

COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

OPINION OF THE COMMISSION

BEFORE: JOHN E. FREUND, III, ESQUIRE, Hearing Officer
February 22, 1996

APPEARANCES: For the Respondent
BRUCE F. BRIODY, ESQUIRE
429 E. Broad St.
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For the Department of Education
LINDA A. MCKAY, ESQUIRE
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IN RE: DEPARTMENT OF EDUCATION V. DAVID L. SAVERI
PSPC DOCKET NO. DI-92-11

DECISION OF THE HEARING OFFICER

I. ISSUE

WHETHER RESPONDENT, BEING FOUND GUILTY OF IMMORALITY, AS THAT TERM IS DEFINED IN THE TEACHER DISCIPLINARY LAW, SHOULD BE DISCIPLINED BY PRIVATE REPRIMAND, PUBLIC REPRIMAND, SUSPENSION OF TEACHING CERTIFICATE OR REVOCATION THEREOF.

II. PROCEDURAL HISTORY

By Order of August 23, 1995, based upon the Motion for Summary Judgment of the Department of Education, this Hearing Officer found that the actions of the Respondent constituted immorality as a matter of law. The finding was based on Respondent's admission that he sexually molested a 14-year-old

girl who was a student at the school where he taught. The record before the Hearing Officer at the time of the Motion for Summary Judgment contained no information upon which a recommendation for discipline could be made.

Consequently, a hearing was held on February 22, 1996, to determine the appropriate level of discipline to be imposed on Respondent for his immoral conduct. Testifying on behalf of the Respondent was psychologist Gerald Zimmerman, Ph.D. The Respondent testified on his own behalf. Testifying on behalf of the Department were the victim [REDACTED], her mother [REDACTED], Reese Lessig, former program coordinator for Forensic Treatment Services program, and Dr. Veronique Valliere, Director of Confront and Forensic Treatment Services. Counsel for both parties submitted extensive briefs together with proposed findings of fact and conclusions of law. The record closed upon receipt of Respondent's Brief dated April 6, 1996.

This Adjudication and Order constitutes the Professional Standards and Practices Commission's written opinion and Order imposing discipline upon the Respondent pursuant to Section 5(a)(11) of the Teacher Certification Law, as amended, 24 P.S. §12-1255 (a)(11).

III. FINDINGS OF FACT

1. On August 23, 1995, the Hearing Officer entered an Order granting the Department of Education's (the "Department") Motion for Summary Judgment in which it was found that Respondent

is guilty of immorality as a matter of law for sexually molesting ██████████, a 14-year-old female student (the "victim") on October 13, 1990.

2. Respondent "groomed" the victim to place himself in a position such that he could commit a sexual offense against her. (Tr. p. 52).

3. "Grooming" behavior in the context of a sexual offense is "conducting a series of behaviors to train a victim to be compliant." (Tr. p. 229).

4. Respondent began to gain the victim's confidence and friendship through discussions he had with her. These discussions occurred while Respondent drove the victim to and from his house on the occasions when the victim babysat for his daughter. (Tr. p. 175).

5. When the 1990-91 school year began, Respondent intensified these discussions by meeting the victim before and after school, and during the victim's free periods when he would send passes to her so that he could spend time with her in the gym. (Tr. pp. 176-78).

6. Respondent began touching the victim in October 1990 by rubbing her shoulders and he also began to talk to her about sexual issues. (Tr. p. 178-79).

7. On October 11, 1990, Respondent gave the victim a pass to come to the gym and in his office, during school hours, he gave her an "intimate" kiss. (Tr. p. 180, see also Exhibit 5.

8. On October 13, 1990, while driving the victim home from babysitting, Respondent placed his hands on her breasts and underpants for his own sexual gratification.

9. Respondent told the victim, on the way home after his molestation of her, that he wanted her to come to his house while his wife and daughter were away so that he could have sex with her. (Tr. p. 181-82).

10. The victim disclosed Respondent's conduct to a friend, whose mother encouraged the victim's mother to call the police. (Tr. pp. 133-34, 182).

11. The day after Respondent molested the victim she felt sick and was crying all the time. (Tr. p. 182).

12. Two days after Mr. Saveri molested her, the victim was asked to talk to the police while she was at school. She felt "very uncomfortable" describing what happened to her in a room full of men. (Tr. p. 184).

13. After Respondent molested her, the victim heard comments at school where she was referred to as a "slut" and was accused of "setting (Mr. Saveri) up." (Tr. p. 185).

14. The victim has had to cope with the stigma of being a victim of sexual abuse. (Tr. pp. 187-88).

15. Respondent's conduct toward the victim was a total betrayal of trust for her mother, [REDACTED] (Tr. p. 135).

16. The victim's mother felt the pain her daughter was

forced to endure at school from the boys and girls who were "cruel" to her. (Tr. p. 136).

17. The victim's mother personally heard slurs made in the community about the victim. (Tr. p. 139).

18. The victim's mother was visibly upset at the hearing when she was forced to recall the events involving her daughter.

19. The student involved, the victim, is now 19 years of age.

20. The victim is a Bio Pre-Med major at King's College where she is doing well in school and is actively involved in athletics. (Tr. pp. 712, 189).

21. Respondent recognizes the pain he has caused to the victim, the victim's family, and himself. (Tr. p. 206).

22. Respondent is a sexual abuse perpetrator. (Tr. p. 16).

23. Respondent counseled with and received treatment from Dr. Zimmerman from October 1991 through early 1993. (Tr. pp. 18, 28, 29, 98, 120).

24. The major focus and goal of Respondent's treatment with Dr. Zimmerman was behavior control and relapse prevention. (Tr. pp. 20, 21, 30, 31).

25. Respondent spent approximately 10 months in the Confront Program, which is intensive group therapy for sexual offenders. (Tr. 147, 150; see also Exhibit 3).

26. Respondent was compliant with treatment, attended all required therapy sessions, participated in group therapy, and fulfilled his treatment obligations with the Confront program

required by the terms of his ARD probation. (Tr. pp. 153, 160, 161, 162, 163).

27. Respondent remained unaware of the precursors of his behavior toward the victim, even after the completion of his counseling with Dr. Zimmerman. (Tr. pp. 81-83, Exhibit 5).

28. Dr. Zimmerman does not know whether Respondent's arousal patterns are any different today than they were on October 13, 1990, when he was sexually aroused by the victim.

29. Respondent continued use of "900 number" sex lines and sexual fantasy contrary to therapeutic recommendation. The use of fantasy reflects a pattern that may contribute to sexual abuse. (Tr. pp. 53-54).

30. Respondent's desire to return to a career that puts him in close contact with children may in itself indicate a continuing propensity to abuse. (Tr. p. 111).

31. Respondent is gainfully employed as the owner/operator of a real estate business, in addition to building homes for Saveri Homes, Incorporated. (Tr. pp. 194-95).

32. Respondent has been appointed by the Mayor of Wind Gap to develop and chair the Civil Service Commission, and he has been asked to participate in the determination of whether there is going to be a regional police force in his area. (Tr. p. 196).

33. Respondent shares custody of his 14-year-old daughter with his ex-wife. (Tr. pp. 190-91).

34. On October 29, 1992, Respondent agreed not to be

employed by any school district in the Commonwealth during the pendency of the disciplinary proceeding. (Tr. p. 216).

IV. DISCUSSION

It is initially noted that pursuant to 24 P.S. §2070.13 (c)(2); 22 Pa. Code §233.13 (e)(4)(ii), in a teacher disciplinary case, the Department of Education has the burden to show that grounds for discipline exist. In this case, grounds for discipline exist only if the Respondent is guilty of immorality as provided by Section 5(a)(11) of the Teacher Certification law, as amended, 24 P.S. §12-1255(a)(11). In addition, the Department avers that the Respondent "is a danger to the health, safety and welfare of students in the schools of this Commonwealth."

Because of the Respondent's alleged immorality, the Department has requested that the Commission order the revocation of the Respondent's professional teaching certificate. In the instant case, the Department has shown that Respondent admitted to sexually molesting a 14-year-old girl, thus proving that grounds exist to discipline Respondent through its Motion for Summary Judgment.

In the opinion of the Hearing Officer, an exploration of a person's present "fitness and ability" cannot be divorced from the behavior which led to a prior and still standing determination that the teacher engaged, and is guilty of, immoral behavior. "Immorality" is defined as "conduct which offends the morals of a community and is a bad example to the youth whose

ideas a professional educator has a duty to foster and elevate."
22 Pa. Code §237.3.

The Department urges the Hearing Officer to take the position that fitness to teach is irrelevant in determining the appropriate discipline to be imposed and that fitness is only relevant in a Petition for Reinstatement. In support of its position the Department cites the Commonwealth Court case of Startzel v. Department of Education, 128 Pa. Cmwlth. 110, 562 A.2d 1005 (1989), appeal denied 574 A.2d 573 (1990). Startzel had been convicted of mail fraud which was a crime of "moral turpitude." The Secretary of Education refused to consider evidence presented by the teacher establishing his fitness to consider teaching. The Startzel court refused to disturb the Secretary's findings reasoning in part that:

"Nothing in the statute suggests that this discretionary determination of fitness should be made at the decertification stage instead of the reinstatement stage."

562 A.2d at 1007.

It does not necessarily follow that because it was not error for the Secretary to refuse consider fitness at the decertification stage that the Secretary could not in his discretion consider fitness. Indeed, the Court expressly acknowledges that the statute gives no guidance. More importantly, however, the Startzel decision applied law prior to the passage of the Teacher Certification Law. 24 P.S. §1251-12-1268. Under the law existing at the time of Startzel the "Department of Public Instruction" was required to "suspend or

revoke the certificate --- of any person --- for a crime or misdemeanor involving moral turpitude ..." 24 P.S. § 1225(j) (repealed). While the requirement for revocation of the professional's certificate upon conviction of the crime of moral turpitude remains, absent a conviction the Teacher Certification Law gives the Commission discretion to impose "discipline" unfettered by statutory standards. 24 P.S. 12-1255(a)(11). The standards for discipline for a professional educator found guilty of "immorality" are nowhere delineated in the statute or the bylaws of the Commission. The bylaws provide that the Hearing Officer's "decision" will include proposed findings of fact and conclusions of law and will specify the discipline proposed. 22 Pa. Code 233.13(e)(vii). Where the range of discipline available to the Commission for any disciplinable offense ranges from private reprimand to revocation of the certificate, it is appropriate for the Commission to give due consideration to all evidence or argument relevant to the issue of discipline.

In the absence of statutory or regulatory definition the Commission must examine each question of discipline on a case by case basis. In an appropriate case fitness to teach can be a relevant consideration together with such other obvious considerations as protection of the health and safety of students, and the nature of the offense itself. In this case Respondent was never convicted of a crime or misdemeanor. He was approved for an Accelerated Rehabilitative Disposition with conditions that he undergo counseling and evaluation. He

successfully completed those conditions and was discharged. By way of affidavit submitted to the Commission on October 29, 1992, Respondent agreed not to be employed as a teacher or in any other capacity by a high school or school district in the Commonwealth of Pennsylvania during the pendency of these disciplinary charges. Respondent has been effectively suspended since that time and in fact has not been actively employed as a teacher since shortly after the incident in October 1990. Considering the Respondent was not convicted of a crime, and has completed his court required probation and counseling and has been effectively suspended from teaching for three and one-half years, evidence of Respondent's fitness to teach is appropriately reviewed.

A proper analysis must necessarily balance the need to protect children against the Respondent's right to practice his chosen profession. This Hearing Officer is not persuaded that the Respondent's treatment or the five and one-half years separation from teaching has rendered him an acceptable risk to return to the classroom. The testimony of the mental health professionals in this case, including Respondent's psychologist were consistent in that Plaintiff's personality and behavior continues to manifest some indicators of the potential sexual abuser. Respondent has testified that he is remorseful for his actions, has admitted to the underlying charges and accepted responsibility for his actions. While Respondent has acknowledged that his past behavior was inappropriate, the

Respondent has not successfully achieved elimination of those factors that might lead to a repetition of his offensive behavior if returned to the classroom. Although the Respondent may never again attempt to have a sexual relationship with a student, this Hearing Officer is not persuaded that the underlying reasons for his former inappropriate behavior may not appear in other guises to the detriment of his students. While not necessarily agreeing with the opinion of Plaintiff's expert witness Dr. Valliere that there is never an acceptable risk of reintroducing the sexual offender into a power relationship such the student-teacher relationship, the balancing of interests in this case weighs in favor of the protection of children. Respondent is not in jeopardy of losing his ability to earn a living, only his ability to earn a living in his chosen profession. The balance of interests must be measured in terms of the risk to children as against merely the denial of one career option. Under the circumstances of this case the balance clearly weighs in favor of the protection of children. Revocation of the Respondent's teaching certificate is the only disciplinary option that can afford that protection.

V. CONCLUSIONS OF LAW

1. There are four options available for the Hearing Officer to recommend in this case: a private reprimand, a public reprimand, suspension of Mr. Saveri's certificate, or revocation thereof. 24 P.S. §2070.1(6).

2. Teaching is a privilege, not a right. Penn-Delco School District v. Urso, 33 Pa. Commw. 501, 382 A.2d 162, 168 (1978).

3. Respondent is guilty of "immorality," as that term is defined in the Teacher Disciplinary Law.

4. The appropriate discipline in this case for Respondent's commission of a sexual offense against a child is revocation of his teaching certificate. See Department of Education v. Michael J. Deromo, PSPC Docket No. DI-93-01; Department of Education v. Kenneth Spicher, PSPC Docket No. DI-95-02; In Re: William Boyce, PSPC Docket No. DI-92-02; In RE: Vincent Peterson, PSPC Docket No. DI-92-23; Pennsylvania Department of Education v. Robert L. Bonello, PSPC Docket No. DI-95-13; Pennsylvania Department of Education v. Michael Donnelly, PSPC Docket No. DI-95-08; Pennsylvania Department of Education v. John Claude Kalko, PSPC Docket No. DI-94-04.

5. Due to the serious nature of the misconduct committed by Respondent, discipline shall be imposed immediately to protect the health, safety, and welfare of the students of this Commonwealth. See 24 P.S. §2070.15(b).

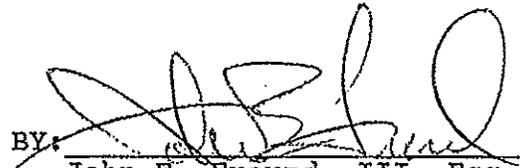
VI. CONCLUSION

Based upon the Hearing Officer's findings and conclusions stated above, this Hearing Officer further finds by a preponderance of the evidence, that the Respondent is a danger to the health, safety and/or welfare of the students and other

persons in the schools of this Commonwealth. Therefore, we must conclude that the Respondent's professional certificate must be revoked immediately under Section 15(b) of the Teacher Certification Law, as amended, 24 P.S. §12-1265(b).

An appropriate Order will be entered.

DATE: May 9, 1996

BY: 
John E. Freund, III, Esq.
Hearing Officer