

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

DEPARTMENT OF EDUCATION, Petitioner,	:	
	:	
	:	
	:	
v.	:	DOCKET NO. DI-17-207
	:	
	:	
CHRISTOPHER KILEY, Respondent.	:	
	:	
	:	

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. For the reasons set forth below, the Motion is granted.

The Department filed a Notice of Charges against Respondent on December 13, 2017 alleging that Respondent has been convicted of a crime set forth in section 111(e)(1)-(3) of the Public School Code of 1949 and a crime involving moral turpitude, namely Unlawful Contact with Minor (18 Pa.C.S. § 6318). Simultaneous with the filing of the Notice of Charges, the Department filed a Motion for Summary Judgment requesting that the Commission immediately revoke Respondent’s Pennsylvania educator certification¹ and employment eligibility pursuant to section 9b(a)(2) of the Educator Discipline Act (“Act”). Section 9b(a)(2) of the 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 section 111(e)(1)-(3) of the Public School Code of 1949 upon the filing of a certified copy of the

1. Respondent was issued an Emergency Permit in the area of Automotive Body and Fender 7-12.

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). Attached to the Department's Notice of Charges are certified copies of the pertinent court documents reflecting Respondent's conviction.

The Department served the Notice of Charges and Motion for Summary Judgment on Respondent by first class and certified mail. Notwithstanding the language in the Notice of Charges cautioning Respondent that failure to respond could result in the factual assertions being deemed admitted and the imposition of discipline without a hearing, Respondent 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 Unlawful Contact with Minor. Therefore, the only question before the Commission is whether this crime involves moral turpitude or is among the crimes enumerated in section 111(e)(1)-(3) of the Public School Code of 1949. Unlawful Contact with Minor is a crime enumerated in section 111(e)(1) of the Public School Code of 1949 and a crime involving moral turpitude *per se*. 24 P.S. § 1-111(e)(1); 22 Pa. Code § 237.9(c)(1). Thus, 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 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 the educator's certification and employment eligibility. 24 P.S. § 2070.16. Pursuant to section 1b of the 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*..."² "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

2. The crime of Unlawful Contact with 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 Minor can be accomplished through contact with a child or with a law enforcement officer posing as a child. 18 Pa.C.S. § 6318(a)(1).

appears to be or someone who the educator believes to be a child. Accordingly, we find that Respondent is not guilty of sexual abuse or exploitation.³

Finally, our General Assembly has determined that in those cases where an educator is convicted of an offense compelling revocation under section 9b of the Act, an appeal from the Commission's adjudication will not delay the imposition of discipline. 24 P.S. § 2070.15. Therefore, the revocation of Respondent's certification and employment eligibility will be effective immediately.

Accordingly, we enter the following:

3. 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)(1) of the Public School Code of 1949. 24 P.S. § 1-111(e); 24 P.S. § 2070.16(c).

ORDER

AND NOW, this 28th day of February, 2018, 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 KILEY shall be REVOKED by the Department pursuant to 24 P.S. § 2070.9b(a)(2). Pursuant to 24 P.S. § 2070.16(c) the Commission shall not reinstate Respondent's educator certification or employment eligibility for the time period set forth in 24 P.S. § 1-111(e). This Order is effective IMMEDIATELY.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By: _____
Myron Yoder
Chairperson Pro Tempore

Attest: _____
Shane F. Crosby
Executive Director

Date Mailed: February 28, 2018