

**COMMONWEALTH OF PENNSYLVANIA  
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION**

<b>DEPARTMENT OF EDUCATION,</b>	:	
<b>Petitioner,</b>	:	
	:	
	:	
<b>v.</b>	:	<b>DOCKET NO. DI-15-50</b>
	:	
<b>CHRISTOPHER CHEPELEVICH,</b>	:	
<b>Respondent.</b>	:	

**MEMORANDUM AND ORDER**

This matter is before the Professional Standards and Practices Commission (“Commission”) upon the Department of Education’s (“Department”) Motion for Summary Judgment. Initially, the Department filed a Notice of Charges against Respondent on June 2, 2015, alleging that Respondent had been convicted of Obscene Communication-Use Computer to Seduce, Solicit, Lure Child (F.S.A. § 847.0135(3)(a)) and Obscene Communication-Travel to Meet After Use Computer to Lure Child (F.S.A. § 847.0135(4)(a)) in the state of Florida. In its Motion for Summary Judgment, filed simultaneously with the Notice of Charges, the Department requests that the Commission revoke Respondent’s Pennsylvania educator certification<sup>1</sup> and employment eligibility pursuant to section 9b(a)(2) of the Educator Discipline Act.

Section 9b(a)(2) of the Educator Discipline Act requires the Commission to direct the Department to revoke the certification and employment eligibility of an educator convicted of a crime involving moral turpitude or a crime listed in sections 111(e)(1) through (3) of the Public School Code of 1949 upon the filing of a certified copy of the verdict, judgment or sentence of the court with the Commission. Section 111(e)(3)

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1. Respondent holds an Instructional I Pennsylvania teaching certificate in the area of Social Studies 7-12.

includes crimes from another jurisdiction that are similar in nature to the Pennsylvania crimes listed in sections 111(e)(1) and (2). 24 P.S. § 2070.9b(a)(2); 24 P.S. § 1-111(e)(1)-(3). In support of its Motion, the Department attached certified copies of the pertinent court documents reflecting Respondent's convictions.

The Department properly served the Notice of Charges and Motion for Summary Judgment on Respondent. The Notice of Charges informed Respondent of his right to request a hearing within 30 days of service and cautioned him that failure to respond could result in the factual assertions being deemed admitted and the imposition of discipline without a hearing. On July 6, 2015, four days after his response to the Notice of Charges was due, Respondent submitted a letter in which he acknowledged his convictions, but maintained his innocence. Respondent also raised numerous alleged errors in the criminal proceedings. Respondent failed to request a hearing, but rather asked that any action be deferred pending the outcome of his criminal appeal. Under section 35.37 of the General Rules of Administrative Practice and Procedure, the answer to an order to show cause<sup>2</sup> "shall be drawn so as specifically to admit or deny the allegations or charges which may be made in the order, set forth the facts upon which respondent relies and state concisely the matters of law relied upon." An answer that fails to comply with the requirements of section 35.37 may be deemed a basis for entry of a final order without a hearing. Additionally, an educator failing to file a proper answer within the time allowed shall be deemed in default. 1 Pa. Code § 35.37; 22 Pa. Code § 233.115(c)(1). Respondent failed to timely file an answer as contemplated by

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2. The Commission treats the Department's Notice of Charges as an Order to Show Cause. 22 Pa. Code § 233.115.

the General Rules of Administrative Practice. Thus, all relevant facts stated in the Notice of Charges will be deemed admitted and the Commission will proceed to consideration of the Department's Motion for Summary Judgment.<sup>3</sup>

We can grant summary judgment where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Snyder v. Department of Environmental Resources, 588 A.2d 1001 (Pa. Cmwlth. 1991). In the instant case, there is no dispute that Respondent was convicted of the Florida crimes of Obscene Communication-Use Computer to Seduce, Solicit, Lure Child and Obscene Communication-Travel to Meet After Use Computer to Lure Child. Thus, the only question before the Commission is whether these crimes involve moral turpitude or are similar in nature to the crimes listed in section 111(e)(1) of the Public School Code of 1949. To determine whether an in-state offense and an out-of-state offense are similar in nature, the Commission carefully compares the elements of the two crimes in terms of the definition of the conduct or activity proscribed (the *actus reus*) and the requirements for culpability (the *mens rea*). The laws need not be identical to be similar; it is sufficient that the laws be nearly corresponding or have a general likeness. Com. v. Simpson, 294 A.2d 805 (Pa. Super. 1972). The Commission's purpose is to

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3. Even if we were to treat Respondent's letter as a proper answer, section 9b(a)(2) of the Educator Discipline Act limits our consideration to one issue: whether Respondent has been convicted of a crime involving moral turpitude or a crime enumerated in sections 111(e)(1)-(3) of the Public School Code of 1949. In his letter, Respondent does not dispute his convictions, nor does he argue that the crimes for which he has been convicted are not crimes involving moral turpitude or crimes similar in nature to a crime set forth in section 111(e)(1) of the Public School Code. While Respondent claims he was wrongly convicted, we may not consider the propriety of the underlying conviction in proceedings under section 9b(a)(2) of the Educator Discipline Act. Accordingly, there are no material facts in dispute and this matter is ripe for summary judgment. However, in the event that Respondent successfully appeals his conviction, the Commission will direct the Department to immediately reinstate his certificate and employment eligibility upon receipt of certified court documents establishing that his conviction was reversed.

give the educator's conduct the same effect it would have if the conduct had occurred in Pennsylvania.

The Department contends that the Florida crimes of which Respondent has been convicted are similar in nature to the Pennsylvania crime of Unlawful Contact with a Minor (18 Pa.C.S. § 6318), which is a crime enumerated in section 111(e)(1) of the Public School Code of 1949, because the Pennsylvania and Florida crimes similarly proscribe communications with minors or with persons posing as minors for the purposes of engaging in prohibited activity, including activity of a sexual nature. After carefully reviewing the elements of each offense, the Commission agrees and accordingly finds that Respondent has been convicted of an out-of-state offense similar in nature to a crime enumerated in section 111(e)(1) of the Public School Code of 1949.

The determination of whether a crime involves moral turpitude is based solely upon the elements of the crime. 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). The Florida crimes of Obscene Communication-Use Computer to Seduce, Solicit, Lure Child and Obscene Communication-Travel to Meet After Use Computer to Lure Child clearly involve "an act of baseness, vileness or depravity" and conduct "done knowingly contrary to justice, honesty or good morals." See 22 Pa. Code § 237.9(a). Moreover, crimes from another jurisdiction that are similar in nature to the Pennsylvania crimes listed in sections 111(e)(1) and (2) of the Public School Code of 1949 are *per se* crimes involving moral turpitude. 22 Pa. Code § 237.9(c). Accordingly, the Commission also concludes that Respondent's offenses involve moral turpitude.

In light of the Commission's determination that Respondent has been convicted of section 111(e)(3) crimes and crimes involving moral turpitude, there is no genuine issue as to any material fact and the Department is entitled to judgment in its favor as a matter of law as the Educator Discipline Act mandates revocation. 24 P.S. § 2070.9b(a)(2).

The Department also requests that the Commission enter a finding that Respondent is guilty of sexual abuse or exploitation. The import of a finding of sexual abuse or exploitation is that the Commission is permanently barred from reinstating Respondent's certification and employment eligibility. 24 P.S. § 2070.16. Pursuant to section 2070.1b of the Educator Discipline Act, sexual abuse or exploitation shall have the meaning given to the term by 23 Pa.C.S. Ch. 63 (relating to child protective services), which includes "[t]he employment, use, persuasion, inducement, enticement or coercion of a *child* to engage in or assist another individual to engage in sexually explicit conduct..." or any of the thirteen enumerated Pennsylvania "offenses committed against a child..." "Child" is defined as "[a]n individual under 18 years of age." 23 Pa. C.S. § 6303(a)(*emphasis added*). While we in no way wish to condone or minimize Respondent's deplorable behavior, we are constrained to conclude that under the circumstances of this case the Department has failed to establish as a matter of law that Respondent is guilty of sexual abuse or exploitation. Although Respondent clearly believed that he was communicating with a child, the person on the other end of those communications was in fact an undercover officer posing as a child. By its plain language, the definition of sexual abuse or exploitation that the Commission has adopted clearly contemplates the involvement of an actual child under the age of eighteen as opposed to

someone who appears to be or someone who the educator believes to be a child.<sup>4</sup>

Accordingly, we find that Respondent is not guilty of sexual abuse or exploitation.<sup>5</sup>

Finally, the Department requests that the Commission enter a finding that immediate discipline is necessary to protect the health, safety or welfare of students or other persons in the schools of this Commonwealth. The import of this finding is that in the event an appeal is filed from the Commission's adjudication imposing discipline, the finding prevents the appeal from acting as a stay of the discipline. Thus, in those cases where the Commission finds that the danger presented by an educator's conduct outweighs the educator's interest in deferring discipline until an appellate court reviews the Commission's decision, it will enter the requested finding.

The facts underlying Respondent's convictions are that he engaged in sexually explicit online communications with a person whom he believed to be a fifteen-year-old male child. Specifically, Respondent indicated his interest in engaging in oral and anal sex with the presumed child and offered to provide him with marijuana. Respondent also travelled to meet the presumed child for the purposes of engaging in sexual activity. When Respondent was apprehended, law enforcement officers searched his vehicle and found condoms, lubricant and 20 grams of marijuana. Under these

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4. We note that the Pennsylvania crime of Unlawful Contact with a Minor is one of the crimes enumerated in the definition of sexual abuse or exploitation. 23 Pa. C.S. § 6303(a). The offense of Unlawful Contact with a Minor can be accomplished through contact with a child or with a law enforcement officer posing as a child. This opinion should not be construed to extend to those situations where an educator is convicted of the Pennsylvania crime of Unlawful Contact with a Minor based upon communications with a law enforcement officer or to those situations involving educators who are convicted of other enumerated offenses as a result of conduct towards students who are eighteen years of age or older, as those questions are not before us.

5. We note, however, that Respondent is permanently barred from school employment in Pennsylvania and that the Commission is permanently barred from reinstating Respondent's educator certification and employment eligibility due to his conviction for a crime set forth in section 111(e)(3) of the Public School Code of 1949. 24 P.S. § 2070.16(c); 24 P.S. § 1-111(e).

circumstances the Commission has no difficulty concluding that Respondent poses a danger to the health, safety or welfare of students in our schools and that immediate discipline is necessary.

Accordingly, we enter the following:

**ORDER**

AND NOW, this 20th day of July, 2015, upon consideration of the Motion for Summary Judgment filed by the Department of Education, it is hereby ORDERED that the educator certification and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member of Respondent CHRISTOPHER CHEPELEVICH shall be REVOKED IMMEDIATELY by the Department.

PROFESSIONAL STANDARDS AND  
PRACTICES COMMISSION

BY: \_\_\_\_\_  
Gilbert R. Griffiths  
Chairperson

ATTEST: \_\_\_\_\_  
Shane F. Crosby  
Executive Director

Date Mailed: July 20, 2015