

misdemeanor involving moral turpitude whenever a certified copy of the verdict, judgment or sentence of court is filed with the Commission. 24 P.S. §2070.5(a)(11).

In support of its Motion, the Department attached certified copies of the pertinent court documents reflecting Respondent's conviction. Respondent, having been served by certified mail with the Notice of Charges and the Motion for Summary Judgment, failed to respond to either pleading. Accordingly, the facts alleged in the Notice of Charges are deemed admitted. 22 Pa. Code §233.13(e)(1)(iii); 1 Pa. Code §35.28.

In the instant case, there is no dispute that Respondent was convicted of the crime of Lewd Act Upon a Child. Thus, the only question before the Commission is whether this crime involves moral turpitude. The determination of whether a crime involves moral turpitude is based solely upon the elements of the crime or misdemeanor. The facts underlying the charges are not relevant to the issue of moral turpitude. 22 Pa. Code §237.9(b); Startzel v. Commonwealth, Department of Education, 128 Pa. Commonwealth Ct. 110, 114, 652 A.2d 1005, 1007 (1989).

Under Chapter 15 of Title 16 of the South Carolina Crimes Code (Offenses Against Morality and Decency), the crime of Committing or attempting lewd act upon child under sixteen is defined as follows:

It is unlawful for a person over the age of fourteen years to willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of the child.

A person violating the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than fifteen years, or both.

S.C. Code §16-15-140. Out-of-state crimes that are similar to crimes that have been

determined by regulation to involve moral turpitude are, by regulation, found to fall within the definition of moral turpitude. 22 Pa. Code §237.9(c); 24 P.S. §1-111(e)(1). In the instant case, the South Carolina crime of committing a Lewd Act Upon a Child is strikingly similar to the Pennsylvania crime of Indecent Assault:

A person who has indecent contact with the complainant or causes the complainant to have indecent contact with the person is guilty of indecent assault if ... the person does so by forcible compulsion ... the complainant is less than 13 years of age; or the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

18 Pa. C.S. §3126(a).

Accordingly, there is no genuine issue as to any material fact and immediate revocation of Respondent's teaching certificate will be ordered as a matter of law.

ORDER

AND NOW, this 20th day of November, 2000, upon consideration of the Motion for Summary Judgment filed by the Department of Education, it is hereby ORDERED that the professional teaching certificate issued to Respondent Raymond J. Sbuscio shall be REVOKED by the Department pursuant to section 5(a)(11) of the Teacher Certification Law, as *amended*, 24 P.S. § 2070.5(a)(11). In addition, the Commission finds that Respondent is deemed to have admitted that he is a danger to the health, safety and welfare of the students of this Commonwealth. Thus, the revocation shall be effective IMMEDIATELY.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

BY:

Richard D. Hupper
Chairperson

ATTEST:

Carolyn Angelo
Executive Director

Date Mailed: