

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**BRANDON W. FLATLEY,
Respondent.**

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DOCKET NO. DI-15-67

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 August 14, 2015, alleging that Respondent had been convicted of Institutional Sexual Assault (18 Pa. C.S. § 3124.2(a.2)(1)) and Unlawful Contact with a Minor (18 Pa. C.S. § 6318(a)(1)). In its Motion for Summary Judgment, filed simultaneously with the Notice of Charges, the Department requests that the Commission revoke Respondent’s Pennsylvania educator certification¹ 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. 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

1. Respondent holds an Instructional II Pennsylvania teaching certificate in the area of Music PK-12.

court documents reflecting Respondent's conviction. Respondent, having been served 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 § 233.115(c)(1); 1 Pa. Code § 35.37.

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 Institutional Sexual Assault and Unlawful Contact with a Minor. Thus, the only question before the Commission is whether these crimes involve moral turpitude or are among the crimes enumerated in sections 111(e)(1) through (3) of the Public School Code of 1949. As Institutional Sexual Assault and Unlawful Contact with a Minor are both crimes enumerated in section 111(e)(1) of the Public School Code and crimes involving moral turpitude *per se*, 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); 24 P.S. § 1-111(e)(1); 22 Pa. Code § 237.9(c)(1).

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 the following:

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

...

(v) Institutional Sexual Assault as defined in 18 Pa. C.S. § 3124.2(a.2)(1) (relating to institutional sexual assault).

...

(xii) Unlawful Contact with a Minor as defined in 18 Pa. C.S. § 6318(a)(1) (relating to unlawful contact with a minor).

24 P.S. § 2070.1b; 23 Pa.C.S. § 6303. As set forth above, both of the offenses of which Respondent has been convicted constitute sexual abuse or exploitation *per se* when committed against a child. The facts underlying Respondent's convictions are that he engaged in a sexual relationship with a minor female student when the student was sixteen and seventeen years old. Respondent's conduct included exchanging over 90,000 private electronic messages with the student, which included multiple audio clips of Respondent moaning and masturbating and clips of Respondent telling the student he was "horny" for her and that he loved her. Respondent also "face-timed" the student while she was in the shower and masturbated to her and had physical sexual contact with the student on multiple occasions in his school office. Accordingly, the Commission finds that Respondent is guilty of sexual abuse or exploitation and permanently barred from serving as an educator in Pennsylvania.

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.

In this case, Respondent's repeated sexual contact with a minor student clearly represents an egregious breach of his fiduciary duty and supports a finding that he poses a danger to the health, safety or welfare of students in our schools. Therefore, the Commission finds that immediate discipline is necessary.

Accordingly, we enter the following:

ORDER

AND NOW, this 14th day of October, 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 BRANDON W. FLATLEY shall be REVOKED IMMEDIATELY by the Department. The Commission further finds that Respondent's conduct constitutes sexual abuse or exploitation under 24 P.S. § 2070.1b and 23 Pa. C.S. § 6303.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

BY:

Gilbert R. Griffiths
Chairperson

ATTEST:

Shane F. Crosby
Executive Director

Date Mailed: October 14, 2015