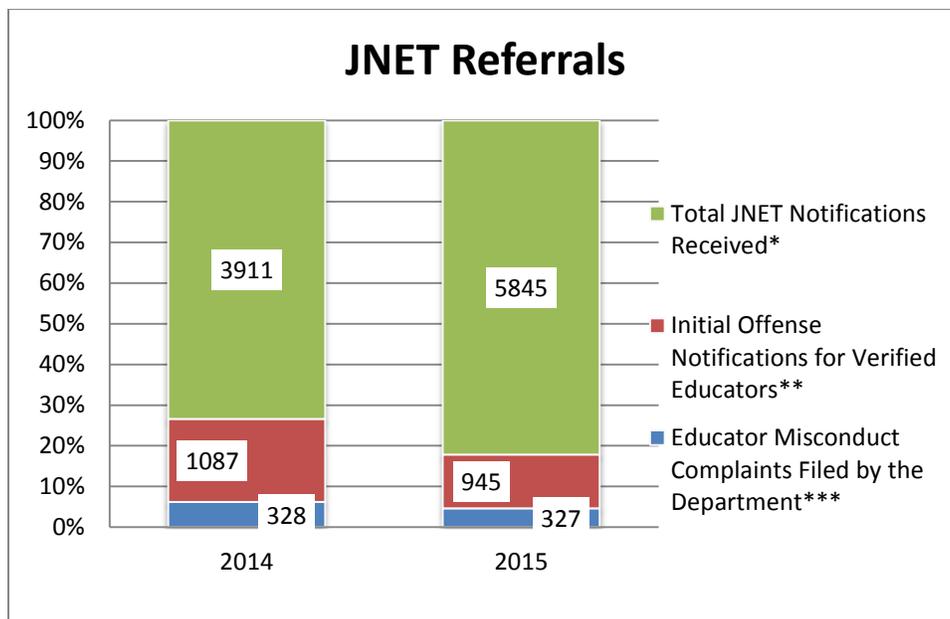
As background, the Department’s caseload of new educator misconduct complaints averaged 240 new complaints annually between 2008 and 2011. In 2012, the OCC received 563 new complaints, a 120 percent increase from the prior year. In 2013 the number of complaints dipped slightly to 482 but increased by 60 percent to the 2014 and 2015 average of 772 new educator misconduct complaints.

The sustained increase in the number of educator misconduct complaints is a direct result of (1) consistent referrals from the Pennsylvania Justice Network (“JNET”) and (2) 2014 amendments to the Educator Discipline Act (“Act”), which increased mandatory reporting requirements and expanded the OCC’s and the Commission’s jurisdiction. Neither referral source initiates the educator discipline process without preliminary action and investigation by OCC staff. As demonstrated below, referrals from these two sources are on the rise.

- **JNET Referrals**

The OCC’s ability to know when an educator has been the subject of a criminal event—in real time—has been critical to the OCC’s fulfillment of its responsibilities under the

Act and the Public School Code. On September 18, 2013, the OCC began receiving notifications whenever a specified event (i.e. arrest, preliminary hearing, conviction, etc.) occurs involving an educator. OCC investigators and attorneys receive, review, monitor, and investigate JNET notifications. The outcome of each notification is dependent upon the conduct that resulted in the criminal event. The Department may take no action, issue a warning letter, or file an educator misconduct complaint. As the chart below demonstrates, an extensive amount of OCC human resources are dedicated to pre-complaint work with on average only six percent of all JNET notifications resulting in the filing of an educator misconduct complaint.<sup>1</sup>



\*The total number of JNET Notifications consists of initial offense notifications, subsequent notifications, and invalid notifications. Each notification received from JNET must be processed regardless of type.

\*\*This number accounts for initial offense notifications for verified educators. It does not include subsequent notifications related to a single educator that are received and processed by OCC staff.

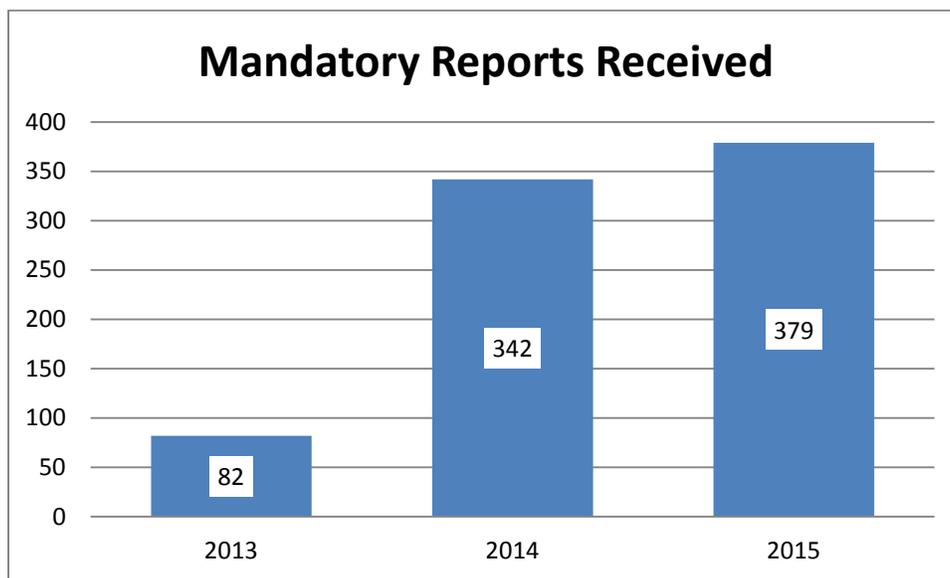
\*\*\*This number excludes alternative dispositions such as the issuance of a warning letter.

- **Mandatory Reports**

Certain events require a chief school administrator to file a mandatory report with the Department. OCC attorneys receive, evaluate, and investigate mandatory reports filed by school entities and educators. OCC investigators also assist in the investigation requirements associated with mandatory reports. The mandatory report referrals could result in no action, the issuance of a warning letter, or the filing of an educator misconduct complaint.

<sup>1</sup> On a yearly basis, between three and eight percent of the notifications resulted in the filing of an educator misconduct complaint. No data is available for 2013.

Act 120 of 2013 significantly amended the previously titled “Professional Educator Discipline Act,” expanding the mandatory reporting duties of all chief school administrators, imposing a mandatory duty on all educators to report allegations of sexual misconduct and sexual abuse or exploitation, and prohibiting confidentiality agreements that would interfere with mandatory reporting or other obligations under the Act. The amendments, effective February 18, 2014, increased the number of mandatory reports received by the Department by 317 percent. As shown in the chart below, from 2013 to 2015, the Department has experienced a 362 percent increase in the number of mandatory reports. Approximately 41 percent of all mandatory reports filed in 2015 resulted in the filing of an educator misconduct complaint.



As the statistics throughout this annual report demonstrate, reporting of professional misconduct is on the rise. Over the past two years alone, the Department has experienced a dramatic increase in the receipt of pre-complaint referrals. Despite this increase, the Department has handled on average 772 new educator misconduct complaints per year and has handled increased litigation in front of the Commission and the appellate courts.<sup>2</sup> Given the continuing proactive efforts of the Department to promote the safety of the commonwealth’s students and schools, coupled with the positive response from educational stakeholders and the community at large, this trend of increased reporting is expected to continue.

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<sup>2</sup> The OCC’s human resources have remained unchanged in 2014 and 2015.

# Discipline Process Overview

## I. Types of Educator Misconduct

The disciplinary process begins with the filing of an educator misconduct complaint. All educators in Pennsylvania are held to the standards set forth in the Act. An educator includes a person who holds a certificate, who is a charter or cyber charter school staff member or who is a contracted educational provider staff member. Misconduct that is actionable under the Act falls into one of two general categories: complaints involving certain criminal conduct, and those involving noncriminal conduct.

### a. Criminal Conduct

An educator may be professionally disciplined solely because the educator has been charged with or convicted of certain crimes. A conviction includes a plea of guilty or *nolo contendere*. The Act mandates that the Commission revoke the certificate and employment eligibility of an educator who has been convicted of a crime set forth in section 111(e)(1)–(3) of the Public School Code or a crime involving moral turpitude.

In addition, the Act requires the Commission to immediately suspend the certificate and employment eligibility of an educator charged with a crime listed in section 111(e), if the Commission determines that the educator poses a threat to the health, safety or welfare of a student or other individual in a school. The suspension is immediately lifted upon receipt of certified court documents establishing that the criminal charges were dismissed or otherwise removed. In addition, the Commission may lift a suspension if the educator participates in a pre-trial diversion program as a result of the charges and the Commission determines that the educator does not pose a threat to the health, safety or welfare of students or other individuals in a school. However, if the educator was charged with an offense under 18 Pa.C.S. Ch. 31 (relating to sexual offenses), a suspension will not be lifted prior to successful completion of the pre-trial diversion program and the subsequent dismissal of the criminal charges.

In 2015, the Commission ordered immediate suspensions in 28 cases involving educators charged with section 111(e) crimes who the Commission determined posed a threat to the health, safety or welfare of a student or other individual in a school.

#### ▪ Section 111(e) Crimes

Section 111(e) of the Public School Code requires prospective employees of all school entities and independent contractors who will have direct contact with children to submit both state and federal criminal history record information, an employment history review, and a child abuse clearance prior to employment. Due to recent legislation, all of these employees must have the state and federal background checks and the clearance completed every five years. A school entity is prohibited from employing an individual whose criminal history record indicates a conviction for one of the crimes listed below:

- Criminal homicide;
- Aggravated assault;
- Stalking;
- Kidnapping;
- Unlawful restraint;
- Luring a child into a motor vehicle or structure;
- Rape;
- Statutory sexual assault;
- Involuntary deviate sexual intercourse;
- Sexual assault;
- Institutional sexual assault;
- Aggravated indecent assault;
- Indecent assault;
- Indecent exposure;
- Sexual intercourse with an animal;
- Incest;
- Concealing death of a child;
- Endangering welfare of children;
- Dealing in infant children;
- Felony offense under sections relating to prostitution;
- Obscene and other sexual materials and performances;
- Corruption of minors;
- Sexual abuse of children;
- Unlawful contact with minor;
- Solicitation of minors to traffic drugs;
- Sexual exploitation of children;
- Felony under Controlled Substance, Drug, Device and Cosmetic Act; or
- Out-of-state or federal crimes similar to any of the Pennsylvania crimes listed above.

▪ **Crimes Involving Moral Turpitude**

A moral turpitude crime involves:

- (1) That element of personal misconduct in the private and social duties which a person owes to his fellow human beings or to society in general, which characterizes the act done as an act of baseness, vileness or depravity, and contrary to the accepted and customary rule of right and duty between two human beings.
- (2) Conduct done knowingly contrary to justice, honesty, or good morals.
- (3) Intentional, knowing or reckless conduct causing bodily injury to another or intentional, knowing or reckless conduct which, by

physical menace, puts another in fear of imminent serious bodily injury.

22 Pa. Code § 237.9(a).

In determining whether any specific crime meets the definition of moral turpitude, the Commission cannot consider the underlying facts that led to the conviction. Instead, the Commission is restricted to a review of the elements, or legal definition, of the crime as set forth in the specific statute. The Commission compares the above definition of moral turpitude to the elements of the crime to determine whether the crime involves moral turpitude.

Generally, crimes that involve deception, lying, fraud, or sexual misconduct are universally considered to be crimes involving moral turpitude. Crimes that the Commission has previously concluded meet the definition of moral turpitude include, but are not limited to, the following: burglary, robbery, theft by deception, receiving stolen property, forgery, defrauding public welfare, money laundering, insurance fraud, trafficking in counterfeit goods, and terroristic threats.

The Act requires the Commission to direct the Department to revoke the certificate of any educator convicted of the crimes listed above. If the crime does not involve moral turpitude and is not listed in section 111(e), then the Department may pursue discipline based on noncriminal grounds as described below. In addition, if an educator is criminally charged with a listed crime but acquitted, the Department may proceed on noncriminal grounds by pursuing discipline for the underlying conduct.

## **b. Noncriminal Conduct**

### **▪ Conduct in Pennsylvania**

With respect to noncriminal conduct, conduct that does not result in a criminal conviction for an offense listed in section 111(e), or an offense involving moral turpitude, the Act directs that the Commission shall discipline any educator found guilty of the following: immorality; incompetency; intemperance; cruelty; negligence; sexual misconduct; sexual abuse or exploitation; violating the Act of May 29, 1931, which penalizes the illegal use of a professional title and the forgery or alteration of a teaching certificate; and failing to comply with duties under the Act including mandatory reporting and threatening, discriminating or retaliating against an individual who in good faith reports actual or suspected misconduct or cooperates in proceedings under the Act.

In addition, violations of sections 6–11 of the Code of Professional Practice and Conduct for Educators (“Code”) can serve as the basis for disciplinary action. When the disciplinary charges against an educator are based solely on a violation of the Code, however, the Act limits the range of professional discipline to a reprimand (see “Professional Discipline” under Process for Resolving Educator Misconduct Complaints).

When disciplinary charges are brought against an educator on noncriminal grounds, the Commission must determine whether the educator engaged in the alleged misconduct, whether the conduct constitutes one of the grounds for discipline and what, if any, discipline should be imposed. In contrast to cases based on the criminal grounds described above, the Commission maintains full discretion in cases filed on the below-described grounds:

**Immorality:** Immorality is conduct which offends the morals of the commonwealth and is a bad example to the youth whose ideals a professional educator or a charter school staff member has a duty to foster and elevate.

**Incompetency:** Incompetency is a continuing or persistent mental or intellectual inability or incapacity to perform the services expected of a professional educator or a charter school staff member.

**Intemperance:** Intemperance is a loss of self-control or self-restraint which may result from excessive conduct.

**Cruelty:** Cruelty is the intentional, malicious, and unnecessary infliction of physical or psychological pain upon living creatures, particularly human beings.

**Negligence:** Negligence is a continuing or persistent action or omission in violation of a duty. A duty may be established by law, by promulgated school rules, policies or procedures, by express direction from superiors, or by duties of professional responsibility, including duties prescribed by Chapter 235 (relating to Code of Professional Practice and Conduct for Educators).

**Sexual Misconduct:** Sexual misconduct means any act, including but not limited to, any verbal or nonverbal, written or electronic communication or physical activity, directed towards or with a child or a student regardless of age that is designed to establish a romantic or sexual relationship with the child or student. Prohibited acts include, but are not limited to: (1) sexual or romantic invitations; (2) dating or soliciting dates; (3) engaging in sexualized or romantic dialogue; (4) making sexually suggestive comments; (5) self-disclosure or physical exposure of a sexual, romantic or erotic nature; or (6) any sexual, indecent, romantic or erotic contact with the child or student.

**Sexual Abuse or Exploitation:** Sexual Abuse or Exploitation is defined in the Child Protective Services Law (23 Pa.C.S. Ch. 63) and includes any of the following:

(1) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes, but is not limited to, the following:

(i) Looking at the sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

- (ii) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.
- (iii) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.
- (iv) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

This paragraph does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within four years of the child's age.

(2) Any of the following offenses committed against a child:

- (i) Rape as defined in 18 Pa.C.S. § 3121.
- (ii) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1.
- (iii) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123.
- (iv) Sexual assault as defined in 18 Pa.C.S. § 3124.1.
- (v) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2.
- (vi) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125.
- (vii) Indecent assault as defined in 18 Pa.C.S. § 3126.
- (viii) Indecent exposure as defined in 18 Pa.C.S. § 3127.
- (ix) Incest as defined in 18 Pa.C.S. § 4302.
- (x) Prostitution as defined in 18 Pa.C.S. § 5902.
- (xi) Sexual abuse as defined in 18 Pa.C.S. § 6312.
- (xii) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318.
- (xiii) Sexual exploitation as defined in 18 Pa.C.S. § 6320.

Typically, disciplinary charges based on any of the grounds listed above result in an evidentiary hearing before a Commission-appointed hearing officer. If an educator elects not to contest the disciplinary charges, however, a decision may be made without an evidentiary hearing.

#### ▪ **Conduct in Another Jurisdiction**

In addition to the noncriminal grounds listed above, the Act also empowers the Commission to direct the Department to discipline an educator who has been disciplined in another jurisdiction for grounds that are comparable to grounds for discipline under the Act. In cases involving educators convicted of out-of-state crimes that are equivalent to crimes listed in section 111(e) or out-of-state crimes involving moral turpitude, the Commission must revoke the educator's certificate upon receipt of the certified court documents. In all other cases involving Pennsylvania educators disciplined in other jurisdictions, upon receipt of a certified copy of an adjudication from the appropriate licensing authority, the Department may issue an order directing the educator to show cause why the imposition of identical or comparable discipline in this commonwealth would be unwarranted. The final adjudication by an appropriate licensing authority of another jurisdiction is conclusive as to the misconduct of the educator under the Act. The Commission may impose the identical or comparable

discipline unless the educator demonstrates that the discipline would result in a grave injustice, the discipline is substantially different from what would have been imposed for similar conduct in this commonwealth or the procedure used in the other jurisdiction did not provide due process.

In 2015, there were 19 disciplinary actions taken against Pennsylvania educators based upon discipline imposed in another jurisdiction. Those 19 disciplinary actions consisted of 10 surrenders, five revocations, three suspensions, and one public reprimand (see “Professional Discipline” under Process for Resolving Educator Misconduct Complaints).

## **II. Process for Resolving Educator Misconduct Complaints**

At each stage of the disciplinary process, the OCC communicates with the educator, the complainant, and the relevant school entities as appropriate. Confidentiality is strictly protected. The following section explains each phase of the disciplinary process.

### **a. Receipt of Complaint and Legal Sufficiency**

The discipline process is initiated by the filing of a written educator misconduct complaint with the Department. An interested party (“complainant”) must specify the nature and character of the allegations of misconduct and must verify the complaint form. The Department is also permitted to file a complaint. Anonymous complaints are not accepted.

In addition, as mentioned earlier in this Report, certain events require a chief school administrator to file a mandatory report with the Department. The Act requires the superintendent or chief executive officer of a school district, the executive director of an intermediate unit, the director of an area vocational-technical school, the chief administrator of a charter or cyber charter school, the director of a private academic school or the chief administrator of a contracted educational provider, or their respective designees to report to the Department within 15 days in the event that:

- An educator has been provided with notice of intent to dismiss or remove for cause, notice of removal from eligibility lists for cause, or notice of intent not to reemploy for cause;
- An educator has been arrested or indicted for or convicted of any crime that is graded a misdemeanor or felony;
- There are any allegations of sexual misconduct or sexual abuse or exploitation against an educator involving a child or student;
- There is reasonable cause to suspect that an educator has caused physical injury to a child or student as the result of negligence or malice;

- An educator has resigned or retired or otherwise separated from employment after a school entity has received information of alleged misconduct under the Act; or
- An educator is the subject of a report filed by the school entity under 23 Pa.C.S. Ch. 63 (relating to child protective services); or who the school entity knows to have been named as a perpetrator of an indicated or founded report under 23 Pa.C.S. Ch. 63.

The Act also requires any educator who knows of any action, inaction or conduct by another educator constituting sexual abuse or exploitation or sexual misconduct to file a mandatory report with the Department, the chief school administrator, and his or her immediate supervisor within 15 days of discovery of the sexual abuse or exploitation or sexual misconduct.

After receipt of the complaint, the disciplinary process begins with a review of the complaint by OCC staff to confirm the Department's jurisdiction. The complaint is then assigned to an attorney, who determines the legal sufficiency of the complaint, *i.e.*, whether the facts alleged, if true, would be sufficient to warrant discipline under the Act or other relevant statute. If no legal sufficiency exists, the complaint is dismissed and the complainant and educator are so notified.

#### **b. Probable Cause**

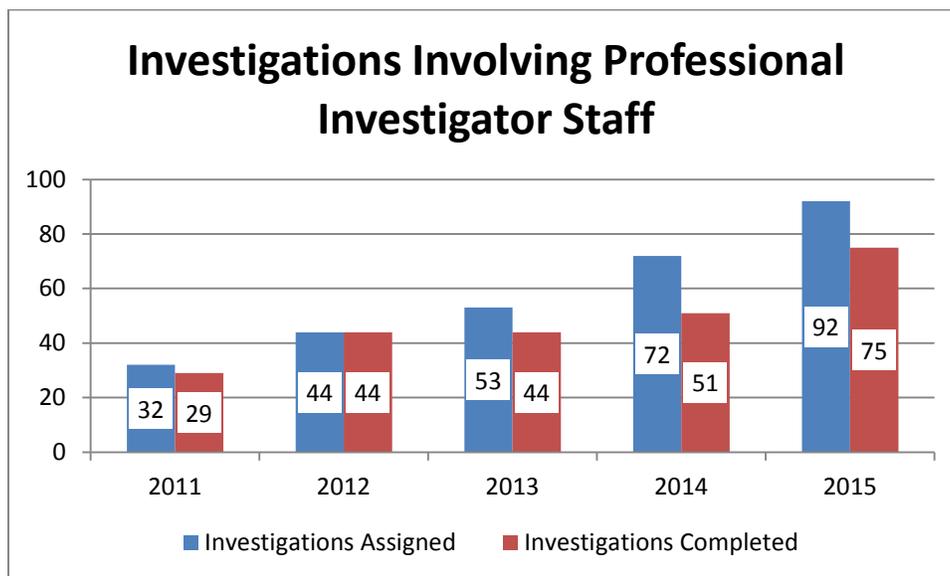
Following a determination that the allegations described in the complaint are legally sufficient, a preliminary investigation is conducted to determine if there is probable cause to believe that grounds for discipline exist and if the alleged conduct in the complaint is supported by the information provided to the Department. Such an investigation generally involves a review of documents provided by the educator, complainant, and relevant school entity, if applicable. In certain cases, preliminary interviews of complainants, victims, and administrative witnesses are conducted to determine the sufficiency of the evidence. If no probable cause is found, the complaint is dismissed and the complainant, educator, and the current and former school entity in which the educator is or was employed are so notified.

#### **c. Full Investigation and Notice of Charges**

If probable cause is found, a full investigation is performed by an OCC investigator or an OCC attorney. The Department may also direct the school entity to conduct an investigation and/or comment upon the appropriateness of professional discipline. In conducting investigations under the Act, the Department may investigate any and all allegations of misconduct concerning the educator that are discovered during the course of the investigations.

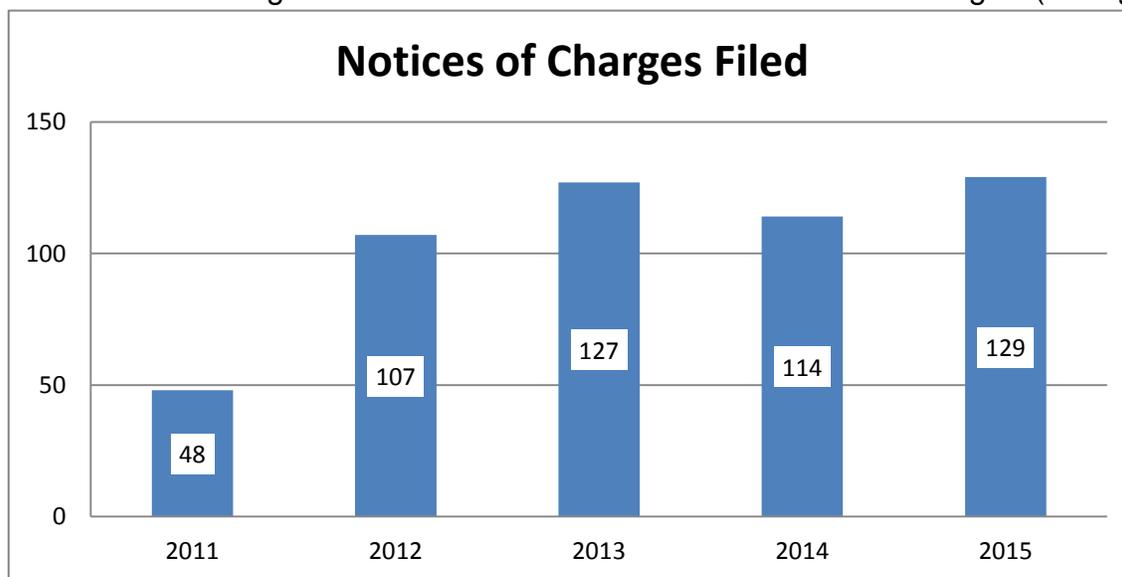
Since 2011, the number of investigations assigned to the OCC's two professional conduct investigators has increased by 188 percent and the number of investigations

completed has increased by 159 percent. The table below illustrates the number of complaints assigned and completed each year since 2011.



After investigation, the OCC may elect to dismiss the complaint, determine that appropriate and sufficient punishment has been imposed by the school entity (“local action sufficient”), participate in an alternative dispute resolution process, enter into a written settlement agreement with the educator, or initiate the formal adjudicatory hearing process by filing a notice of charges with the Commission.

Since 2011, the number of Notices of Charges filed by the OCC has increased by 169 percent. The following table illustrates the number of notices of charges (“charges”)



filed by the OCC since 2011.

#### d. Hearings

The authority to impose professional discipline after charges are filed rests with the Commission. If the results of the Department's investigation warrant discipline and the educator is unwilling to enter into a settlement agreement with the Department, charges are sent to the educator. The educator has the right to respond to the charges and request a hearing. If the educator fails to respond, the Department seeks a default judgment (a decision in favor of the Department). If a hearing is requested, the Commission refers the case to a hearing officer, an independent attorney under contract to act as presiding officer in hearings pursuant to Pennsylvania's General Rules of Administrative Practice and Procedure. The hearing officer would then contact the parties and arrange a pre-hearing conference.

Under the administrative rules, hearing officers are granted authority to hold pre-hearing conferences, conduct a fair and impartial hearing, rule on evidentiary questions and dispose of procedural matters. A hearing officer is prohibited, however, from making a final determination of the case except through a proposed written report of facts, conclusions of law and, if appropriate, recommendations of discipline to the Commission. The Commission is responsible for making final determinations.

Either the educator or the Department may file an appeal of the proposed report ("exceptions") with the Commission within 30 days of the date the proposed report was mailed. Within 60 days, the Commission may also initiate a review of the proposed report in the absence of exceptions or may reopen the proceeding for the reception of further evidence. After consideration of exceptions to the hearing officer's proposed report, further evidence, or its review under the Act, the Commission will accept, modify, or reject the hearing officer's proposed report.

#### e. **Intervention**

Under section 2070.13(c)(4) of the Act, the current or former school entity in which the educator is or was employed may intervene as of right in the disciplinary proceeding. While school entities that intervene may participate fully in the case, admission as an intervenor does not confer full party status on the school entity, and intervenors are granted no rights that survive discontinuance or resolution of the disciplinary matter before the Commission.

#### f. **Professional Discipline**

Following the hearing, the Commission will review the record and determine to either dismiss charges or impose professional discipline in one of the following forms:

- **Private Reprimand:** An admonishment to the educator for his or her conduct. A reprimand does not impact an educator's certification or employment eligibility but may be used against an educator in subsequent

proceedings should future conduct warrant additional discipline. Notice of a private reprimand is not released to the public.

- **Public Reprimand:** An admonishment to the educator for his or her conduct. A reprimand does not impact an educator's certification or employment eligibility but may be used against an educator in subsequent proceedings should future conduct warrant additional discipline. Notice of a public reprimand is communicated via postings on the Department's website and a release issued to other state jurisdictions through the NASDTEC national clearinghouse.<sup>3</sup>
- **Suspension:** The temporary termination of a certificate, the temporary termination of the eligibility to be employed as a charter or cyber charter school staff member, or the temporary termination of the eligibility to be employed as a contracted educational provider staff member for a specific period of time, for an indefinite period of time, or until specific conditions are met. Notice of a suspension is communicated via postings on the Department's website and a release issued to other state jurisdictions through the NASDTEC national clearinghouse.
- **Revocation:** The termination of a certificate, the termination of the eligibility to be employed as a charter or cyber charter school staff member, or the termination of the eligibility to be employed as a contracted educational provider. Notice of a revocation is communicated via postings on the Department's website and a release issued to other state jurisdictions through the NASDTEC national clearinghouse.
- **Surrender:** The termination by consent of a certificate or eligibility to be employed as a charter or cyber charter school staff member or as a contracted educational provider staff member whenever the surrender occurs at any time after the issuance of the certificate or the employment in a charter or cyber charter school or contracted educational provider. When an educator surrenders his or her certification or employment eligibility after allegations of misconduct, the effect is the same as revocation. Notice of a surrender is communicated via postings on the Department's website and a release issued to other state jurisdictions through the NASDTEC national clearinghouse.
- **Supplemental Sanctions:** Private or public disciplinary sanctions that focus on remediation or restitution, including, but not limited to: fees, fines, prescribed coursework, evaluations, treatment impaired educator programs and other corrective action plans.

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<sup>3</sup> The NASDTEC (National Association of State Directors of Teacher Education and Certification) Clearinghouse is a searchable database administered by the education departments of NASDTEC members.

## **g. Appeals**

Decisions of the Commission are “adjudications.” Administrative agency law defines an adjudication as any final order, decree, decision, determination, or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities, or obligations. As adjudications, decisions of the Commission are appealable to the Commonwealth Court by either the Department or the educator. An appeal of a Commission decision acts as a stay of the discipline except where: (1) the grounds for discipline include sexual misconduct or sexual abuse or exploitation, (2) the decision to discipline is accompanied by a finding that immediate discipline is necessary to protect the health, safety or welfare of students or other persons in the schools of the commonwealth, or (3) the discipline imposed is the result of a negotiated settlement between the parties or is imposed under section 9b of the Act. In 2015, two Commission decisions were appealed by educators to the Commonwealth Court, and one appeal proceeded to the Supreme Court.

## **h. Reinstatement**

An educator whose certificate or employment eligibility has been suspended, revoked, or surrendered may apply to the Commission for an order lifting the suspension or reinstating the certificate. The educator must submit a Petition for Reinstatement, which specifically requires the educator to request or waive a hearing, and an application for certification. The educator must also submit a criminal history record and a waiver for release of information.

The information sought as part of the application includes an educational and employment history, a description of the misconduct, a personal statement as to why reinstatement should be granted, a description of rehabilitation efforts, and letters of reference. The Commission may elect to appoint a hearing officer to consider a reinstatement application or it may consider the matter directly.

- **Publication and Department Recommendations**

In considering reinstatement and prior to entering an order, the Commission must seek the Department’s recommendation and the recommendation of any school entity where the educator was employed at the time of the misconduct. While the respective recommendations must be considered by the Commission, they are not binding on the Commission. Once the Department’s recommendation is submitted, the Commission publishes notice of the application in the Pennsylvania Bulletin to allow for public comment. In 2015, the Department issued recommendations to the Commission in response to three Petitions for Reinstatement.

- **Just and Proper Standard**

The Commission will lift a suspension or reinstate a certificate or employment eligibility if it is just and proper to do so. For purposes of determining whether it is *just and proper*, the Commission may consider the following factors:

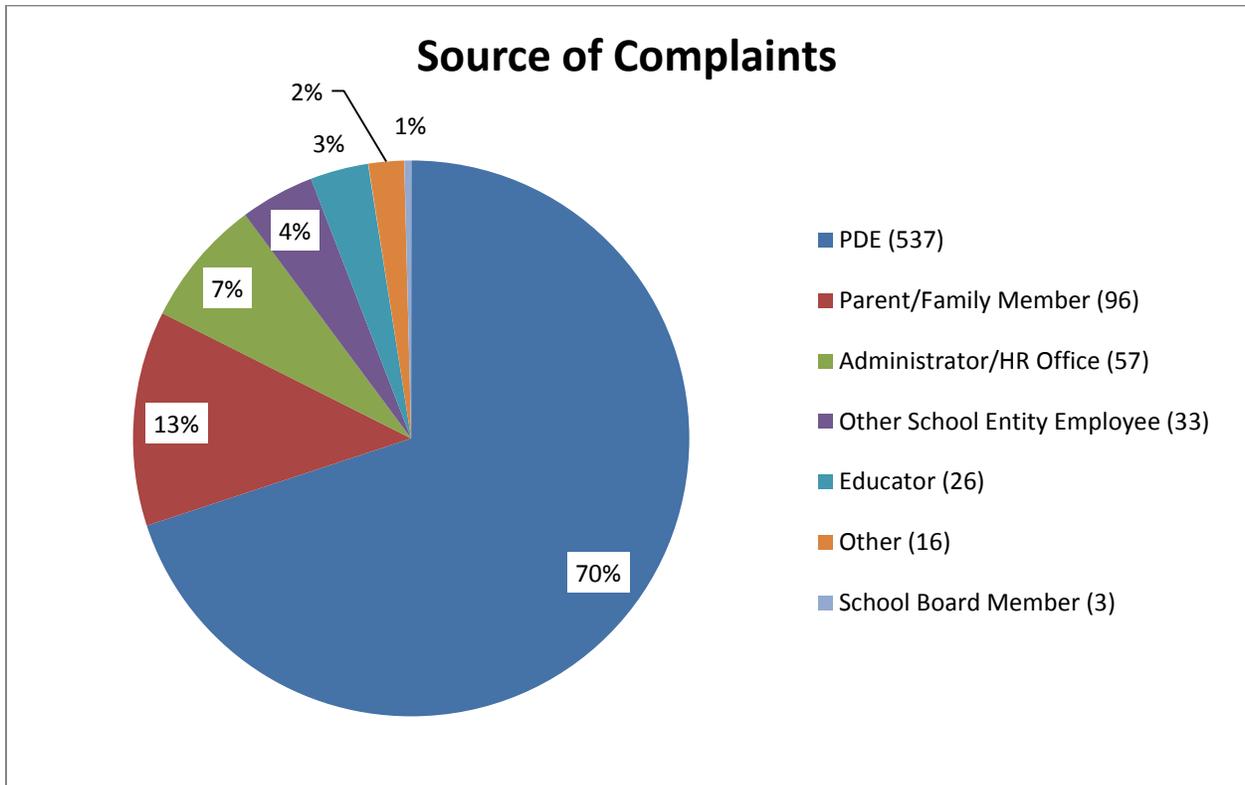
- The conduct which resulted in discipline;
  - Other past conduct of the educator;
  - The educator's current attitude toward past conduct;
  - Rehabilitation efforts and activities;
  - Evidence of compliance with conditions imposed as part of discipline; and
  - References and letters of support or opposition.
- Restrictions on Reinstatement

The Commission will not reinstate the certificate or employment eligibility of an educator convicted of a crime or offense listed in section 111(e) of the Public School Code of 1949. In addition, the Act prohibits the Commission from lifting a suspension or reinstating the certificate or employment eligibility of an educator if the suspension or revocation involved a "finding of guilt" for sexual abuse or exploitation or a surrender for conduct relating to sexual abuse or exploitation.

## 2015 Statistics

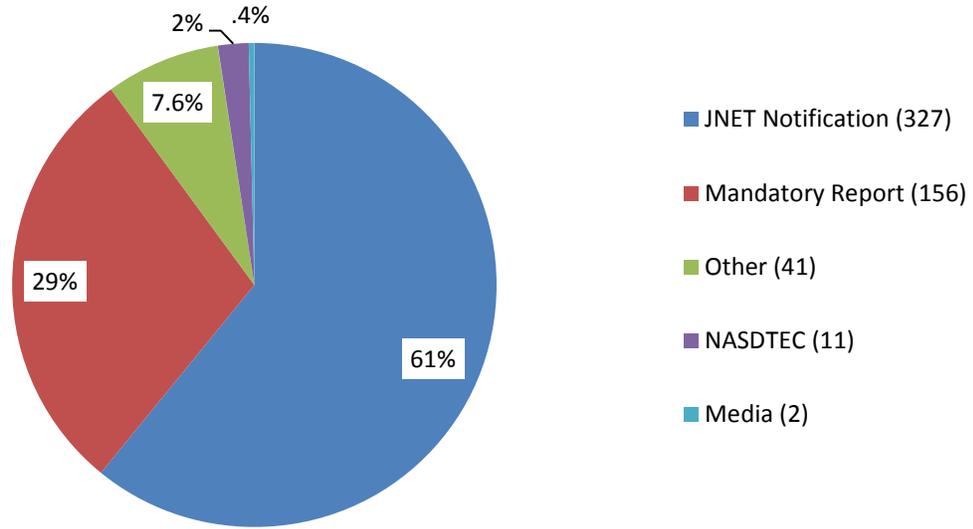
The previous sections describe the grounds for professional discipline and the process of how an educator misconduct complaint is handled from intake to final resolution. The statistics below depict the source of complaints and case resolutions.

In 2015, the Department received approximately 768 educator misconduct complaints. The chart below illustrates the source of these complaints.



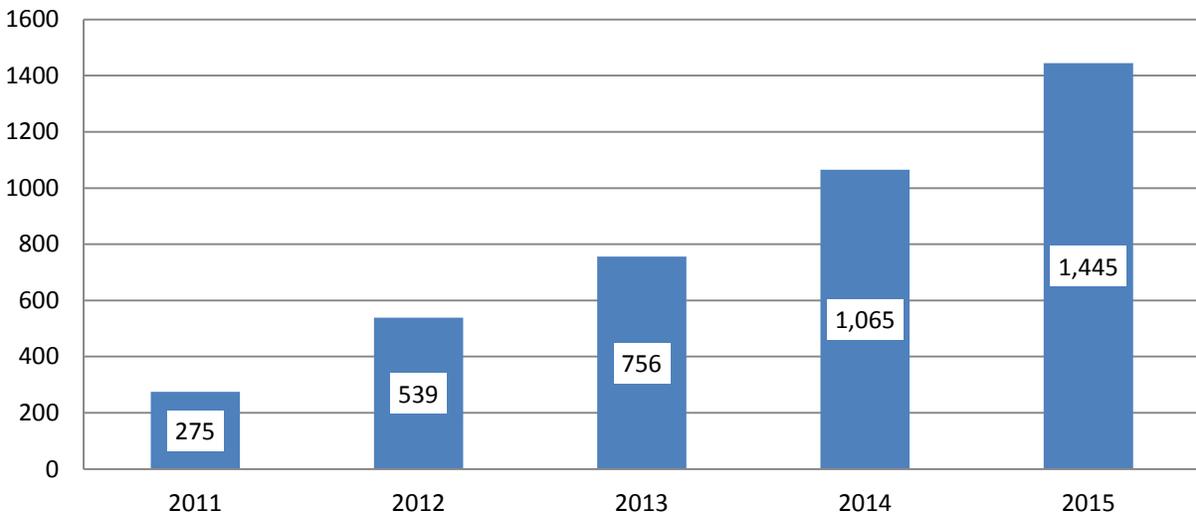
The Department receives information from a variety of sources such as JNET notifications, mandatory reports, the media, NASDTEC, and other sources. As a result of information received and evaluated by the OCC, the Department filed 537, or 70 percent, of all complaints filed in 2015. The following table captures the specific information source of these 537 complaints.

## Information Source of Complaints Filed by PDE

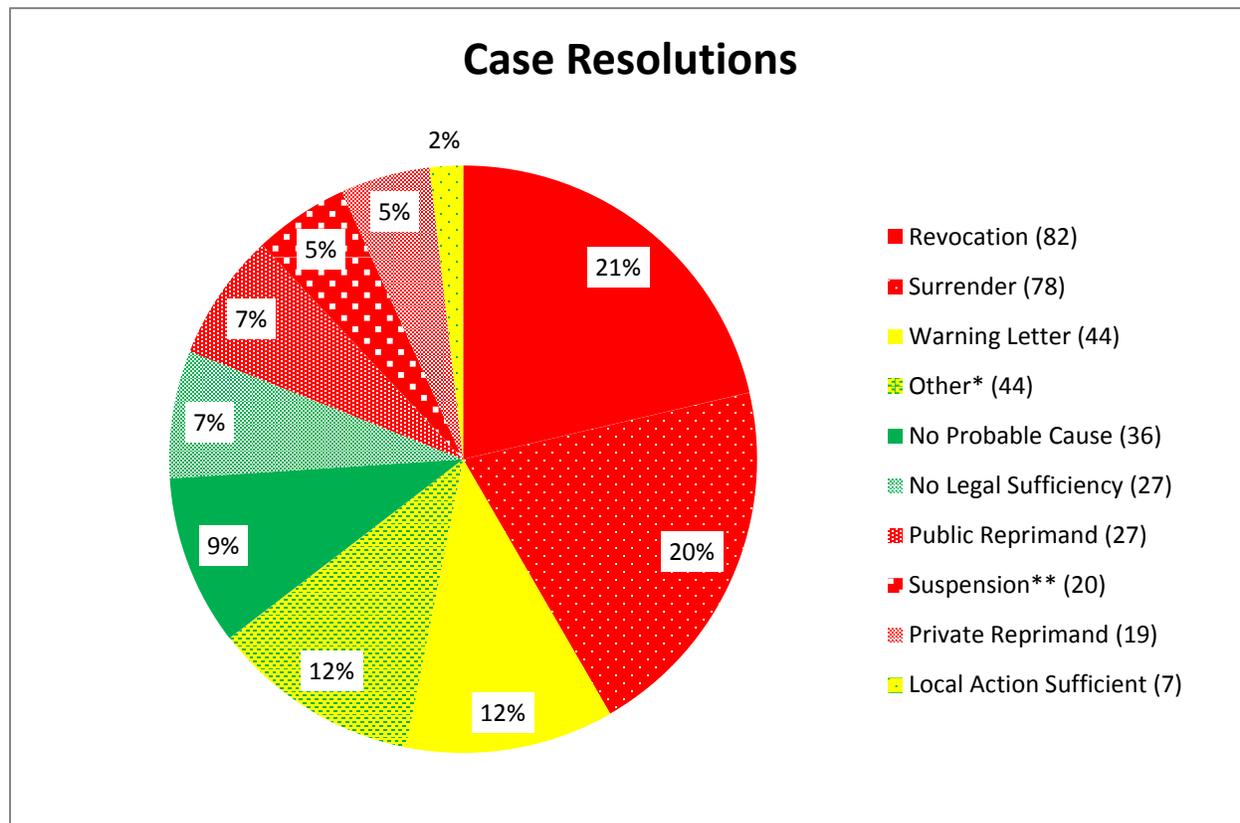


As a direct result of increased referrals and the dramatic increase in the filing of educator misconduct complaints, the number of open cases has also risen. As of December 31, 2015, approximately 1445 cases were pending with the OCC, a 425 percent increase over the number of open cases in 2011. The table below shows the number of open cases on December 31 of each of the last five years.

## Open Cases as of December 31



The OCC and the Commission may resolve cases with or without the imposition of professional discipline as described above. The following graphic indicates the types of case resolution during 2015.



\*In addition to the types of case resolution listed above, cases are closed for other reasons such as lack of evidence, lack of witness cooperation, and death of the educator.

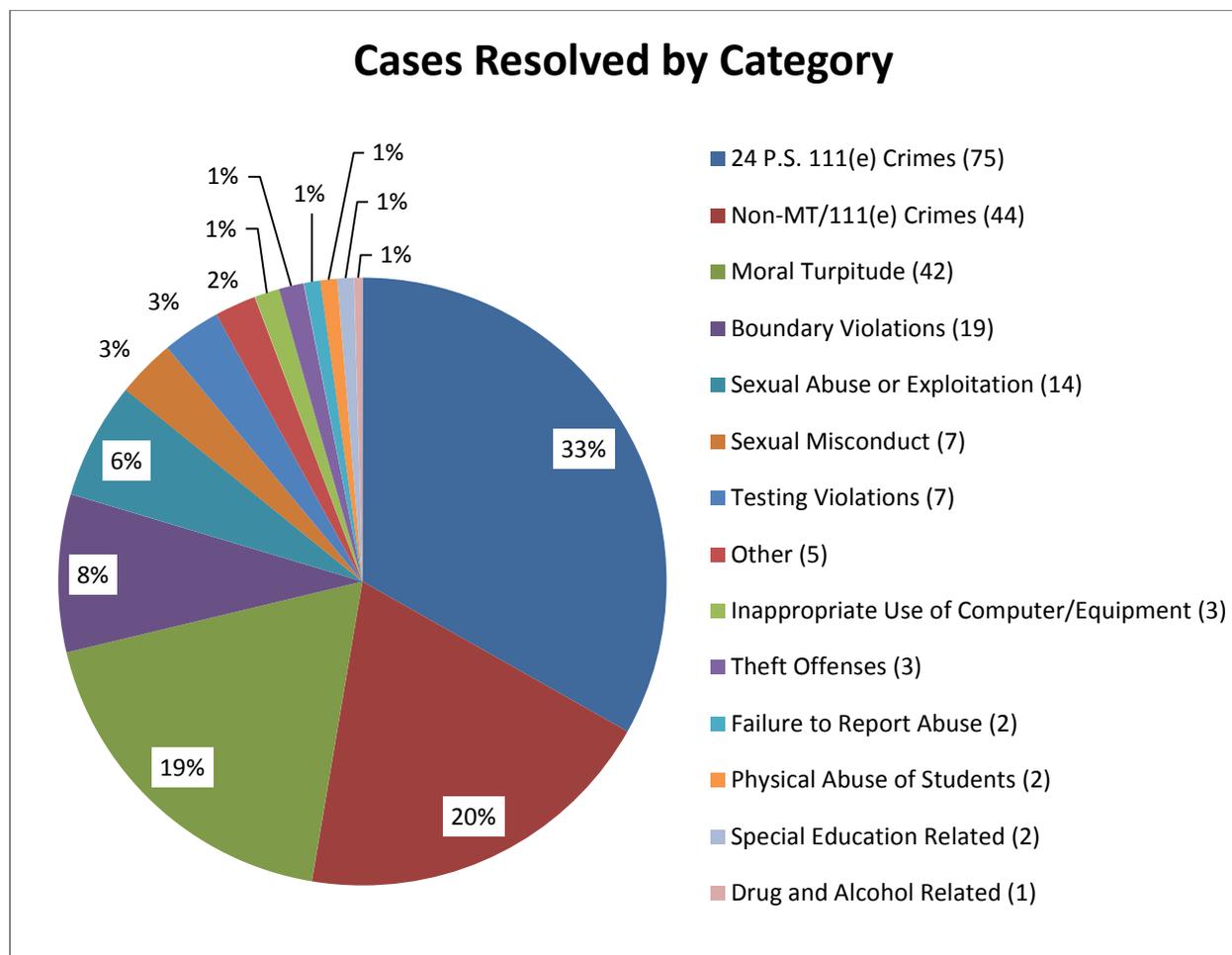
\*\*The suspensions counted above do not include the 28 “immediate suspensions” the Commission ordered in 2015 because these cases were not fully resolved. In an “immediate suspension” case, the Commission retains jurisdiction until the criminal charges are resolved. The numbers listed above also do not include the 19 reciprocal disciplinary actions ordered by the Commission based upon disciplinary actions in other jurisdictions.

The Department imposed professional discipline in 70 percent of the 384 cases resolved in 2015. The remaining 30 percent of cases were resolved without the imposition of professional discipline. The chart above shows the discipline imposed in each of the 226 cases resolved with professional discipline in 2015. Of these, approximately 38 percent involved sexual misconduct.

The term “sexual misconduct” is used in this context to denote all cases involving any conduct by an educator, including but not limited to, any verbal or nonverbal, written or electronic communication or physical activity, directed towards or with a child or a student regardless of age that is designed to establish a romantic or sexual relationship with the child or student. Such prohibited acts include but are not limited to: (1) sexual or romantic invitations; (2) dating or soliciting dates; (3) engaging in sexualized or

romantic dialogue; (4) making sexually suggestive comments; (5) self-disclosure or physical exposure of a sexual, romantic or erotic nature; or (6) any sexual, indecent, romantic, or erotic contact with the child or student. While the percentage of cases involving sexual misconduct decreased by seven percent in 2015, the statistic is representative of the Department's efforts to expand its response to all areas of educator misconduct.

The category types of each of the cases resolved in 2015 is captured in the chart below. Please note that many cases involve numerous case category types and only the primary category for each is accounted for below. For example, convictions for section 111(e) crimes often involve sexual misconduct as a secondary case category, however sexual misconduct as the primary case category encompasses only three percent of all case categories resolved in 2015.



## Conclusion

There are approximately 882,685 certificated individuals in the commonwealth over whom the Department maintains jurisdiction. The Department also maintains jurisdiction over charter or cyber charter school staff members, contracted educational providers, and contracted educational provider staff members. While the majority of these educators conduct themselves professionally in accordance with the highest moral standards, this report shows that reporting of educator misconduct is on the rise. In 2015, the OCC received an extraordinary number of pre-complaint referrals (5,845 JNET notifications, 379 mandatory reports, and other general referrals) and processed 768 educator misconduct complaints. Of the complaints concluding with disciplinary actions, approximately 38 percent involved sexual misconduct. Even with these dramatic increases, OCC staff conducted more investigations, filed more notices of charges, and imposed discipline more frequently than in prior years. In order to ensure overall responsiveness and the safety of students, the OCC has requested additional human resources to manage current and future increases. The OCC has responded to the growing number of educator misconduct cases with a sense of urgency and a commitment to be successful in its mission of protecting students, even in a fiscally constraining environment.

In order to obtain optimal outcomes for the safety of children within the schools of this commonwealth, the OCC must maximize efforts to resolve educator misconduct complaints in a sound and expeditious manner. In 2016, the OCC's top priority remains the investigation and prosecution of complaints involving sexual misconduct. As the OCC continues to advance prosecutorial endeavors and promote the efficient management of complaints, the OCC can expand its response to other growing areas of educator misconduct with the intent to timely resolve all complaints. With the help of recent amendments to the Educator Discipline Act, legislation, and the OCC's ongoing outreach efforts to stakeholders across the commonwealth, the OCC believes it will continue to be successful in its mission to protect students and to hold accountable educators who betray the public trust.