

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

In Re: Lynne Dalinka

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: PSPC Docket No. DI-92-06
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MEMORANDUM AND ORDER

On February 19, 1992, the Department of Education, through its Office of Chief Counsel, filed with the Professional Standards and Practices Commission a Notice of Charges, alleging that the respondent, Lynne Dalinka, was dismissed from the School District of Philadelphia for persistent negligence and persistent and willful violation of Pennsylvania school laws. Attached to the notice of charges are copies of a Mandatory Report of Certificated Employee Terminated for Cause submitted to the Department by the school district, the transcript of the hearing held before the school board, exhibits presented at the hearing, and the school board's Resolution and Findings of Fact and Conclusions of Law.

In its notice of charges, the Department avers that the facts which supported the school district's dismissal action, in

conjunction with the respondent's behavior at the dismissal hearing as reflected in the transcript, establish that she is unable to perform the services expected of a professional educator and that she is unable to control her behavior. For these reasons, the Department contends, the Commission should discipline the respondent for incompetency and intemperance. The Department recommends that the professional teaching certificate, endorsed in the areas of Elementary Education and Elementary Guidance and issued to the respondent by the Department, be revoked pursuant to section 5(a)(11) of the Teacher Certification Law, as amended, 24 P.S. §12-1255(a)(11).

On March 26, 1992, the Department filed with the Commission a Motion for Entry of Judgment pursuant to 1 Pa. Code §§35.37 & 35.178 and 22 Pa. Code §233.13(e)(1)(iv). In its motion, the Department averred that the respondent, on February 21, 1992, received by certified mail a copy of the notice of charges and, in response to the notice of charges, sent a letter to the Department dated March 19, 1992, stating: "I cannot address the allegations, accusations and charges that were filed against me any more than I had. I have requested disability/retirement benefits -- disability request is still pending."

Because the respondent in her letter did not request a hearing, the Department contends, the respondent has waived the right to an evidentiary hearing under the Teacher Certification

Law as interpreted by the Commission at 22 Pa. Code §233.13(e)(1)(iv). Therefore, the Department has requested that the Commission consider the matter without a hearing.

In addition, the Department contends in its motion that respondent has admitted the factual allegations contained in the Department's notice of charges since she did not deny any of its allegations in her March 23 letter. The Department cites 1 Pa. Code §35.37, providing that "[m]ere general denials of the allegations ... unsupported by specific facts upon which the respondent relies, will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing" Because the respondent failed to specifically deny the allegations in the notice of charges, the Department requests the Commission to deem the allegations admitted and to grant summary judgment to the Department by revoking the respondent's certificates without a hearing.

The respondent did not file an answer or otherwise respond to the Department's motion for entry of judgment. Therefore, by letter dated April 27, 1992, the Commission informed the respondent and the Department's counsel that the Commission would consider the Department's motion on May 14, 1992 at 12:40 P.M. in Heritage Room B, Lobby Level, 333 Market Street, Harrisburg, PA. In his letter, the Commission's Executive Director expressly notified the respondent that under section 18(a) of the Teacher

Certification Law, as amended, 24 P.S. §12-1268(a), the respondent would be entitled to be heard by the Commission in person, in writing or through her designated representative. The respondent did not appear at the May 14 meeting, either in person or by representative, nor did she submit any document in writing to the Commission. The Department's counsel did appear before the Commission.

The first issue for the Commission is whether the matter should be assigned to a hearing officer rather than having the Commission immediately decide the Department's motion. Under 22 Pa. Code §233.13(e)(1)(iv), if a professional educator timely responds in writing to the notice of charges but waives the right to an evidentiary hearing by failing to expressly request a hearing, "the Commission will appoint a hearing officer to prepare a proposed report without hearing" In these cases, the general policy of the Commission is that the hearing officer is required to accept as true the allegations of fact contained in the notice of charges. Therefore, under the general policy of the Commission as expressed in its by-laws, this is a case in which the appointment of a hearing officer would be appropriate.

However, upon motion of the Department, the Commission unanimously agreed in this case to waive the application of its policy expressed at 22 Pa. Code §233.13(e)(1)(iv). The Commission has decided to waive its by-laws under these

circumstances because there is substantial factual detail in the record, and the Commission believes that the legal conclusions to be drawn from the record are so clear that the Commission can proceed to decide the Department's motion without the assistance of a hearing officer's decision.

In addition, the Commission notes that the respondent's letter of March 19, 1992 was directed to and delivered to the Department's Office of Chief Counsel and not to the Commission. Therefore, the respondent is, in any event, technically in default. Under the Commission's by-laws, the Commission will usually decide a case in default without a hearing officer's decision. See 22 Pa. Code §233.13(e)(i)(iii).

After due consideration of the Department's motion, its notice of charges and supporting documentation, the Commission, by roll call vote, has determined to revoke the professional teaching certificate issued to the respondent. Further, based upon its independent review of the record, the Commission has determined that the respondent is a danger to the health, safety, or welfare of students and others in the schools of this Commonwealth. Therefore, the Commission has also determined that the respondent's certificate must be revoked immediately.

The following order shall be entered:

ORDER

AND NOW, this 12th day of June, 1992, it is hereby ORDERED that the Department of Education's Motion for Entry of Judgment is GRANTED. It is therefore ORDERED that the Department of Education shall immediately REVOKE all professional teaching certificates issued to the respondent, Lynne Dalinka, and notify the appropriate persons and entities under 22 Pa. Code §49.64(f). Further, it is ORDERED that because the respondent is a danger to the health, safety or welfare of students or others in the schools of this Commonwealth, the revocation shall be effective immediately.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By:

Howard R. Selekman
Howard R. Selekman
Chairperson

ATTEST:

Warren D. Evans
Warren D. Evans
Executive Director