

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

DEPARTMENT OF EDUCATION,	:	
Petitioner,	:	
	:	
	:	
v.	:	DOCKET NO. DI-19-220
	:	
RENEE N. KINDER,	:	
Respondent.	:	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter is before the Professional Standards and Practices Commission (“Commission”) on a Notice of Charges and Motion for Summary Judgment filed by the Department of Education (“Department”). After consideration of the record in this matter and the applicable law, the Commission finds that summary judgment in favor of the Department is appropriate and enters this Order as follows:

BACKGROUND AND PROCEDURAL HISTORY

Renee N. Kinder (“Respondent”) holds an Instructional II certificate in the area of Elementary K-6. At all relevant times, Respondent was employed as a kindergarten teacher by the Ringgold School District. The Department initiated disciplinary proceedings against Respondent with the filing of a Notice of Charges on December 20, 2019. The Notice of Charges alleges that Respondent was convicted of the federal crime of Conspiracy to Distribute and to Possess with Intent to Distribute a Quantity of Cocaine. Certified copies of the pertinent court documents are attached to the Notice of Charges. Simultaneous with the filing of the Notice of Charges, the Department filed a Motion for Summary Judgment requesting that the Commission enter summary judgment in its favor and revoke Respondent’s certificate and employment eligibility

based upon her conviction.

As required, the Department mailed copies of the Notice of Charges and Motion for Summary Judgment to Respondent at her last-known address. Respondent did not file an answer to either pleading.

The Commission heard oral argument at its regularly scheduled meeting on May 11, 2020. Respondent was not present.

SUMMARY JUDGMENT STANDARD

Summary Judgment is appropriate only when, after examining the whole record in the light most favorable to the non-moving party, there is no genuine issue of 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).

MATERIAL FACTS

The material facts are not in dispute.¹ On September 18, 2018, Respondent was convicted in the United States District Court for the Western District of Pennsylvania of Conspiracy to Distribute and to Possess with Intent to Distribute a Quantity of Cocaine, 21 U.S.C. § 846, 21 U.S.C. § 841(a)(1). The facts underlying Respondent's conviction are that she conspired with others to distribute 500 grams or more of cocaine between March 2017 and December 2017.

DISCUSSION

The Department seeks the revocation of Respondent's certificate and employment eligibility pursuant to section 9b(a)(2) of the Educator Discipline Act ("Act").

1. Since Respondent did not file a responsive pleading, the only facts considered by the Commission are those alleged in the Department's Notice of Charges, which the Commission deems admitted. See 22 Pa. Code § 233.115(c)(1); 1 Pa. Code § 35.37; See also Kinniry v. Professional Standards and Practices Commission, 678 A.2d 1230 (Pa. Cmwlth. 1996).

24 P.S. § 2070.9b(a)(2). That section mandates, in relevant part, that the Commission shall direct the Department to revoke the certificate and employment eligibility of an educator convicted of a crime set forth in section 111(e)(1) through (3) of the Public School Code of 1949, a crime involving moral turpitude, or the attempt, solicitation or conspiracy to commit such a crime upon the filing of a certified copy of the verdict, judgment or sentence of the court with the Commission. Id.²

Section 111(e)(3) of the Public School Code of 1949 includes crimes from another jurisdiction that are similar in nature to the Pennsylvania crimes listed in sections 111(e)(1) and (2). 24 P.S. § 1-111(e)(1)-(3). To determine whether an in-state offense and an out-of-state offense are similar in nature, the Commission carefully compares the elements of the two crimes in terms of the definition of the conduct or activity proscribed (the *actus reus*) and the requirements for culpability (the *mens rea*). The laws need not be identical to be similar; it is sufficient that the laws be nearly corresponding or have a general likeness. Com. v. Simpson, 294 A.2d 805 (Pa. Super. 1972). The Commission's purpose is to give the educator's conduct the same effect it would have if the conduct had occurred in Pennsylvania.

Here, the Department has presented the Commission with certified court records of Respondent's conviction for the federal crime of Conspiracy to Distribute and to Possess with Intent to Distribute a Quantity of Cocaine. The Department contends that the federal crime of Distribution and Possession with Intent to Distribute a Controlled Substance is similar in nature to the section 111(e)(2) crime of Manufacture, Delivery or Possession with Intent to Manufacture or Deliver a Controlled Substance, 35 P.S. §

2. The term 'conviction' includes a plea of guilty or nolo contendere. 24 P.S. § 2070.9b(a)(2).

780-113(a)(3), because both crimes prohibit the distribution or possession with intent to distribute of a controlled substance. After carefully reviewing the elements of each offense, the Commission agrees. Therefore, we find that Respondent has been convicted of a crime set forth in section 111(e)(3) of the Public School Code of 1949.

The determination of whether a crime involves moral turpitude is based solely upon the elements of the crime. The facts underlying the charges are not relevant to the issue of moral turpitude. 22 Pa. Code § 237.9(b); Startzel v. Commonwealth, Department of Education, 652 A.2d 1005, 1007 (Pa. Cmwlth. 1989). The federal crime of Distribution and Possession with Intent to Distribute a Controlled Substance certainly requires conduct “contrary to the accepted and customary rule of right,” 22 Pa. Code § 237.9(a)(1), conduct “done knowingly contrary to justice, honesty or good morals,” 22 Pa. Code § 237.9(a)(2), and a “reprehensible state of mind or *mens rea*.” Bowalick v. Commonwealth, 840 A.2d 519, 523-24 (Pa. Cmwlth. 2004). Moreover, crimes set forth in section 111(e)(3) of the Public School Code of 1949 and crimes that contain as an element delivery of a controlled substance or possession of a controlled substance with intent to deliver *per se* involve moral turpitude. 22 Pa. Code § 237.9(c). Therefore, we find that Respondent has been convicted of a crime of moral turpitude.

Because Respondent has been convicted of a crime set forth in section 111(e)(3) of the Public School Code of 1949 and a crime of moral turpitude, the Commission must direct the Department to revoke Respondent’s certificate and employment eligibility. 24 P.S. § 2070.9b(a)(2); See also Bowalick, 840 A.2d at 522 (revocation of a teaching certificate on summary judgment is appropriate upon proof of a conviction of a crime of

moral turpitude); *citing* Kinniry v. Professional Stds. & Practices Comm'n, 678 A.2d 1230, 1234 (Pa. Cmwlth. 1996).³

ORDER

AND NOW, this 26th day of June 2020, upon consideration of the Department of Education's Motion for Summary Judgment and the lack of response thereto, it is hereby ORDERED:

1. The Motion is granted.
2. Pursuant to 24 P.S. § 2070.9b(a)(2), the Department is directed to revoke Respondent's certificate and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member effective on the date of this Order.
3. Respondent is not eligible to be employed in a school entity in a position requiring certification or as a charter or cyber charter school staff member or contracted educational provider staff member, or eligible for any certificate.
4. Pursuant to 24 P.S. § 2070.16(c), the Commission shall not reinstate Respondent's certificate or employment eligibility for the period set forth in 24 P.S. § 1-111(e).

3. An appeal shall not operate as a stay if the discipline is imposed under section 9b. 24 P.S. § 2070.15. Therefore, the revocation of Respondent's certificate and employment eligibility will be effective immediately.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By: 

Myron Yoder
Chairperson Pro Tempore

Date Mailed: June 26, 2020



Attest:

Shane F. Crosby
Executive Director