

COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

IN RE: DISCIPLINARY CASE : PSPC
OF : DOCKET NO.
THOMAS R. SMITH, JR., : DI-00-05

DECISION AND PROPOSED FINAL ORDER

GLORIA J. DAVIS BANKS
HEARING OFFICER



HEARING DATE: SEPTEMBER 13, 2001

RECEIVED

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Professional Standards and Practices Commission

I. PROCEDURAL HISTORY

1. On or about October 30, 1997, the Pottstown School District (the "District") dismissed Thomas R. Smith, Jr., (the "Respondent") from employment with the District. (Notices of Charges, paragraph 30).

2. Respondent filed a grievance regarding his dismissal and, following a three-day evidentiary hearing held on February 24, November 2, and November 13, 1998, the Arbitrator, Joseph B. Bloom sustained the grievance and overturned the District's dismissal of Respondent, by order dated March 31, 1999. (hereinafter referred to as "the Arbitration') (Notice of Charges, paragraph 31).

3. This disciplinary proceeding commenced on or about February 4, 2000 when the Department of Education (the "Petitioner") filed a Notice of Charges against Respondent with the Professional Standards and Practices Commission (the "Commission") seeking disciplinary action pursuant to Section 13(a) of the Teacher Certification Law,¹ against Respondent on grounds he committed actions deemed immoral, incompetent, cruel, negligent and intemperant which posed a danger to the health, safety, and welfare of students or other persons in the schools of the Commonwealth. Respondent's counsel, Mr. Ralph J. Teti, by letter dated February 24, 2000, while entering his appearance for Respondent and requesting a hearing in this matter,

¹ Act of December 12, 1973 (PL. 397, No. 141), as amended, 24 P.S. §2070.13(a).

requested a 30 day extension to file Respondent's answer to the Notice of Charges. By letter dated March 2, 2000, Respondent's request for extension of time to respond to the Notice of Charges was granted by the Commission.

4. By letter dated February 29, 2000, Douglas B. Breidenbach, Jr. filed, on behalf of the Board of School Directors of the District, Pottstown, Montgomery County, Pennsylvania, a Petition to Intervene, pursuant to 24 P.S. §13(c)(4) and 1 Pa. § 35.28, in the Notices of Charges against Respondent.

5. Respondent filed his response on March 14, 2000, denying the material allegations in Petitioner's Notice of Charges by Response To Notice of Charges, dated March 14, 2000. Respondent also averred that the dates of allegations were beyond the one year statute of limitations in " 24 P.S. §20-2070.9", and therefore requesting that the action be dismissed. Respondent further incorporated the findings and record of the arbitration proceeding held against Respondent in his Response, seeking that the Commission's Notice of Charges be dismissed based upon the arbitration record. Finally, Respondent challenged the intervention of the District in this matter.

6. On or about March 28, 2000, the Commission appointed Gloria J. Davis Banks, the undersigned hearing officer. The letter recognized the appearance of Daniel Myers, Esquire as Petitioner's counsel and Ralph Teti, Esquire as counsel for Respondent. By letter dated August 15, 2000, the Petitioner entered the appearance of Paul K. Blunt, Esquire, on its behalf. By

letters dated May 30, 2001 and June 28, 2001, the Petitioner entered the appearance of Joseph A. Russelburg, Esquire, on its behalf.

7. A pre-hearing telephonic conference was held on June 28, 2001, at 10:00 a.m.. By letter dated June 20, 2001, Petitioner filed its prehearing statement listing the following five witnesses:

██████████, ██████████, ██████████, and ██████████ and Mr. ██████████.

The Petitioner listed no documentary evidence, but reserved the right to use prior Arbitration testimony of any of the above witnesses who were unable to attend the hearing in this matter.

8. By letter dated June 25, 2001, Respondent filed a prehearing statement listing the following eight witnesses; Andrew Bachman, Paul Castanzo, Margaret Munz, Donald O.

McNeill, Mary Cuttillo, Terry Burnley, Robert Yerger, and Respondent, Thomas Smith.

Respondent's requested documentary evidence listed included the personnel file of Thomas Smith from Pottstown School District and the personal student files of Petitioner's four student witnesses including their disciplinary actions, grades, criminal records and medical records.

9. Respondent's prehearing statement readdressed three issues raised in Respondent's Response to the Notice of Charges in this matter, including:

- a. Whether the action should be dismissed based upon the Arbitration Award.
- b. Whether the allegations were beyond the statute of limitations, and
- c. Whether the Pottstown School District could properly intervene in this matter.

Finally, Respondent objected to Petitioner's witness, Steven Turner and to the use of Arbitration

transcript testimony as a substitute for unavailable witnesses.

10. By letter and order dated June 29, 2001, the Hearing Officer requested parties in this matter to file final hearing statements on or before Friday, August 17, 2001 resolving all outstanding prehearing evidentiary matters. Additionally, the parties were ordered to file briefs addressing the three issues raised by Respondent in his pre hearing statement as above stated in paragraph seven. Petitioner filed its final prehearing statement on July 16, 2001. Respondent filed his final prehearing statements on July 23, 2001. Respondent filed his prehearing brief on July 25, 2001. Petitioner's reply brief was filed on August 14, 2001.

11. The Hearing Officer granted the Respondent's request that the hearing be held in Pottstown, Pennsylvania to accommodate local witnesses. Petitioner's Petition for Issuance of Subpoenas was dated August 22, 2001. The Hearing Officer issued subpoenas on Petitioner's behalf on August 28, 2001. Respondent's Petition For issuance of Subpoenas was dated August 30, 2001. The Hearing Officer issued subpoenas on Respondent's behalf on September 5, 2001, by certified mail, return receipt requested.

12. By letter dated August 31, 2001, Douglas B. Breidenbach, Jr., as counsel to the District, advised the Hearing Officer that the District rescinded its request to formally intervene in this matter. By letter dated September 6, 2001 Petitioner informed the Hearing Officer that the Department of Education would only present evidence with respect to Respondent's conduct toward [REDACTED] as described in the Notice of Charges.

13. The hearing was held on Thursday, September 13, 2001 at the Pottstown School District Administrative Building in Pottstown, Pennsylvania.

14. Respondent's character witnesses included; Ms. Margaret Munz; Mr. Andrew Bachman; Mr. Terry Lee Burnley; and Mr. Paul Castanzo. Respondent testified on his own behalf. In addition, testimony supporting Petitioner's case was offered by [REDACTED]. No documentary evidence or exhibits were offered into evidence.

15. The Hearing Officer denied Respondent's request that the Notice of Charges be dismissed based upon the Arbitration decision reinstating Respondent. Petitioner submitted that its allegations against Respondent would be limited to those actions Respondent made solely during the 1996-97 school year. The Hearing Officer held, and does hereby find, that Petitioner's Notice of Charges were timely filed in this matter pursuant to 24 P.S. §2070.9(a). By letter dated August 31, 2001, Douglas B. Breidenbach, Jr., as counsel to the District, advised the Hearing Officer that the District rescinded its request to formally intervene in this matter. The Hearing Officer determined moot Respondent's issue of whether the District could properly intervene.

16. No objections were raised by the parties regarding the testimony and documentary evidence submitted and accepted as the record in this case. No other outstanding objections were preserved by the record during the one day proceeding.

17. The Hearing Officer closed the record in this matter on September 13, 2001. At the close of oral arguments, the Hearing Officer directed that post hearing briefs be filed simultaneously by counsel for both parties on or before Friday, November 2, 2001. Post hearing briefs were duly and timely filed in this matter.

II. FINDINGS OF FACT

1. Respondent, an adult sui juris, is a resident of the Commonwealth of Pennsylvania.

Respondent has been married for 17 years and has three children; [REDACTED]

[REDACTED] (Tr. 90, 142).

2. Respondent holds an Instruction I teaching certificate endorsed in the areas of General Science, and Earth and Space Science, issued in 1994 by the Department of Education.

Respondent began teaching ninth through twelfth grade Earth/Space Science and Environmental Science in September 1994 at Pottstown High School. (Notice of Charges and Answer).

Respondent has received satisfactory ratings as a science teacher while employed by the District. (Tr. 131).

3. Respondent is a well-liked and respected science teacher. Respondent also coaches little league sports team. (Tr. 90,130). He is a very likable high school teacher, eager to help colleagues and students who are in need. Respondent experienced a great deal of attention from both female and male high school students, including some who were not his students, who

sought him out for advice on teenage problems dealing with classes, teachers, dating, substance abuse, parents and home life. Respondent is viewed as a role model for students and colleagues. (Tr.73-75,88-90,100-103,108-112, 123, 131-132).

4. Respondent was encouraged by high school administration to provide well-rounded instruction and counsel to students on matters relating to their matriculation as high school students. The Hearing Officer does not find credible Respondent's testimony that he was told to serve as a counselor for students on matters regarding their personal lives and on matters related to their "teenaged years." (Tr. 132).

5. Respondent's conduct while providing consultation with students was viewed as professional by colleagues who observed Respondent's behavior during certain consultations. (Tr. 106, 123). Respondent's ability to counsel students was viewed as extraordinary by colleagues who observed Respondent's consultations with students. (Tr.118-119). The nature of information shared with Respondent by students was "very personal." (Tr.110-111, 125). Students sought out Respondent more often for counseling than they sought out any other teacher. (Tr.118).

6. Respondent readily provided students with his advice and unsolicited comments regarding students' personal lives, including their dating relationships; substance abuse; inappropriate attire; inappropriate friendships; inappropriate social activities; highly sensitive family matters (such as a student's hatred of a stepparent); illegal activities; and their extreme

emotional distress (including contemplations of running away from home).(Tr.113-115, 141).

7. Respondent rarely referred students to appropriate counseling officials when advising them on personal matters.(Tr.178-182, 191-194). Approximately 15 to 30 students, both male and female, came to Respondent's home classroom during the 1996-1997 school year seeking his help on a regular basis even though Respondent was no longer their teacher. (Tr. 28-29,134-135).

8. Since Respondent's reinstatement as a science teacher after the Arbitration determination, Respondent has continued to advise students regarding personal matters. (Tr.191-194). Respondent now refers inappropriately dressed students to the office without commenting on their dress. (Tr.191-194).

9. During the school year of 1995-1996, ██████████ as a student in Respondent's ninth grade Earth and Space Science class. (Tr. 4-5, 128, 131). Miss ██████████ ██████████ was sixteen years old during her 1995-1996 school year. (Tr.3, 13).

10. While in Respondent's ninth grade science class, Miss ██████████ viewed Respondent as one of her favorite teachers and as a role model she could look up to. (Tr.28). Respondent conducted himself appropriately at all times while Miss ██████████ was a student in his ninth grade Earth and Science class during the 1995-1996 school year. (Tr.28).

11. During the 1996-1997 school year, Miss ██████████ was not a student in Respondent's class

but maintained contact with him by visiting him in his classroom approximately three times a week to discuss academic problems, boyfriend issues, personal matters, and family problems. (Tr. 7-8, 28-30, 133-135). Miss ██████ obtained hall passes from her home room teacher to go to Respondent's class on a regular basis. Respondent was aware of the hall passes given to Miss ██████ during her visits. (Tr.135, 182-184). Miss ██████ decreased her regular visits to Respondent's classroom towards the end of the 1996-1997 school year. (Tr.37, 135, 172).

12. Occasionally, Miss ██████ engaged in conversations with Respondent in the hallway in front of his classroom in public, open view. (Tr- 37). Students were normally present in Respondent's classroom while Miss ██████ visited Respondent. (Tr. 30).

13. Respondent suggested that his conversations with Miss ██████ be held in the Prep Room when he wanted to have private, personal discussions with Miss ██████. (Tr. 138, 141). The Prep Room, a small room located to the left of the classroom, with three entrances (one from Respondent's room, one from an adjoining classroom, and one from the hallway), was used for storage and supplies for teachers of the two adjoining classrooms.(Tr. 29-32, 136-138). The classroom doors leading to the Prep Room were always unlocked and were kept open most of the time. (Tr. 31-32, 136-137). Respondent shared his classroom a couple of times a week with a Sergeant McLean who was an ROTC instructor. (Tr. 30-31).

14. The Hearing Officer finds credible Miss ██████' testimony that on one occasion during the 1996-1997 school year, while Miss ██████ was visiting Respondent in his classroom, Respondent told her to pick up a bottle or bottle cap from the floor. After she picked up the object, Respondent told Miss ██████ that he could see down her shirt. (Tr. 9-10, 33). The Hearing Officer does not find credible Respondent's denial of this event ever occurring. (Tr. 140-141).

15. On one occasion during the 1996-1997 school year, Respondent told Miss ██████ to rest her elbows on the writing extension on his desk. After she did so, Respondent told her that she should be careful about the clothes she wore because when her elbows were resting on the desk he could see down her sweater. (Tr. 11). The Hearing Officer does not find credible Respondent's denial of this event ever occurring. (Tr. 141).

16. Respondent's comments to Miss ██████ regarding his seeing down her shirt and sweater made her feel uncomfortable. (Tr. 10-11, 79-80). The Hearing Officer specifically finds that Respondent misrepresented the truth when testifying that he never commented to Miss ██████ about her clothing or appearance. (Tr. 142).

17. On one occasion during the 1996-1997 school year, Respondent jokingly told Miss ██████ that he wanted to take her to Bermuda with him. (Tr. 12). The Hearing Officer does not find credible Respondent's denial of the event ever occurring. (Tr. 142-143).

18. On one occasion during the 1996-1997 school year, Miss ██████ was crying while visiting Respondent in his classroom. Respondent stated to Miss ██████ that she could come back to see him for a hug when she turned age 18. (Tr. 13). The Hearing Officer does not find credible Respondent's denial of the event ever occurring. (Tr. 144).

19. On one occasion during the 1996-1997 school year, while she was visiting Respondent in his classroom, Miss ██████ mentioned that she needed to buy a new bathing suit for the summer. Respondent stated that he would take Miss ██████ shopping for a bathing suit and she could model it for him. (Tr. 13). The Hearing Officer does not find credible Respondent's denial of the event ever occurring. (Tr. 143-144).

20. Respondent's comments to Miss ██████ disturbed and upset her, making her feel uncomfortable. Miss ██████ thought that some of the comments regarding her attire were helpful, but inappropriate coming from a teacher instead of a parent. (Tr. 10, 79-81). Miss ██████ did not think that Respondent's comments or conduct meant that he wanted to have a sexual relationship with her. (80-81). Miss ██████ thought Respondent's comments and actions were harmful and flirtatious, causing her to lose respect for Respondent as a teacher. (80-82).

21. On one occasion during the 1996-1997 school year, Miss ██████ become very emotionally upset and started crying while sitting as a student in the classroom of Mr. Castanza, her tenth grade science teacher. Mr. Castanza referred Miss ██████ to a guidance counselor upon observing her state. (Tr. 126).

22. About two weeks after this incident, sometime toward the end of the 1996-1997 school year, Miss ██████ approached Respondent while he was in the adjoining classroom of Mr. Castanzo during lunchtime. Miss ██████ told Respondent that she hated her stepfather and that she wanted to move out. At some point in her conversation with Respondent, Miss ██████ indicated that she smoked marijuana and used LSD. At that point, Mr. Castanzo joined in the conversation between Miss ██████ and Respondent to discourage Miss ██████ from using drugs. (Tr. 50-51, 112-115, 145-148).

23. The Hearing Officer finds that Respondent told Miss ██████ that he would have to report the fact that she used drugs to the PRO team, a confidential school-based counseling service for troubled students. (Tr. 116-146). The Hearing Officer places no weight on Miss ██████ testimony that Respondent did not tell her that he would report her drug use. (Tr. 24-25, 51-52).

24. The Hearing Officer finds that Miss ██████ was very upset during her conversation with Respondent and Mr. Castanza. Miss ██████ remained upset when hearing Respondent's comment that he would have to report her to the PRO team. The Hearing Office finds that Miss ██████ requested that Respondent not report her drug use to the PRO team. The Hearing Officer does not find credible Miss ██████' testimony that Respondent did not inform her of his intention to report her to the PRO team. The Hearing Officer does not find credible Miss ██████ testimony that she never asked Respondent not to tell the PRO team about her drug use. (Tr. 51-52, 116-146). Miss ██████ was upset, but not crying during this discussion. (Tr. 123). Miss ██████ made no threats to Mr. Castanza or Respondent for Respondent's threat to report

her to the PRO team. (Tr. 123).

25. Respondent reported his conversation with Miss ██████ regarding her drug use to Margaret Munz, a faculty member of the PRO team. (Tr. 73, 74, 147, 148). The Hearing Officer does not find that Miss ██████'s allegations against Respondent were falsely made in an attempt to punish or prevent Respondent from reporting Miss ██████ to the PRO team. (Tr. 159).

26. On at least one occasion following this incident, Respondent and Miss ██████ were casually conversating in the hallway outside of Respondent's classroom. (Tr. 125). Miss ██████ continued to visit Respondent periodically in his classroom until the 1996-1997 school year ended in early June of 1997. (Tr. 37, 135, 172).

27. On one occasion, toward the end of the 1996-1997 school year, but prior to June 11, 1997, Respondent, while sitting in his van in front of his banking institution, saw Miss ██████ and asked her how her summer was going. Miss ██████ showed no hostility or unpleasantry toward Respondent during this encounter. (Tr. 85-86, 164-167).

28. On June 11, 1997, after the end of the 1996-1997 school year, Respondent was in his van with his then two-year old daughter ██████ driving in the area of the Industrial Highway in Pottstown, returning from a visit to the Maiers Bread Outlet. (Tr. 150).

29. The Hearing Officer finds that prior to June 11, 1997, Respondent occasionally looked for scrap metal for recycling and earning money. (Tr. 91, 150). The Hearing Officer places no weight on Respondent's testimony that he was out looking for scrap metal with his two year old daughter on June 11, 1997. The Hearing Officer finds it unlikely, however that Respondent's sole purpose during this June 11, 1997 outing was to look for scrap metal.

30. Respondent drove his van down an alleyway behind Miss [REDACTED] home. Respondent stopped in back of Miss [REDACTED] home when spotting two females, Miss [REDACTED] and a woman neighbor, sunbathing. Respondent asked Miss [REDACTED] neighbor for directions to an abandoned factory in the area. (Tr. 15-17, 53-54, 150-153).

31. Respondent recognized Miss [REDACTED] as the other person sunbathing as she was lying on a blanket in her backyard. (Tr. 153). Miss [REDACTED] recognized Respondent and briefly exchanged greetings before entering her home to put a shirt on to cover her bathing suit. Respondent then walked out to the alley where Respondent was stopped and began conversating with Respondent. (Tr. 18-19, 55-56, 153, 190). Respondent never got out of his van during his conversation with Miss [REDACTED] (Tr. 153). Respondent did not ask Miss [REDACTED] to come down to his van while she stood in her backyard. (Tr. 153).

32. Respondent was wearing a t-shirt and short, cut-off jean shorts on June 11, 1997 during this incident. (Tr. 60, 154). Miss [REDACTED] was wearing a bikini bathing suit and a shirt as a cover-up while she was speaking with Respondent near his van. (Tr. 18-19, 55-56, 153, 190).

33. Respondent asked Miss ██████ what she was wearing under her shirt and repeatedly asked her to let him see her bathing suit underneath. Miss ██████ refused to show Respondent her bathing suit. (Tr. 27, 68-69).

34. Respondent asked Miss ██████ how her summer was going. Miss ██████ stated that she was sunbathing to prepare for her birthday party. Respondent then asked Miss ██████ whether this was going to be a "good party" or "bad party." Miss ██████ told Respondent that beer would be served at her party. Respondent told Miss ██████ that drinking beer was not good. He then invited her to step down closer to his van so that she could see what life was really all about by looking at his young daughter. When Miss ██████ looked into the van, Respondent's penis was exposed as Respondent fondled or scratched it. Respondent's penis protruded from one of the legs of his cut-off jean shorts. (Tr. 20-21, 58-61, 153-154, 166-167).

35. The Hearing Officer specifically finds that Petitioner failed to substantially prove, beyond a preponderance of the evidence, that Respondent's exposure of his penis to Miss ██████ was intentional. Miss ██████' testimony that neither she nor Respondent acknowledged the exposure of his penis is highly credible. Respondent's testimony that his penis is not sufficiently large enough so as to inadvertently protrude from his shorts while seating in his van is not as credible. (Tr. 82, 155). The Hearing Officer finds that Respondent's cut off jean shorts were of a length short enough to allow Respondent's penis to protrude from the side of one leg.

36. Miss ██████ did not acknowledge to Respondent that she had seen his penis because she was afraid. (Tr. 21-23). Respondent did not acknowledge his exposure of his penis to Miss ██████. Miss ██████ was visibly upset after leaving Respondent's van upon seeing Respondent's penis. She immediately told her stepfather that Respondent had exposed his penis to her. (Tr. 22). Miss ██████ was afraid that Respondent would come back to her house or find out that she had reported his exposure of his penis to her parents. (Tr. 83).

B. Pottstown School District Investigation

37. Miss ██████ parents reported Respondent's conduct to Pottstown High School officials. The Pottstown School District superintendent confronted Respondent about the allegations. Respondent, at the advice of his Union Representative, did not deny or explain his conduct with respect to the allegations. (Tr. 157-158).

38. Respondent was dismissed by the Pottstown School District for his misconduct toward Miss ██████. Thereafter, an arbitration proceeding was initiated by Respondent's Union. Upon the conclusion of Arbitration hearings conducted on February 24, November 2, and 13, 1998, Respondent was reinstated to his teaching position with the School District with full back pay and benefits. (Tr. 158-159). On March 31, 1999, Arbitrator Joseph B. Bloom issued an Opinion and Award sustaining the grievance, concluding that the Pottstown School District did not act with just cause when discharging Respondent from his employment. (Tr. 158-159). The arbitration award was not appealed by the Pottstown School District. (Tr. 157-158).

39. Notice of charges were filed against Respondent by the Department for investigation pursuant to 24 P.S. § 2070.13. After completing its investigation, the Department advised the Commission that it was recommending termination of Respondent's teaching certificate based on charges of immorality and intemperance pursuant to 22 Pa. Code § 237.3 & 22 Pa. Code § 237.5. The Commission assigned the matter to Hearing Officer Gloria J. Davis Banks on March 28, 2000. The Hearing Officer conducted a telephonic pre-hearing conference and a hearing in this matter.

40. Respondent wishes to continue teaching in the Commonwealth of Pennsylvania and within the Pottstown School District and seeks to retain his teaching certificate.

B. Respondent's Testimony

41. The Hearing Officer specifically finds that Respondent failed to present truthful testimony when stating that Miss ██████ was an unremarkable student prior to her reporting of the allegations in this matter. (Tr. 176). The Hearing Officer finds that Respondent expressed a keen interest in the personal life of Miss ██████. This finding is supported by Respondent's own testimony showing that:

- a). Miss ██████ visited Respondent's classroom at least once or twice a week (Tr. 177);
- b). Miss ██████ had very personal conversations with Respondent which prompted him to retreat to the private area of the Prep room during his discussions with Miss ██████ (Tr. 138,141);
- c). Miss ██████ told him of her drug use which he felt strongly against to the point of

reporting her to the PRO team (Tr. 73-74,147-148) and,
d). She informed him that she hated her stepfather to the point of her contemplation
of running away from home. (Tr. 50-51,112-115,145-148).

42. The Hearing Officer finds unreliable Respondent's testimony that he never commented to Miss ██████ regarding her attire. (Tr. 142,171). This finding is supported by Respondent's admission that he commented on the inappropriate dress of other female students during the 1996-1997 school year. (Tr.184). The Hearing Officer finds it highly likely that Respondent's ease in discussing other, very personal matters with Miss ██████ provided a comfortable and likely setting for him to also comment on her attire.

43. The Hearing Officer finds unreliable Respondent's characterization of his motive for riding around the area of Miss ██████ home on June 11, 1997. The Hearing Officer further finds that Respondent fabricated his account regarding his daughter's prompting of him to drive near the alley behind Miss ██████ home in order to see a swing or play set located at a nearby abandoned factory. (Tr.150-151).

44. The Hearing Officer assigns little or no weight to Respondent's testimony denying that his penis was exposed to Miss ██████ (Tr. 155).

45. The Hearing Officer finds credible Respondent's testimony that he had 15 to 20 students who were not his current students visiting him during the 1996-1997 school year once per week.

(Tr. 178). The Hearing Officer further finds credible Respondent's testimony that no other students had ever shared their drug problems with him. (Tr. 179). Respondent's testimony that students found him more accessible than other teachers because he "was a fresh face at 30 whatever years old. .. an open person [who] spoke freely and [who was] willing to hear their complaints, and I do try to help them" most credible. (Tr. 179).

C. Respondent's Character Witnesses

152. In addition to testimony presented by Respondent, Respondent presented character witnesses who were familiar with his teaching while at Pottstown High School.

153. Margaret Munz, (Tr. 71-79), a teacher at Pottstown High School and employee of Pottstown School District for twenty-seven years, had known Respondent as a teacher and colleague for as long as Respondent had been a teacher at Pottstown High School. (Tr. 71,74). Margaret Munz provided direct testimony that, as a faculty member of the PRO team, she received a referral from Respondent during the 1996-1997 school year regarding ██████████ ██████████ use of illegal drugs. (Tr. 71-73) The Hearing Officer finds this testimony credible, specifically finding that Respondent reported Miss ██████████ alleged drug use to the PRO team sometime in late May of 1997.

154. Margaret Munz further testified that she was unaware of whether upon her notification of Respondent's report on Miss ██████████ a PRO team member ever contacted or followed up with Miss ██████████ (Tr. 77-78) The Hearing Officer finds this testimony credible. In light of Miss

██████ testimony that she was never contacted by a PRO team member (Tr. 26), in addition to Respondent's testimony that no one from the PRO team ever contacted him after his report (Tr. 174), the Hearing Officer specifically finds that Miss ██████ was never contacted by a PRO team member regarding her alleged drug use in response to Respondent's report.

155. Finally, Margaret Munz testified that she understood Respondent's reputation as a teacher to be excellent and that he has a good rapport with other teachers and students alike. (Tr. 74). This testimony is credible. She further testified that she was familiar with the basis of factual allegations against Respondent in this matter and that knowing these allegations she would still provide Respondent with an excellent rating as a teacher. She then acknowledged that if Respondent's alleged conduct was in fact true, that there would be no way that the conduct would be appropriate. (Tr. 74, 79). The Hearing Officer does not find credible or persuasive, Ms. Munz's testimony that her overall opinion of Respondent would not change even when knowing the allegations made against Respondent in this matter. (Tr. 78-79). The weight of this testimony is limited to the degree the witness is familiar with the full extent of Respondent's conduct toward Miss ██████. The Hearing Officer does find credible her testimony that the Respondent's alleged conduct would be inappropriate if proven true. (Tr. 79).

156. Andrew Bachman, (Tr. 87- 99), a Mathematics teacher at Pottstown High School since 1993, testified having known Respondent since he began working at the high school. Mr. Bachman testified that Respondent's reputation as a teacher both among other teachers and

students was as a demanding, helpful teacher who provided assistance to students on projects, college resumes and letters. He testified that "other impressions from students are fair. Very consistent with his (Respondent's) expectations in the classroom, both behaviorally and academically." (Tr. 89). Mr. Bachman further testified that Respondent is viewed as a role model by students, teachers and serves actively in community events such as little league baseball. (Tr. 90-91). This testimony is credible. Mr. Bachman further testified that his opinion of Respondent's reputation as a suitable teacher was not changed even in light of his general familiarity of the charges brought against Respondent. The weight of this testimony is limited to the extent to which Mr. Bachman was familiar with the allegations against Respondent and of the nature of Respondent's interaction with Miss ██████████. The Hearing Officer finds credible Mr. Bachman's testimony that the allegations Respondent is charged with are not the typical conduct of teachers in the high school and that if proven true, Respondent would no longer qualify to teach in a high school. In light of this testimony, the Hearing Officer finds less persuasive, Mr. Bachman's testimony that he would continue to support Respondent's good reputation even if the allegations were true. (Tr. 97-99).

155. Terry Lee Burnley (Tr. 99- 107), a science teacher and the Science Department Chairman, has been employed as a teacher at Pottstown High School for thirty-one years, and has known Respondent for eight years. (Tr. 100). Mr. Burnley testified that Respondent's reputation as a teacher among other teachers and students is that of an excellent science teacher who relates very well to students. (Tr. 101-102). The Hearing Officer finds Mr. Burnley's testimony highly credible as to Respondent's known reputation as a teacher.

156. Mr. Burnley further testified that although he was aware of allegations that Respondent exposed his penis to a student, he was unfamiliar with all the aspects of Respondent's alleged conduct. (Tr. 102). This testimony is credible. The Hearing Officer finds highly credible Mr. Burnley's testimony that his opinion of Respondent's excellent reputation would become questionable if the allegations against Respondent were true.

157. Paul Castanzo (Tr. 107-129), a science teacher at Pottstown High School for the last twelve years, testified that Respondent was a colleague and good friend of his. Mr. Castanzo testified that his understanding of Respondent's reputation as a teacher as very good and that he had seen many positive things in Respondent's dealings with students as a role model and counselor. He further testified that he has witnessed Respondent counsel students on personal home and parent problems. He stated that he has never seen any inappropriate conduct by Respondent during such sessions. (Tr. 107-129) This testimony is credible. Mr. Castanzo's testimony that his opinion of Respondent does not changed in light of the charges alleged against Respondent is less persuasive.

158. Mr. Castanzo's testimony regarding his and Respondent's impromptu meeting with Miss [REDACTED] whereby her parent and drug use problems were discussed is credible. Mr. Castanzo's testimony that Miss [REDACTED] admitted using LSD and smoking marijuana is credible. (Tr. 115-116). His further testimony that Respondent told Miss [REDACTED] during this meeting that he would

report her to the PRO team is also credible. Mr. Castanzo's testimony that Miss ██████ asked Respondent not to report her to the PRO team and that she left the room visibly upset, but not to the point of crying is credible. Mr. Castanzo's testimony that Miss ██████ did not make any threats against him or Respondent not to reveal her parent and drug use problems to anyone else is credible. (Tr. 123).

159. Mr. Castanzo's testimony that the problems expressed to them by Miss ██████ were of a very personal type that no student had ever shared with him is credible. (Tr. 125). Mr. Castanzo testified that he witnessed Respondent and Miss ██████ conversating at least one additional time after this meeting in the hallway in front of Respondent's class room. This testimony is credible. (Tr. 125).

III. PROPOSED CONCLUSIONS OF LAW

1. The Professional Standards and Practices Commission is given statutory authority to discipline any professional educator who is found guilty of immorality, cruelty, incompetence, negligence or intemperance. 24 P.S. §2070.5 (a)(11); 22 Pa. Code §233.3(a)(14).

2. The Commission has provided statutory guidance with respect to the scope and effect of the Teacher Certification Law under 22 Pa. Code §237.2(b), which provides the following:

The Act and this Subchapter will be construed and applied by the Commission in the Commission's power and duty to determine the present, continuing and future fitness and ability of a person to

properly perform in this Commonwealth the duties and responsibilities of a professional educator in the area of the person's certification.
22 Pa. Code §237.2(b).

3. The Commission established, in the Code of Professional Practice and Conduct for Educators ("Code of Conduct"), 22 Pa. Code §235.1-235.11, the mission of being "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." 22 Pa. Code §235.1 The Code of Conduct provides the Act's purpose which is, in part, to ensure that, "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." 22 Pa. Code §235.3 (a).

4. The Code of Conduct requires that, "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." 22 Pa. Code §235.3 (b).

5. The Code of Conduct further states that an educator's practices should reflect behavior and attitudes which result in high levels of competency; exhibit appropriate "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.” Professional educators must also exert reasonable effort to protect students from harmful conditions in the learning process which may injure students’ health and safety. 22 Pa. Code §235.4 (a), (b)(3),(7) & (10).

6. Pennsylvania’s Code of Professional Practice and Conduct for Educators prohibits professional educators from “sexually harassing or engage in sexual relationships with students.” 22 Pa. Code §235.10(3).

7. Although the essence of Respondent’s inappropriate communications were sexually suggestive in nature, Petitioner failed to establish, by a preponderance of the evidence, that Respondent’s communication towards Miss ██████ reached the level of sexual harassment prohibited by the Code. Miss ██████’ own testimony established that she did not think that Respondent’s comments towards her were of a sexual nature or that Respondent’s motive was to enter into a sexual relationship with her. (Tr. 80-81).

8. The Findings of Fact support a conclusion that Respondent’s exposure of his penis to a student, whether intentional or unintentional, offends the spirit of section 235.10(3) of the Code of Conduct,² in that Respondent intentionally and willfully placed himself in a position where such an offense could occur. Respondent set into motion a series of events which led to the

² 22 Pa. Code §235.1

exposure of his penis to one of his students. Respondent's conduct leading to the exposure of his penis dangerously approached the level of violating section 235.10(3) of the Code. Petitioner's presentation of evidence fell short of proving, however, beyond a preponderance of the evidence, that Petitioner's exposure of his penis to a student was willful and intentional. Moreover, Respondent's restraint from acknowledging to Miss ██████ any intentional exposure of his penis coupled with his restraint from making any overt solicitation of a response from Miss ██████ following the exposure of his penis mitigates a finding in this case that Respondent sexually harassed Miss ██████ in violation of the Code of Conduct.

9. There are statutory definitions of impermissible conduct by professional educators in the Commonwealth.³ Petitioner has charged Respondent with having made inappropriate sexually-oriented comments, including penile exposure to a high school student in connection with his work as a professional educator and therefore request that the Commission, pursuant to the Professional Educator Discipline Act, as amended, 24 P.S. §2070.5(a)(11), revoke Respondent's teaching certificate. The Petitioner has, by a preponderance of the evidence, sufficiently established that Respondent's past conduct towards a tenth grade high school student constitutes immorality and intemperance. Petitioner has not sufficiently established, by a preponderance of the evidence, that Respondent is an imminent danger to the health, safety and welfare of students in the schools of the Commonwealth to a level mandating the revocation of Respondent's teaching certificate.

³See, 22 Pa. Code §237.3 - 237.10.

10. The Findings of Fact, based upon the record in this proceeding, establish, by a preponderance of the evidence, that Respondent's conduct warrants the immediate suspension of his teaching certificate for a six month period from the date of this Proposed Order or until such time as Respondent demonstrates within or prior to the expiration of the six month suspension period, after appropriate counseling, his ability to maintain appropriate professional relationships with students.

11. The statutory definition of immorality is as follows:

§237.3. Immorality.

(a) *Definition.* Immorality is conduct which offends the morals of a community and is a bad example to the youth whose ideals a professional educator has a duty to foster and elevate. 22 Pa. Code §237.3(a); see also Horosko v. School Dist. of Mount Pleasant Twp., 335 Pa. 369, 372, 6 A.2d 866, 868 (1939), cert. denied, 308 U.S. 553 (1939).

(b) *Morals of a Community.* For purposes of the definition of the term "immorality" set forth in subsection (a), the "morals of a community" mean the morals of the community in which the professional educator is employed. 22 Pa. Code §237.3(b).

12. The Findings of Fact in this Proposed Order establish that Respondent's conduct while a teacher at the Pottstown School District offends the morals of the Pottstown community and is a bad example to the youth whose ideals he has a duty to foster and elevate and, therefore

constitutes immorality. 22 Pa. Code §237.3.

13. Respondent's inappropriate, verbal and physical conduct towards Miss [REDACTED], as set forth in the Proposed Findings of Fact, constitutes immorality, 22 Pa. Code §237.3.

14. Petitioner has sustained its burden of proof and has presented credible evidence to prove that Respondent is guilty of immorality in the performance of his job as a professional educator in the Commonwealth.

15. The statutory definition of intemperance is as follows:

§237.5. Intemperance.

Intemperance is a loss of self-control or self-restraint, which may result from excessive conduct. 22 Pa. Code §237.5; see also, Belasco v. Board of Public Education of the School Dist. of Pittsburgh, 87 Pa. Commw. 5, 486 A.2d 538, 541 (1985), aff'd, 510 Pa. 504, 510 A.2d 337.

16. Respondent's inappropriate communications and fixation on the attire and personal life of his former student, Miss [REDACTED] during the 1996-97 school year, which culminated into his unannounced visit to her home in Summer of 1997, wherein Respondent's penis was exposed to Miss [REDACTED] was a continuing display of his lack of self-control and self-restraint. Respondent displayed intemperance by failing to control himself from inappropriately communicating with Miss [REDACTED] regarding highly personal matters and by failing to control himself from visiting a

student's home for non-school purposes. 22 Pa. Code §237.5. The exposure of Respondent's penis to Miss ██████ was a result of his failure to maintain an appropriate level of self-control. 22 Pa. Code §237.5.

17. Respondent's inappropriate communications and conduct towards his student, Miss ██████ as set forth in the Proposed Findings of Fact, constitutes a loss of self-control and self-restraint and therefore constitutes intemperance. 22 Pa. Code §237.5.

18. Petitioner has sustained its burden of proof and presented substantial credible evidence to prove that Respondent is guilty of intemperance in the performance of his job as a professional educator in the Commonwealth.

19. The evidence of record, as provided in the Proposed Findings of Fact in this Order, establishes that the cumulative effect of Respondent's inappropriate communication and conduct is that he violated his primary responsibilities as a professional educator in the Commonwealth. His actions were also continuing violations of school laws and regulations:

- a. He violated his obligation to provide services and to conduct himself in a manner which placed the highest esteem on human rights and dignity when his penis was exposed to his female student. 22 Pa. Code §235.3(a).
- b. He violated his obligation to ensure that every student receives the highest quality of

service by failing to control his inappropriate suggestive communication and conduct towards a student. 22 Pa. Code §235.3(a).

- c. He violated his obligation to maintain a high level of competence during his tenure when he failed to discontinue his inappropriate suggestive communication and conduct towards a female student. 22 Pa. Code §235.3(a).
- d. He violated his obligation to recognize his primary responsibility to students and the development of their potential when his penis was exposed to a female student. 22 Pa. Code §235.3(b).
- e. He violated his obligation to the pursuit of truth and devotion to excellence by failing to acknowledge his inappropriate, suggestive communication and conduct towards a student throughout the course of this disciplinary matter. 22 Pa. Code §235.3(b).
- f. He violated his obligation to reflect proper behavior and attitudes through his verbal communication with students because of his inappropriate, suggestive communication towards a female student. 22 Pa. Code §235.4 (a), (b)(7).
- g. Finally, he violated his obligation to protect students from harmful conditions which might interfere with a student's learning process or injure a student's health and safety by failing to refer his female student to the proper counseling authorities to deal with all highly personal

problems. The exposure of his penis to Miss Hughes caused her to suffer emotional turmoil. He also endangered her emotional well-being when his penis was exposed to her. 22 Pa. Code §235.4(a), (b)(10).

20. Respondent's inability to admit to his inappropriate conduct and his failure to comprehend the degree in which his conduct negatively impacted his student, demonstrates Respondent's ongoing inability to meet the moral and character standards set by the Commission for professional educators in the Commonwealth.

21. The evidence presented by the Petitioner in the Proposed Findings of Fact in this Order substantially supports the conclusion that the appropriate discipline for Respondent is the suspension of his Pennsylvania teaching certificate for a six month period from the date of this Proposed Order, or until such time Respondent demonstrates, to the satisfaction of the Commission, during or prior to the expiration of the six month suspension period, that he has satisfactorily completed appropriate counseling, which establishes his ability to maintain appropriate professional relationships with students. Should Respondent fail to present such a showing by the expiration of the six month period, the Petitioner's request for the revocation of Respondent's certificate shall be granted.

22. The Respondent asserts that the matters referred to in the Petitioner's Notice of Charges should be dismissed because "the events complained of are alleged to have occurred on unspecified dates during the 1995-'96 and 1996-'97 school years, all before the one year time frame referenced

in the controlling statute. (24 P.S. §20-2070.9).” The provision referred to by Respondent provides, in relevant part, that:

... [a] proceeding to discipline a professional educator shall be initiated by the filing of a complaint with the department by any interested party within one year from the date of the occurrence of any alleged action specified under section 5(a)(11), or from the date of its discovery. Complaints involving sexual abuse or exploitation of a child or a student may be filed beyond the date of the alleged occurrence or date of its discovery up until five years after the child or student reaches 18 years of age. If the alleged action is of a continuing nature, the date of its occurrence is the last date on which the conduct occurred.” 24 P.S. §20-2070.9(a).

The code defines sexual abuse or exploitation as,

...[t]he employment, use, persuasion, inducement, enticement or coercion of a child or student to engage in, or assist any other person to engage in, any sexually explicit conduct or a simulation of any sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of any sexually explicit conduct or conduct that constitutes an offense under 18 Pa. C. S. Ch 31 (relating to sexual offenses) or section 6312 (relating to sexual abuse of children) or other forms of sexual exploitation of children or students. 24 P.S. §2070.1

23. Title 18 of the Pennsylvania Code provides that a person commits [the crime] of indecent exposure if that person exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront or alarm.” 18 Pa.C.S.A. §3127(a). Section 6312(a) defines, in relevant part, sexual abuse of children as the “lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.” 18 Pa.C.S.A. §6312(a)

24. Petitioner filed its complaint against Respondent on February 4, 2000 alleging grounds he committed actions deemed immoral, incompetent, cruel, negligent and intemperant based upon alleged conduct occurring during the 1995-1996 and 1996-1997 school years. More specifically, Petitioner's complaint was based upon alleged facts that on June 11, 1997, Respondent exposed his penis to a 16 year old Pottstown High School student while making an unannounced visit to the home of a past student with his two-year old daughter seated in the back seat of his van.

25. The factual basis upon which the Petitioner charged Respondent with actions in violation of his duties as a professional educator falls within the definition of sexual abuse or exploitation under the laws of this Commonwealth. As such, pursuant to 24 P.S. §20-2070.9(a), the Petitioner in this case had a statutory period measured "from the date of the alleged occurrence or date of its discovery up until five years after the child or student reaches 18 years of age," to file an action against Respondent in this matter. 24 P.S. §20-2070.9(a). Miss ██████ was born on June 13, 1979, and turned 18 years old on June 13, 1998. Pursuant to the above-referenced provision, Petitioner had five additional years from June 13, 1998 in which to file a complaint against Respondent, on or before June 13, 2003.

26. The Petitioner filed its complaint against Respondent on February 4, 2000 in accordance with the requirements of 24 P.S. §20-2070.9(a). Respondent's request to dismiss the complaint in this matter is therefore unwarranted and shall not be granted.

27. Finally, Respondent contends that this action should be dismissed because of a favorable Arbitration Award rendered on behalf of Respondent based upon the same facts which formed the basis of the Petitioner's complaint against Respondent in this case. Respondent has failed to present any persuasive legal argument upon which this claim can prevail. Respondent's request to dismiss the complaint in this matter is therefore unwarranted and shall not be granted.

DISCUSSION

A. Merits of the Case

1. Scope of Inquiry

In a professional disciplinary case, the Department of Education has the burden to show that grounds for discipline exist. 24 P.S. §2070.13(c)(2); 22 Pa. Code §233.13(e)(4)(ii). The Department must prove that Respondent's conduct violated existing law by a preponderance of the evidence.⁴ The Hearing Officer has determined, upon review of the entire record, that Petitioner has met its burden of proof by presenting a preponderance of evidence that grounds exist to discipline Respondent in this case.

The Department has requested the revocation of Respondent's teaching certificate based upon charges that his professional conduct supports such disciplinary action on grounds of immorality and intemperance. The legal foundation for disciplinary actions based upon such

⁴ Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Comm'n, 578 A.2d 600, 600-602 (Pa. Commw. 1990), appeal den'd, 602 A.2d 863 (Pa. 1991).

grounds is found in the Commission's bylaws, regulations and statutes related to the certification of professional educators in the Commonwealth.⁵ The Commission's stated goals and mission under these laws are to "determine the present, continuing, and future fitness and ability of a person to properly perform in this Commonwealth the duties and responsibilities of a professional educator in the area of the person's certification." 22 Pa. Code §237.2(b).

B. Respondent's Conduct

The evidence presented in this case provides sufficient evidence in support of the Department's charges that Respondent exhibited improper, professional conduct during the course of his dealings with a Pottstown High School student during the 1996-1997 school year. Respondent denies all material charges brought against him. He also contends that the Department failed to meet its burden of proof in establishing charges of immorality or intemperance and that the disciplinary action of revocation is therefore unfounded.

The Hearing Officer recognizes that the character evidence presented on Respondent's behalf establishes that Respondent is a well-respected, well-liked role model and that his colleagues from the Pottstown School District consider him an excellent teacher. They also praised his ability to relate to students on academic and personal matters. (Tr. 74,90-91,101-102,107-129). The Hearing Officer finds quite compelling character testimony which establishes Respondent's remarkable counseling efforts with students regarding highly personal matters that students were

⁵ See Conclusions of Law of this decision.

unlikely to share with other teachers or counselors. (Tr. 125). Respondent's character testimony supports the Hearing Officer's finding that Respondent be required to undergo appropriate counseling to assist him in maintaining healthy professional boundaries when relating to students.

Respondent's own testimony supports the finding in this case. Respondent testified that students were drawn to him because of his open and embracing manner. (Tr. 178-180). The Hearing Officer finds quite compelling evidence showing that as many as thirty of Respondent's past students returned to visit him frequently for academic and personal counseling. (Tr. 178) The Hearing Officer recognizes the commonality and benefit of having professional educators who relate well to students especially in cases where child abuse and endangerment circumstances may arise. Professional educators often serve as the early warning system in preventing such harms. The ability to relate well to students often enables the professional educator to meet their responsibility to "exert reasonable effort to protect the student from conditions which interfere with learning or are harmful to the student's health and safety," as required by the Code of Conduct.⁶ The evidence in this matter clearly establishes Respondent's ability to attract and relate to troubled students. The Hearing Officer raises the concern, however, of whether Respondent's infrequency in reporting students to school counseling services contributed to his attractiveness.

In Respondent's first two years of teaching at Pottstown High School, he occupied an elevated position of influence and power over the lives of vulnerable students. Perhaps in his

⁶22 Pa. Code §235.4(a), (b)(3),(7) & (10).

inexperience, Respondent failed to understand the heightened professional and ethical responsibility required of professional educators who serve as prominent “gatekeepers.” The evidence supports a finding that Respondent failed to maintain appropriate professional boundaries when relating to students regarding personal matters such as appropriate attire. Respondent’s inappropriate comments and conduct regarding Miss ██████’s attire establishes a consistent pattern of Respondent’s fixation on personal matters beyond appropriate professional boundaries. Miss ██████ testified that Respondent’s comments that her clothing was “see-through” or “too low-cut” made her feel uncomfortable when coming from a teacher instead of a parent. (Tr. 9-12, 33, 79-80, 140-143).

The evidence further establishes Respondent’s pattern of actively pursuing and prying into the personal life of Miss ██████. He asked pointed, follow-up questions regarding her personal, after-school activities. (Tr. 20-21, 58-61, 153-154, 166-167). The Hearing Officer further finds that Respondent encouraged student disclosure of such personal information by taking students into his classroom’s isolated “prep room” for private conversations. (Tr. 138, 141).

The Hearing Officer further notes the gradual intensity of Respondent’s involvement in Miss ██████’s personal life with the passage of time. One factor weighing heavily in Respondent’s favor is that he reported Miss ██████’s alleged drug use to the school’s PRO team. (Tr. 116-146). The record is devoid, however, of any evidence showing that Respondent referred or reported Miss ██████ to appropriate high school counseling authorities upon first hearing of her intent to run away from home and of her other alleged substance abuse. It is highly likely that Respondent would

have maintained an appropriate professional relationship with Miss ██████ had he enlisted earlier intervention by school counselors. Respondent testified to his ongoing uneasiness in dealing with students on personal matters. He testified that he now refers all student attire issues to the appropriate school officials and that he endeavors to maintain appropriate professional boundaries when relating to students regarding school and personal matters. The holding in this matter reflects the Hearing Officer's concern that Respondent undergo appropriate professional counseling to ensure that he has mastered an understanding of requisite professional boundaries before returning to the classroom.

Respondent claims that the magnitude of his conduct does not warrant the finding of immorality, intemperance or the revocation of his teaching certificate. When taken alone, Respondent's inappropriate statements to Miss ██████ regarding the "bottle cap and shirt;" the "desk and sweater;" the "trip to Bermuda;" a "hug at 18;" and his "purchase of a bathing suit" may not have warranted a disciplinary action at the level Respondent is presently facing (Tr 9-12, 33, 79-80, 140-143). It is the cumulative effect of his statements as a whole, when viewed in light of Respondent's penile exposure which aggravates his misconduct.

Moreover, the Hearing Officer places considerable weight on the impact Respondent's actions had on Miss ██████ during her very "troubled" teenaged years. The evidence substantially establishes that Miss ██████ suffered from substance abuse and serious parental relational issues during a time she sought guidance from Respondent, whom she viewed as a trusted adult authority figure in her life. Respondent violated his professional responsibility towards Miss ██████ during

what may have been a pivotal turning point in her life. He failed to weigh the gravity of consequences that his inappropriate comments and conduct might have on a troubled student in Miss ██████ position.

Miss ██████ testified that Respondent's actions left her confused, making her feel very uncomfortable and upset (Tr. 10-11, 79-80). She further stated that she was surprised by Respondent's actions in light of his position as her teacher (Tr. 10, 79-80). The Hearing Officer finds most compelling the fact that Miss ██████ left her mother's home and Pottstown High School to live with her father just a few months after Respondent's unannounced visit to her home. (Tr. 84). Most distressing is that Miss ██████ had not yet, at the time of the hearing in this matter, earned a high school diploma. (Tr. 5). The Hearing Officer does not mean to attribute or shift the blame for these unfortunate outcomes upon Respondent. There remain many unknowns in this case. It is unknown whether the absence of Respondent's inappropriate conduct in Miss ██████ life would have prevented her from leaving Pottstown High School. It is also unknown whether the presence of timely, appropriate intervention by Respondent and school officials would have enhanced Miss ██████' chances of earning a high school diploma. What is certain in this case is that Miss ██████ trust of her school teacher was violated. She was also placed in a position by her high school teacher where she could see his exposed penis. Further, she was discouraged in her pursuit of obtaining responsible adult guidance from one charged with protecting her from harmful conditions.

Respondent's denial of any and all misconduct in this case weighs heavily against a finding

that he is currently capable of maintaining professional boundaries with students without professional intervention. Respondent's failure to display forthright testimony regarding his interest and involvement in the private and personal life of Miss [REDACTED] substantially diminishes the weight of character testimony supporting Respondent's propensity for truth-telling. The Hearing Officer finds most disturbing Respondent's explanation of how he and his two-year old daughter ended up in the alley directly behind Miss [REDACTED] home on June 11, 1997. (Tr. 149-157). The highly skeptical aspect of Respondent's testimony is his assertion that he customarily took his two-year old daughter along while salvaging junk. (Tr. 149-151).

I. Immorality

Immorality is "conduct which offends the morals of a community and is a bad example to the youth whose ideals a professional educator has a duty to foster and elevate. 22 Pa. Code §237.3; see also, Horosko v. School District of Mount Pleasant Township, 6 A.2d 866, 868 (Pa. 1939), cert. denied, 308 U.S. 553 (1939). Respondent's conduct towards Miss [REDACTED] is the type of behavior which substantiates a finding of immorality. Commonwealth courts have determined that teachers who engage in inappropriate sexual behavior and who make sexually explicit, suggestive comments to students are guilty of immorality as sanctioned by the Teacher Education Laws of the Commonwealth.⁷

⁷See, Penn-Delco School District v. Urso, 382 A.2d 162, 168 (Pa. Commw. 1978); Manheim Central Education Association v. Manheim Central School District, 572 A.2d 31 (Pa. Commw. 1990), appeal denied, 582 A.2d 326 (Pa. 1990); Dohanic v. Pennsylvania Department of Education, 533 A.2d 812 (Pa. Commw. 1987); Bovino v. Board of School Directors of Indiana Area School District, 377 A.2d 1284 (Pa. Commw. 1977).

Substantial evidence was presented by Petitioner and even Respondent's character witnesses that Respondent's conduct if proven true went beyond acceptable boundaries of professional student/teacher relationships within the Pottstown community. Improper, suggestive comments made toward a female student and subjecting a student to the exposure of one's penis is inappropriate conduct for a professional educator and offends the morals of the Pottstown School District.

The evidence in this case establishes that Respondent's improper behavior provided a bad example for students. Respondent fostered an atmosphere where he undermined the pursuit of educational endeavors by engaging in very personal conversations with students that were beyond the boundaries of a teacher-student relationship. Further, Respondent's preoccupation with Miss ██████ personal life lead him dangerously down the path toward sexual harassment and impropriety. Respondent's inappropriate comments discouraged Miss ██████ from visiting Respondent while he was alone in his classroom. Respondent violated his duty of protecting Miss ██████ from harmful conditions while in his presence by creating an uncomfortable environment in his classroom.

The Hearing Officer places no weight on the testimony and evidence presented by Respondent that Miss ██████ pursued Respondent. The Hearing Officer assigns more weight to evidence showing that Miss ██████ limited her contact with Respondent after he had made a number of inappropriate comments. This evidence supports a finding that Miss ██████ considered Respondent's conduct as harmful. Miss ██████'s initial reaction was to discontinue all contact with

Respondent. The Department has proven, by a preponderance of the evidence, that Respondent's conduct constitutes immorality.

2. Intemperance

Petitioner has charged Respondent with intemperance as a result of his dealings with Miss Hughes. Intemperance is the loss of self-control or self-restraint, which may result from excessive conduct. 22 Pa. Code §237.5; see also Belasco v. Board of Public Education of the School Dist. of Pittsburgh, 486 A.2d 538, 541 (Pa. Comw. 1985), affid, 510 A.2d 337 (Pa. 1986). In recent cases before the Professional Standards and Practices Commission, the Commission has found that professional educators who communicate to students in a romantic and sexually-oriented manner guilty of intemperance.⁸

The Department has presented substantial evidence that Respondent lost his self-control and self-restraint when relating with Miss ██████. Respondent's loss of self-control is best represented by the exposure of his penis during his unannounced visit to her home. (Tr. 150-155). The Hearing Officer finds disturbing Respondent's pursuit of Miss ██████ after the school year had ended. The Department has met its burden of proving that Respondent's conduct constituted intemperance and that disciplinary action be taken.

⁸See, Department of Education v. Bonello, PSPC Docket NO. DI-95-13(1996); and, Department of Education v. Berner, PSPC Docket No. DI-98-24 (1998).

C. Disciplinary Action

The most challenging aspect of this case is weighing Respondent's improper conduct against his obvious teaching skill and success in light of the fact that Respondent is currently working as a professional educator pending disposition of this matter. Respondent has successfully proven that he has the technical teaching skill required as a professional educator in the Commonwealth. Unfortunately, Respondent's inability and failure to admit to the inappropriate comments and conduct in his dealings with Miss ██████ raises serious doubt of whether he realizes the magnitude of his actions. His denial of all allegations in this matter further raises the question of whether he possesses the requisite moral character to continue working as a professional educator. Respondent's acts of immorality and intemperance when viewed in conjunction with his unwillingness to take full responsibility for his misconduct in this case, warrants a finding that Respondent's teaching certificate must be suspended at this time.

It is favorable on behalf of Respondent that he did not engage in or overtly promote a sexual relationship with his student. (Tr-80-81). It is also favorable that Respondent did not acknowledge the exposure of his penis to Miss ██████ or solicit a response from her regarding such exposure. (Tr. 20-22, 60-65,81-82). It is also favorable that Respondent reported Miss ██████' alleged drug use to appropriate school officials. (Tr. 146-148). The Hearing Officer also considers favorable, Respondent's testimony that he currently refers all student attire issues to the school office.

(Tr. 192-194). It is also favorable that Respondent appears to recognize the need to maintain appropriate professional boundaries when relating with students and has taken some measures to protect against future student claims of impropriety. (Tr. 192-194). The Hearing Officer finds credible Respondent's testimony that he will proceed with great caution when relating with students on personal matters. The Hearing Officer is somewhat assured that Respondent would not comment inappropriately on the attire of students or visit their homes unless on official school business if he remains in his position.

Respondent views himself as having been victimized by this proceeding. His greatest remorse in this case stems from having had to suffer through the public embarrassment and ridicule associated with such allegations. Respondent has learned that any repeat of this type of behavior will cause him trouble and prevent him from working as a professional educator in the Commonwealth. The Hearing Officer also places some weight upon character witness testimony that the alleged conduct was inconsistent with their opinion of Respondent's typical behavior towards students. Based upon these factors, the Hearing Officer concedes that Respondent's inappropriate conduct leading to the exposure of his penis may have been a series of isolated events of bad judgment that do not warrant the revocation of his teaching certificate at this time.

Unfortunately, the weight of these favorable factors is greatly diminished in light of Respondent's failure to show any remorse for his actions. Respondent has failed to show any significant remorse for the student who suffered because of his improper actions. He has further failed to demonstrate an understanding that he is solely responsible for allowing his dealings with

Miss ██████ to cross over professional boundaries. Respondent's lack of remorse for his actions as they impacted Miss ██████ exhibited by his callous reference to her as an unremarkable student along with his unwillingness to acknowledge any of his inappropriate conduct towards Miss ██████ weighs greatly against his credibility as a witness and his current fitness to teach without appropriate counseling.

V. CONCLUSION

The conclusion of this matter leaves the Hearing Officer with uncertainties regarding Respondent's ability to perform his duties as a professional educator in the Commonwealth. It is unknown whether Respondent possess the ability to exercise good judgement while relating to students. What is most uncertain is whether Respondent appreciates the power and great influence he possesses as a teacher, a role model and person in authority over students who are in their most vulnerable stages of adolescent development.

The Commission is charged with the responsibility of ensuring that professional educators are skilled and equipped to provide safe and healthy educational environments for the welfare of students. While Respondent has demonstrated the technical skills necessary to teach his subject matter, the Department has presented substantial evidence that he currently lacks the requisite understanding and ability to exercise good judgement in maintaining appropriate boundaries with students. At this time, the Hearing Officer has determined that it would be unsafe to allow Respondent to continue teaching in the Commonwealth without professional intervention.

Miss ██████ sought out Respondent during a time when she was experiencing serious teenage problems. Respondent was not prepared nor equipped to respond to her cry for help. Her issues were most likely compounded by Respondent's flirtatious actions. Miss ██████' inability to recall specific dates and times of Respondent's improper actions during her testimony illuminates the tumultuous times she faced while in high school. Even though some of the events were fogged and her memory slow to account, perhaps as a result of her alleged drug use, the Hearing Officer found Miss ██████' testimony most compelling and her conviction strong that Respondent did say inappropriate things to her which made her very uncomfortable. She has not forgotten how betrayed she felt by a teacher whom she thought would help her. And even after the passage of five years, she still recalls the humiliation and shock she experienced when seeing her teacher's exposed penis as he was parked behind her house.

Respondent's improper conduct was an early warning signal of his need for additional professional guidance. Although the nature of his actions fell dangerously close to warranting the immediate revocation of his teaching certificate, the Hearing Officer has determined that with proper help Respondent may be capable of heeding this warning. It is highly probable that upon receiving appropriate counseling or other such therapy, Respondent will be able to understand the gravity of his improper dealings with Miss ██████ and the negative impact he may have had on her life. Respondent will also need to show that he is capable of establishing and maintaining appropriate professional boundaries when relating with students. Until such time, the Hearing

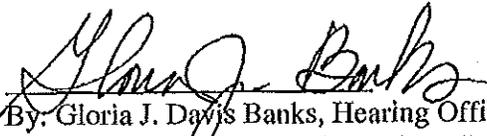
COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

Department of Education, : PSPC
Petitioner,

v.
Thomas R. Smith : Docket No. DI-00-05
Respondent, :

PROPOSED FINAL ORDER

AND NOW, this 20th day of February 2002, it is hereby recommended that the Department of Education be directed to suspend the teaching certificate of Thomas R. Smith on the basis of immorality and intemperance for a period of six months, reinstatement contingent upon Respondent's successful completion of appropriate professional vocational counseling mutually acceptable by both parties in this matter.


By: Gloria J. Davis Banks, Hearing Officer
Professional Standards and Practices Commission
6154 Tyler Drive
Harrisburg, Pa 17112
(717)545-4816
I.D. #49630

Dated and Hand-Delivered on February 20, 2002 to the Commission.
Mailed on February 20, 2002 to Petitioner and Respondent.

NOTE: UNLESS EXCEPTIONS ARE FILED WITH THE PROFESSIONAL STANDARDS AND PRACTICES COMMISSION WITHIN THIRTY (30) DAYS OF THE DATE SHOWN ABOVE, THIS PROPOSED DECISION AND ORDER WILL BECOME FINAL.
24 P.S. §2070.14(a).