

COMMONWEALTH OF PENNSYLVANIA  
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

In Re: Robert E. Montgomery : PSPC Docket No. DI-91-08  
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ADJUDICATION

Upon exceptions taken by the Department of Education (Department) to the decision of the hearing officer in the above-captioned matter, the Professional Standards and Practices Commission (Commission) will modify the decision of the hearing officer and impose discipline upon the respondent, Robert E. Montgomery, by requiring the Department to issue a public reprimand to the respondent.

I. Factual and Procedural Summary

On July 1, 1991, the Department, through its Office of Higher Education (now the Office of Postsecondary and Higher Education), issued a Notice of Charges against the respondent pursuant to section 13(a) of the Teacher Certification Law (Law), as amended, 24 P.S. §12-1263(a) (added to the Law by the Act of December 14, 1989) (P.L. 612, No. 71), §3). In its notice of

charges, the Department avers that the respondent holds a teaching certificate in the area of music issued to him in June 1979 and requests suspension of the certificate.

According to the charges, the Department was notified on April 15, 1991 by the Trinity Area School District (School District) that the respondent had been criminally charged with assaulting a student at the School District. Then, on May 3, 1991, the Department received certified copies of the records of the Court of Common Pleas of Washington County, reflecting that the respondent had been formally charged with the crime of simple assault.

According to the notice of charges and the criminal information, the respondent was serving as a substitute teacher at the School District on October 9, 1990. In the piano lab of the Trinity High School, the respondent allegedly "pushed [REDACTED], a student, up against the wall and struck him in the face and head causing soreness and discoloration to [REDACTED]'s face." Notice of Charges, at para. 4. The criminal information specifically charged that the respondent had "unlawfully attempt[ed] to cause or intentionally, knowingly or recklessly cause[d] bodily injury to [REDACTED]," and that the respondent "did ... unlawfully attempt by physical menace to put [REDACTED] in fear of imminent serious bodily injury."

The Department alleged in its notice of charges that the crime of simple assault constitutes a crime involving moral turpitude, and that the conduct underlying the criminal charge against the respondent meets the statutory offenses of incompetency, immorality and cruelty. In addition, the Department alleges that the respondent "is a danger to the health, safety, and welfare of students and other persons in the schools of this Commonwealth."

In response to the notice of charges, the respondent by letter dated July 31, 1991, received by the Commission on August 5, 1991, contested the notice of charges on the basis that he had not been found guilty of any crime since he had been accepted into a program of Accelerated Rehabilitative Disposition (ARD) by order of the Court of Common Pleas of Washington County dated March 25, 1991.

On October 21, 1991, the Department filed a Motion for Entry of Judgment, asserting that (1) the respondent was in default under 1 Pa. Code §35.37, (2) judgment should be entered without a hearing, and (3) summary judgment is appropriate. By Memorandum and Order dated November 18, 1991, the Commission's legal counsel denied the motion for judgment on default. However, legal counsel did find merit in the Department's alternative grounds for judgment without a hearing, concluding that because the respondent had not sufficiently denied the allegations in the

) notice of charges and had not expressly requested a hearing, he had waived his right to an evidentiary hearing under 1 Pa. Code §35.37, as interpreted by the Commission in its by-laws at 22 Pa. Code §233.13(e)(1)(iv). Therefore, legal counsel directed the Commission's executive director to appoint a hearing officer to prepare a proposed report without hearing and to afford the respondent and the Department the opportunity to present legal argument. The hearing officer was directed to accept as true the allegations of fact contained in the notice of charges and to base her determination on those facts. Neither the respondent nor the Department appealed to the Commission the determinations made by legal counsel.

On February 4, 1992, the Commission appointed Marilyn C. Zilli, Esquire, to serve as the hearing officer in this matter. Upon consideration of legal argument, the hearing officer on April 13, 1992 issued her decision. The hearing officer concluded that the crime of simple assault is not a crime involving moral turpitude. She also concluded that the facts underlying the criminal charges against the respondent do not establish immorality or incompetency under section 5(a)(11) of the Law. However, she did conclude that the respondent's conduct constitutes cruelty under section 5(a)(11).

The hearing officer then determined that the appropriate discipline for the respondent's cruelty would be suspension of

the respondent's teaching certificate for a period coinciding with the term of the ARD probation imposed upon him by the court in disposition of the criminal charges against him arising out of the same incident. Upon successful completion of the ARD probation, the hearing officer determined, the suspension of the respondent's professional teaching certificate would expire. The hearing officer considered only whether to revoke or suspend the professional educator's teaching certificate; she did not expressly consider other forms of discipline, such as public or private reprimand.

Finally, the hearing officer determined that the Department did not have the authority under the Law to allege in its notice of charges that the respondent "is a danger to the health, safety and welfare of students in the schools of the Commonwealth." The hearing officer determined that, under the Commission's by-laws (22 Pa. Code §233.13(g)(2)), such a finding can be made only by the Commission at the point it decides to discipline and is relevant only to the question of whether an appeal to court would stay the discipline imposed. In addition, the hearing officer wrote that the Department's allegation is a conclusion of law which the respondent was not required to answer.

The hearing officer proposed the following order:

AND NOW, this [ ] day of [ ], 1992, the Department's motion for summary judgment is granted in part. It is hereby ORDERED that respondent's teaching certificate is suspended and that the period of suspension shall coincide with the term of ARD probation imposed on respondent in disposition of the criminal charges filed against him in Washington County, PA. It is further ORDERED that [the Department] shall notify the Commission of the date of respondent's successful completion of the ARD probation and of the consequent dismissal of the criminal charges so that the Commission can thus determine the termination date of the period of suspension of respondent's certificate.

Decision of Hearing Officer, at 15.

On May 13, 1992, the Department filed timely exceptions to the hearing officer's decision pursuant to section 14(a) of the Law, as amended, 24 P.S. §12-1264(a). The Department raised three issues, expressed as follows:

1. The hearing officer erred when she found that the beating of a student at a school in the presence of others did not constitute immorality.
2. The timing of the decision proposed by the hearing officer renders such discipline a nullity.
3. The hearing officer erred when she refused to find that Montgomery is a danger to students.

Brief on Exceptions, at 4.

## II. Immorality

The Department contends that the respondent has been deemed to have admitted "that he pushed a student up against the wall and struck him in the face and head with such force that it caused soreness and discoloration of the student's face." In addition, he "grabbed the same student by the head and neck and pinned him against the wall while yelling at him." This behavior, the Department contends, constitutes immorality, i.e., "a course of conduct which offends the morals of a community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate." Brief on Exceptions, at 5 (quoting Horosko v. Mt. Pleasant Township, 355 Pa. 269, 5 A.2d 866 (1939)).

The Department contends that the facts and circumstances of the case demonstrate that the respondent's conduct offended the morals of the communities making up the Trinity Area School District and that his conduct sets a bad example for the youth whose ideals the respondent is supposed to foster and elevate.

The Commission believes that the question of whether the respondent engaged in immorality when he struck a student in a

) classroom in the presence of other students is moot in light of the determination by the hearing officer that the respondent is guilty of cruelty. The respondent has not filed exceptions to the hearing officer's determination in that regard and, therefore, does not contest that he is guilty of cruelty for which discipline might be imposed under section 5(a)(11) of the Law, as amended, 24 P.S. §12-1255(a)(11). Therefore, the Commission believes it unnecessary to determine and, therefore, will not determine whether the respondent is guilty of immorality.

### III. Discipline

The Department contends that the hearing officer erred in tying the respondent's discipline for the offense of cruelty to the criminal charges pending against him arising out of the same incident. Because of the timing of the hearing officer's order of suspension, the Department recites, the respondent will never be subject to discipline by the Commission since his ARD Program has been completed and the criminal charges have been removed. Indeed, the Department states in its brief that "it appears that [the respondent] has completed the ARD Program and that [the criminal] charges have been dismissed and expunged." Thus, under the hearing officer's decision, any suspension of the respondent's professional teaching certificate ordered by the Commission would never take effect. Thus, the Department has

asked the Commission to modify the hearing officer's decision by adopting a six-month suspension from the date that the Commission's suspension order should take effect.

The Commission agrees with the Department that the hearing officer should not have tied the respondent's discipline for cruelty to the existence or results of criminal charges arising out of the same incident. Except where the matter before the hearing officer and the Commission involves solely an alleged crime involving moral turpitude (where suspension and revocation are mandatory), the question of the discipline to be imposed by the Commission for a statutory offense -- such as cruelty -- is entirely separate from the proceedings in or punishments imposed by a criminal court for the same conduct. Consequently, while the Commission believes that it was appropriate for the hearing officer to consider suspension of the respondent's teaching certificate, it was not appropriate to link the suspension of the certificate for the offense of cruelty to the term of criminal probation or other ARD conditions imposed by the court of common pleas. Rather, the hearing officer should have made her determination independent of the sentence of the court.

Upon independent review of the record, it is the judgment of the Commission that the appropriate discipline to be imposed upon the respondent in this case for the offense of cruelty toward a student under his charge is a public reprimand to be issued by

) the Department to the respondent and disseminated to the appropriate public school officials and entities as prescribed by 22 Pa. Code §49.64f. Therefore, the Commission will order the Department to issue a letter of reprimand in the form attached hereto as Exhibit A and to disseminate it in accordance with the Department's procedures under 22 Pa. Code §49.64f.

#### IV. Danger to Health, Safety and Welfare

The hearing officer also determined that the Department does not have the statutory authority to allege that the respondent is a danger to the health, safety and welfare of the students of this Commonwealth. To the contrary, the Commission believes it entirely appropriate, where the Department has evidence thereof, to allege that the respondent is a danger to the health, safety and welfare of the students or others in the schools of this Commonwealth. Such an allegation is, in substance, an allegation of fact based upon a set of other facts which, cumulatively, lead the Department to conclude that the respondent is a danger as prescribed by the Law. Consequently, it is appropriate that the Department make the allegation where it believes the allegation is true, and it is the obligation of the respondent to deny the averment if he should disagree with the allegation. His failure to respond specifically may be deemed an admission.

Although the respondent did not expressly deny the allegation in his answer to the notice of charges, the Commission has considered the facts and documents of record in this matter. In addition, the Commission physically observed the respondent when he appeared before the Commission to oppose the Department's exceptions to the hearing officer's decision. Based upon our review of all the record and the respondent's demeanor, it is the conclusion of the Commission that the respondent is not currently a danger to the health, safety or welfare of students or others in the schools of this Commonwealth. Therefore, we will not modify the hearing officer's decision to add such a finding.

Consistent with the foregoing, we direct the entry of the following order:

ORDER

AND NOW, this 24<sup>th</sup> day of August, 1992, upon consideration of the Brief on Exceptions filed by the Department of Education and the answer thereto filed by the respondent, it is hereby ORDERED that the hearing officer's decision in this matter is MODIFIED. It is hereby ORDERED that the Department of Education shall issue to the respondent, Robert E. Montgomery, a letter of public reprimand substantially in the form attached hereto as Exhibit A. The letter of public reprimand shall be transmitted to the respondent and disseminated in accordance with 22 Pa. Code §49.64f upon the expiration of the 30-day appeal period if no appeal is filed by the respondent, or upon the final disposition of all appeals from this order.

PROFESSIONAL STANDARDS AND  
PRACTICES COMMISSION

By: Rosalind Jones-Johnson 8-24-92  
Rosalind Jones Johnson  
Vice-Chairperson

Attest: Warren D. Evans  
Warren D. Evans  
Executive Director