

**COMMOWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION**

**DEPARTMENT OF EDUCATION,
Petitioner**

v.

**JOSEPH CORRADO,
Respondent.**

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PSPC Docket No. DI-00-21

ADJUDICATION AND ORDER

This matter comes before the Professional Standards and Practices Commission (“Commission”) on Exceptions filed by Joseph Corrado (“Respondent”) to the hearing officer’s Proposed Decision and Order.

The Department of Education initiated disciplinary proceedings against Respondent with the filing of a Notice of Charges on August 4, 2000. In the Notice of Charges, the Department sought professional discipline¹ pursuant to the Teacher Certification Law, *as amended* 24 P.S. §2070.1 et seq.², on the grounds of immorality, intemperance and cruelty. Specifically, the Department alleged that Respondent, while serving as a fourth grade teacher in the South Butler County School District during the 1998-99 school year, engaged in inappropriate conduct towards a female student in his class.

¹ At the time of the issuance of the Notice of Charges, Respondent held an Instructional I teaching certificate endorsed in the area of Elementary Education.

² Subsequent to the filing of the Notice of Charges, the Law was amended by the Act of November 21, 2000, (P.L. 918, No. 123), and is now known as the Professional Educator Discipline Act (“Act”). When discussing actions taken by the Department in processing this disciplinary action, references to the former Law will be used as it was controlling at that time.

In response to the Petition filed by the South Butler County School District, the Commission granted the District's request to intervene on August 28, 2000. On September 8, 2000, Respondent filed his Answer and Request for a Hearing and the Commission subsequently appointed a Hearing Officer. Hearings were conducted on May 22 and 23, 2001, and the Hearing Officer issued a Proposed Decision and Order on January 30, 2002, finding Respondent guilty of immorality, intemperance and cruelty and recommending that the Commission revoke Respondent's professional teaching certificate.

Respondent filed Exceptions to the Proposed Report on or about March 1, 2002, and the Commission entertained oral argument on May 6, 2002. After careful consideration of the formal record³ and Respondent's Exceptions, the Commission accepts the proposed decision and order of the Hearing Officer and dismisses the Respondent's Exceptions.

FINDINGS OF FACT

1. The Department of Education ("Department") issued an Instructional I teaching certificate endorsed in the area of Elementary Education to Respondent in September, 1995.

2. During the 1998-99 school year, Respondent served as a fourth grade teacher at the Winfield Elementary School in the South Butler County School District ("District"). N.T.⁴ at pp. 105, 332.

³ The "formal Record" is defined in the General Rules of Administrative Practice and Procedure as including, *inter alia*, the filings and submittals in a proceeding and the hearing transcript and exhibits received or offered in evidence, motions and stipulations. 1 Pa. Code §31.3.

⁴ "N.T." refers to the Notes of Testimony taken at the May 22-23, 2001, hearings.

3. was a 10 year old student in Respondent's fourth grade class during the 1998-99 school year. N.T. at pp. 15, 105.

4. During the 1998-99 school year, Respondent courted with conduct including:

- a. placing gifts of food and snacks in locker several times a week. N.T. at pp. 108, 132, 211, 219-20, 225, 311-12, 328-29;
- b. seeking opportunities to be with , particularly outside of the classroom. N.T. at pp. 42-44, 87-90, 105-07, 112-13, 119-26, 132-34, 283-300, 312-13, 366;
- c. expressing his romantic feelings for in both speech and in physical contact. N.T. at pp. 107-08, 110-12, 119, 122-24, 127, 133-34, 136-38, 162-63, 220-21;
- d. giving gifts to . PDE Exh. Nos. 1, 4; N.T. at pp. 109-10, 112-15, 129-31, 137-38, 211;
- e. demonstrating favoritism towards in class. N.T. at pp. 107-32, 115-32, 211-25, 238, 258-59, 278-80, 310-13, 326-27;
- f. making inappropriate comments of a personal nature to . N.T. at pp. 106-07, 111-13, 119, 122-24, 133-34; and
- g. manufacturing a relationship with family in order to visit the family home/business on a regular basis. N.T. at pp. 25, 366-69, 371, 382-84.

5. Several students in fourth grade class noted Respondent's singular treatment of and complained to their parents about the apparent favoritism. N.T. at pp. 211-13, 219-25, 229, 238, 258-59, 278-79, 310-13, 326-28.

6. The mother of one of classmates wrote an anonymous letter dated February 24, 1999, to the principal at Winfield Elementary complaining

about the favoritism Respondent demonstrated towards [redacted] specifically and expressing her general unease about Respondent's relationship with the female students in his class. PDE Exh. No. 7; N.T. at pp. 203-07, 210.

7. Upon receipt of the anonymous letter, the principal met with Respondent and instructed him to desist from the conduct described in the letter, including demonstrating favoritism and being alone with any female students. N.T. at pp. 29-30, 86, 330-34.

8. Subsequent to his meeting with the principal in February, 1999, Respondent continued to manipulate opportunities to be alone with [redacted]. N.T. at pp. 31, 88-89, 288-89, 334.

9. On several occasions, Respondent organized unauthorized out-of-school trips with selected students in his class, including [redacted]. N.T. at pp. 84, 106-07, 125, 209, 283, 292-93, 312-13, 336-38.

10. One of the parents that participated in an out-of-school trip observed Respondent's inappropriate fixation with [redacted]. N.T. at pp. 284-89.

11. Realizing that her younger sister may be placed in Respondent's class for the upcoming 1999-2000 school year, [redacted] told her parents about Respondent's inappropriate conduct in August of 1999. N.T. at pp. 134, 374-78.

12. [redacted] parents advised the District of [redacted] allegations and removed [redacted] and her sister from the Winfield Elementary School. N.T. at pp. 263, 316, 335, 381.

13. After investigation of allegations, the District instituted dismissal charges against Respondent, who subsequently resigned after an arbitrator found that the District had just cause to terminate Respondent's employment with the District.

14. Following the arbitrator's decision, the District filed a mandatory report with the Department under 24 P.S. §2070.9⁵, advising that Respondent was to be dismissed for cause.

15. Upon receipt of the mandatory report, the Department filed a complaint under 24 P.S. §2070.9⁶ and initiated hearing procedures with the filing of a Notice of Charges within 30 days of receipt of the arbitration transcript as required by sections 2070.9(e)(3)⁷ and 2070.13 of the then controlling Teacher Certification Law.

16. The Department filed a Notice of Charges with the Commission against Respondent on August 4, 2000.

DISCUSSION

In his Exceptions, Respondent objects to the majority of the Hearing Officer's findings of fact on the grounds that the findings either rely on "uncorroborated testimony"; are irrelevant and erroneous; or are not supported by substantial evidence⁸. Respondent also complains that his procedural due

⁵ See §2070.9.1(a) under current Act.

⁶ See §2070.9 under current Act.

⁷ The "30 day requirement" was eliminated in the amendments to the Law with the passage of the Professional Educator Discipline Act, which was effective February 20, 2001.

⁸ Respondent erroneously characterizes the standard of proof in this administrative proceeding as one of "substantial evidence." The Commission and its hearing officers are governed by a

process rights were violated; that the Hearing Officer's decision was untimely; and that there was no evidence to support all of the elements of the charge of immorality. The Commission finds each of the Respondent's exceptions to be without merit.

Procedural Issues

The Notice of Charges Comported with Due Process

Respondent first complains that he lacked reasonable certainty of the charges against him and thus was unable to adequately prepare a defense in violation of his due process rights. Specifically, Respondent argues that some of the prosecutorial evidence proffered at the hearing was not specifically detailed in the Notice of Charges and thus constituted "approximately thirteen additional charges".

While we agree that due process demands that Respondent be apprised of the charges against him with sufficient particularity in order that he can adequately prepare a defense, Respondent misapprehends the concept of sufficient particularity. In the instant case, the Notice of Charges advised Respondent that the Department was pursuing discipline on the grounds of immorality, intemperance, and cruelty. The Notice also detailed the misconduct which supported the charges:

"preponderance of the evidence" standard. North American Coal Corp. v. Air Pollution Commission, 2 Pa. Commonwealth Ct. 469, 279 A.2d 356 (1971).

- (3) During the 1998-99 school year, Respondent engaged in inappropriate conduct toward female student ., including but not limited to the following:
- (a) showed favoritism toward the student by letting her win classroom contests;
 - (b) gave the student answers to tests;
 - (c) told the student she was his favorite student;
 - (d) put food, stuffed animals, and other gifts in the student's locker;
 - (e) frequently told the student she looked pretty;
 - (f) gave the student a ride home from school;
 - (g) gave the student his home telephone number
 - (h) asked the student if she had had her period;
 - (i) rubbed the student's hair, rubbed the student's back, and put his arm around the student's shoulders;
 - (j) kissed the student's forehead;
 - (k) hugged the student;
 - (l) told the student that he loved her and wanted to marry her.

Notice of Charges (August 4, 2002) at ¶A(3) (emphasis added). Respondent argues that his rights were jeopardized by the admission of admittedly similar evidence, including the anonymous complaint from a parent, the unauthorized out-of-school trips with students, and the giving of items not listed in the Notice (e.g., hair clips and gummy bears).

Under Respondent's theory, any evidence not specifically listed in the Notice of Charges constitutes an additional charge and must be excluded from the hearing. To be constitutionally sound, however, notification only must provide a party with sufficient information to allow him to marshal a defense.

Mellon v. Travelers Insurance Co., 267 Pa. Super. 191, 197, 406 A.2d 759, 762 (1979). Due process does not require an exhaustive preview of all evidence in support of the charges.

In the instant case, the evidence presented did not broaden the issues identified in the Notice of Charges, but rather served to develop the crux of the

charges --- specifically that Respondent engaged in inappropriate conduct towards a 10 year-old female student in his fourth grade class. In contrast to Mellon, supra, the Department here did not prosecute a distinct claim at the hearing; nor did the hearing officer consider charges not presented in the Notice of Charges. The Notice of Charges adequately apprised Respondent of the allegations underlying the discipline action and was sufficiently detailed to allow him to prepare a defense.

Government Functions Were Not Impermissibly Commingled

Respondent argues that the disciplinary proceedings under the Professional Educator Discipline Act are marred by improper commingling of judicial and prosecutorial functions. In support of this argument, Respondent merely asserts that the Department, which prosecutes the case, is “closely joined” with the Commission, which serves as the ultimate fact finder in the case. He reaches this conclusion by virtue of the fact that the Chair of the Commission sits *ex officio* on the State Board of Education, that the General Assembly has funded the Commission through an appropriation to the Department, that the Governor’s office provides the Commission with legal counsel, and that the Commission uses Department of Education envelopes.

While Respondent is correct in his recitation of selective facts, his application of due process principles to the statutory framework is erroneous. Due process requires a separation of prosecutorial and adjudicatory functions to ensure a fair and impartial adjudication. Lyness v. State Board of Medicine, 529 Pa. 535, 605 A.2d 1204 (1992). In the instant case, the Commission is an

independent body whose 13 members are appointed by the Governor with the advice and consent of the Senate. 24 P.S. §2070.3. In addition to enjoying an advisory role to the State Board of Education on varied certification issues, the General Assembly charged the Commission with responsibility for **adjudicating** professional educator discipline⁹.

In contrast, the Professional Educator Discipline Act places responsibility for **prosecuting** professional educator discipline before the Commission with the Department. 24 P.S. §2070.1 et seq. The two entities, the Commission and the Department, are separate and distinct notwithstanding the fact that the General Assembly elected to pass operating funding for the Commission thru the general government appropriation of the Department. 24 P.S. §2070.7. The requisite walls of division between the prosecutorial and adjudicatory functions are inherent in assignment of the discrete functions to two administrative entities that are statutorily independent of each other. Kinnery v. Professional Standards and Practices Commission, 678 A.2d 1230 (Pa. Commonwealth Ct. 1996) (finding no impermissible commingling under the decertification process).

The Commission does not mean to suggest that it does not share a common overriding constitutional mandate with the Department, the Governor and the State Board of Education; namely, to provide support for a thorough and efficient system of public education. Respondent's suggestion that the necessary symbiosis that occurs between the Governor, the executive agencies, and the independent Boards and Commissions constitutes impermissible

⁹ Prior to the creation of the Commission, this adjudicatory function was performed by the Secretary of the Department of Education.

commingling is remarkable. As the Court in Lyness noted, ultimately each administrative agency and commission is a subdivision of a single entity --- the Commonwealth, but this fact does not render their collective work constitutionally infirm. Lyness, supra, 605 A.2d at 1209.

The Department Complied With the Procedures Found in the Professional Educator Discipline Act

The Respondent complains that the Department failed to follow the statutory procedure prescribed by the Professional Educator Discipline Act, thereby invalidating the entire proceeding. After a review of the procedure followed by the Department, the Commission rejects Respondent's argument.

In the instant case, the District instituted a dismissal proceeding¹⁰ against Respondent under the Teacher Tenure Act, 24 P.S. §11-1126 to §11-1133. At the close of the arbitration hearing on the dismissal charges, the arbitrator found that there was just cause for the dismissal and Respondent subsequently resigned his position. As required by 24 P.S. §2070.9, the District advised the Department of the Respondent's impending dismissal with the filing of a mandatory report. The Department then filed a complaint and initiated hearing procedures with the filing of a Notice of Charges within 30 days from the District's notice that an arbitration hearing had been held upholding Respondent's dismissal. Filing the Notice of Charges within the 30-day period was required by sections 2070.9(e)(3) and 2070.13 of the Teacher Certification Law, which was controlling during the pertinent time period.

¹⁰ The grounds for dismissal arose out of the conduct that underlies the instant proceeding.

The controlling statute expressly mandated the procedure followed by the Department in what was commonly called a “30-day case”. In cases where the district had already investigated and taken action against an educator, the law dispensed with the preliminary investigatory stages¹¹ established by section 2070.9 of the Teacher Certification Law. Thus, the Department was not required to send out letters to the Respondent notifying him that after review of a complaint lodged against him, the Department had or had not determined that legal sufficiency¹² or probable cause for the allegations existed. As the Department notes, these preliminary letters trigger neither a need nor a right to defend but are merely intended to apprise the affected educator with notice that a complaint has been filed and whether the Department intends to pursue the allegations.

In the instant case, the Department initiated a written Notice of Charges, which was served upon Respondent, in lieu of the preliminary notification. The Notice of Charges, which is treated as an Order to Show Cause under 22 Pa. - Code §233.13(e)(1)(i), adequately informed Respondent of the charges lodged against him. The Respondent has failed to establish that the Department’s procedure departed from the statute’s requirements or how he was prejudiced by any such purported departure. Seltzer v. Department of Education, 782 A.2d 48 (Pa. Commonwealth Ct., 2001)(noting that the mere demonstration of a potential

¹¹ The preliminary stages of the proceeding under the statute contemplated time for investigation by both the District and the Department.

¹² In his Brief on Exception, Respondent erroneously characterizes the preliminary notification to Respondent as a “Sufficiency of Complaint”.

procedural error without demonstration of the resulting harm is insufficient to disturb an agency's adjudication.)

The Failure of the Hearing Officer to Issue a Proposed Decision Within the Statutory Period Does Not Invalidate the Decision

Respondent contends that the decision of the Hearing Officer was beyond the statutory time periods as set forth in 24 P.S. §2070.13(c)(7). Rejecting this argument previously, the Commonwealth Court has stated that “any purely judicial function cannot be deemed invalid or illegal by a statute’s requiring a judicial action to occur within a certain period of time. Gow v. Department of Education, 763 A.2d 528, 533 (Pa. Commonwealth Ct., 2000). Accordingly, the time periods set forth in the Professional Educator Discipline Act are directory, not mandatory, and Respondent’s exception is without merit.

Substantive Issues

Respondent generally excepts to all of the Hearing Officer’s findings of fact as being unsupported by the evidence or uncorroborated. The essence of Respondent’s complaints center on the Hearing Officer’s rejection of his testimony as not credible and, conversely, his acceptance of the testimony of the prosecution witnesses as credible.

As the ultimate fact finder, the Commission must judge the weight and credibility of evidence and witnesses. After careful scrutiny of the record, the Commission concludes that the Respondent is guilty of immorality.¹³ Immorality is conduct which offends the morals of a community and is a bad example to the

¹³ As the Commission has found overwhelming evidence supporting the charge of immorality justifying the imposition of discipline, the Commission need not determine whether the Respondent is also guilty of cruelty and intemperance as alleged by the Department.

youth whose ideals a professional educator has a duty to foster and elevate. 22 Pa. Code §237.3. Teachers occupy positions of trust and confidence and are uniquely situated to exert considerable influence over their students. The hallmark of this fiduciary relationship is that the teacher, who has superior power and responsibility, will exercise that power only in the best interests of the student.

Viewing Respondent's conduct over the 1998-99 school year, it is clear that he breached the boundary limits that are necessary for healthy professional relationships with a student. Respondent's conduct reflects an insidious and escalating pattern, which exploited the trust and confidence the student, her parents and the community placed in him and in the public school system as a whole. From Respondent's subtle favoritism of _____, his inappropriate comments, and his expressions of romantic feelings for _____ to his engineering of opportunities to be with _____, either alone or with her family, Respondent's conduct reflects inexcusable poor judgment, offends community standards¹⁴, sets a bad example for students and is unacceptable. See Dohanic v. Department of Education, 111 Pa. Commonwealth Ct. 192, 533 A.2d 812 (1987); Keating v. Board of School Directors of the Riverside School District, 99 Pa. Commonwealth Ct. 337, 513 A.2d 547 (1986). Accordingly, the Commission finds that Respondent is guilty of immorality and enters the following:

¹⁴ Respondent argues that there is no evidence that his conduct offended the morals of the community. The offensive nature of his conduct is explicit in the testimony of several witnesses and implicit in the dismissal action brought by the District. N.T. at pp. 61-65, 298-99, 303, 335, 340.

ORDER

AND NOW, this __9th__ day of July, 2002 upon consideration of the Exceptions filed by the Respondent Joseph Corrado, it is hereby ORDERED that the Exceptions be DISMISSED and the Commission hereby ORDERS the Department to REVOKE the teaching certificates of Respondent.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By: _____
Richard D. Hupper
Chairperson

Attest: _____
Carolyn Angelo
Executive Director

Date Mailed: