

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**BRENT J. FISHER,
Respondent.**

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DOCKET NO. DI-20-077

MEMORANDUM AND ORDER

This matter is before the Professional Standards and Practices Commission (“Commission”) upon the Department of Education’s (“Department”) Motion for Judgment on Default. For the reasons set forth below, the Motion is granted.

BACKGROUND AND PROCEDURAL HISTORY

The Department initiated disciplinary proceedings against Brent J. Fisher (“Respondent”) with the filing of a Notice of Charges on October 5, 2020. The Notice of Charges alleges that Respondent tried to foster an inappropriate personal relationship with a student and engaged in inappropriate communications with students, falsified scoring data for choir auditions and passed over the highest scoring student singer, and misrepresented his work hours for work totaling approximately \$1,000 of pay. The Notice of Charges also alleges that Respondent’s conduct constitutes with immorality, intemperance, negligence, and sexual misconduct under the Educator Discipline Act (“Act”) and the Commission’s regulations and requests the revocation of Respondent’s certificate and employment eligibility.

Respondent’s response to the Notice of Charges was due on or before November 4, 2020. When no response was filed, on December 1, 2020, the

Department filed a Motion for Judgment on Default, requesting that the Commission find Respondent in default and issue an order directing the Department to revoke his certificate and employment eligibility. The Commission considered the Motion at its January 11, 2021 meeting. Respondent, though properly notified in advance of the date and time of the meeting, did not appear.

FINDINGS OF FACT

1. Respondent holds an Instructional II certificate in the area of Music PK-12.
2. At all times relevant, Respondent was employed by the Cumberland Valley School District as a music and theater teacher.
3. During the 2015-2016 school year, Respondent attempted to foster in improper personal relationship with Z.D., an 18-year-old senior student, and other students via text message communications which had no educational purpose.

Respondent's communications included, but was not limited to, the following:

- a. Asking Z.D. about which "porn sites" he likes to visit; and
 - b. Requesting that Z.D. send him a picture (Z.D. complied); and
 - c. Regularly communicating via text message with other students regarding non-school related subjects.
4. Respondent engaged in further professional misconduct involving the musical program. Specifically, Respondent falsified scoring data for the "Chamber Singers," the highest level of choir singing in the Cumberland Valley School District and Respondent passed over at least one student for admittance to the choir, even though they scored the highest. This occurred in the following manner:

- a. When two audition judges were unavailable for a makeup audition, Respondent assigned scores to the judges without their knowledge. He claimed that he scored each singer himself, then assigned scores one point above and one point below his score, but the records do not reflect this; and
 - b. Respondent said that 10 students attended the makeup session, in which 2 students were ultimately selected, but could only produce scores for 4 of these students; and
 - c. Respondent's records indicate that the top scoring student was passed over by students who placed second through sixth.
5. Respondent engaged in further professional misconduct during the 2015-2016 school year when he misrepresented the number of hours that he worked, totaling approximately \$1,000.00. Specifically, Respondent submitted work logs that were incorrect on at least 10 occasions. For each occasion, Respondent was not present or partially present, but submitted a log that stated he was present for the full work period.
 6. Respondent received the Notice of Charges and all other notices in this matter.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter.
2. Respondent is in default under 1 Pa. Code § 35.37. 22 Pa. Code § 233.115(c)(1).
3. The Commission may deem admitted the relevant facts stated in the Notice of Charges and proceed to consideration of discipline based upon the admitted

facts and exhibits to the Notice of Charges. 22 Pa. Code § 233.115(c)(1); Kinniry v. Professional Stds. & Practices Comm'n, 678 A.2d 1230 (Pa. Cmwlth. 1995).

4. Immorality is conduct which offends the morals of the Commonwealth and is a bad example to the youth whose ideals a professional educator or charter school staff member has a duty to foster and elevate. 22 Pa. Code § 237.3.
5. Respondent is guilty of Immorality.
6. Intemperance is a loss of self-control or self-restraint, which may result from excessive conduct. 22 Pa. Code § 237.5.
7. Respondent is guilty of Intemperance.
8. Negligence is a continuing or persistent action or omission in violation of a duty. 22 Pa. Code § 237.8(a).
9. A duty may be established by law, by promulgated school rules, policies or procedures, by express direction from superiors or by duties of professional responsibility, including duties prescribed by Chapter 235 (relating to Code of Professional Practice and Conduct for Educators). 22 Pa. Code § 237.8(b).
10. Respondent is guilty of Negligence.
11. Respondent is subject to discipline under the Act. 24 P.S. § 2070.9c(a)(1), (3), and (5).

DISCUSSION

Under 22 Pa. Code § 233.115(a), a Notice of Charges is to be treated as an order to show cause under 1 Pa. Code § 35.14. If the educator timely responds in writing to the Notice of Charges, setting forth the facts upon which he or she is relying and stating concisely the matters of law relied upon, in compliance with 1 Pa. Code

35.37, the Commission will appoint a hearing officer to conduct an evidentiary hearing on the matter. 22 Pa. Code § 233.115(d). If, however, the educator fails to timely respond to the Notice of Charges, the educator is deemed to have defaulted under 1 Pa. Code § 35.37, and the Commission may deem admitted the relevant facts stated in the Notice of Charges and proceed to consideration of discipline based upon the admitted facts and exhibits to the Notice of Charges. 22 Pa. Code § 233.115(c)(1); Kinniry v. Professional Stds. & Practices Comm'n, 678 A.2d 1230 (Pa. Cmwlth. 1995).

Here, the Department mailed a copy of the Notice of Charges to Respondent by first class mail on October 5, 2020. The first class mail was not returned. Depositing in the post office of a properly addressed letter with prepaid postage raises a natural presumption that the letter reached its destination by due course of mail. In re Rural Route Neighbors, 960 A.2d 856, 861 (Pa. Cmwlth. 2008). After laying out the charges against Respondent and calling for the revocation of his certificate and employment eligibility, the Notice of Charges stated:

If you contest any factual assertion made in this Notice, you have a right to request, in writing, a hearing. The proceedings shall be in the nature of a formal hearing conducted in accordance with the procedures described in 24 P.S. § 2070.13. Your response and request for a hearing must include specific admissions and denials of the factual assertions, as well as a concise reference to the facts and matters of law relied upon.

YOUR RESPONSE MUST BE RECEIVED BY THE COMMISSION WITHIN THIRTY (30) DAYS AFTER THE DATE OF SERVICE. IF YOU FAIL TO FILE A RESPONSE TO THIS NOTICE OR TO REQUEST A HEARING WITHIN THIRTY (30) DAYS AFTER SERVICE, ALL OF THE FACTUAL ASSERTIONS STATED IN THE ABOVE NOTICE MAY BE CONSIDERED ADMITTED AND DISCIPLINE MAY BE IMPOSED WITHOUT A HEARING. ADDITIONALLY, IF YOU FAIL TO RESPOND AND/OR MAINTAIN A CURRENT ADDRESS WITH THE DEPARTMENT AND COMMISSION, DISCIPLINE MAY BE IMPOSED BY THE PROFESSIONAL STANDARDS

AND PRACTICES COMMISSION WITHOUT FURTHER NOTICE TO YOU
AND WITHOUT THE NEED FOR YOUR PRESENCE.

Notice of Charges, page 5.

Respondent's response to the Notice of Charges was due on or before November 4, 2020. Despite the clear directive in the Notice of Charges, Respondent did not file a response. Therefore, Respondent is in default under 1 Pa. Code § 35.37 and the Commission may deem admitted the relevant facts stated in the Notice of Charges and proceed to consideration of discipline without scheduling an evidentiary hearing.

The Act empowers the Commission to "direct the Department to discipline any educator in accordance with section 9b, 9c, 9d or 9e." 24 P.S. § 2070.5(a)(11.1). Section 9c provides, in pertinent part, that the Commission shall direct the Department to impose discipline against any educator for conduct found by the Commission to constitute immorality, intemperance, or negligence. 24 P.S. § 2070.9c(a)(1), (3) and (5). The Act does not define these terms, but rather directs the Commission to establish definitions. 24 P.S. § 2070.9c(b).

The Commission has defined immorality as "conduct which offends the morals of the Commonwealth and is a bad example to the youth whose ideals a professional educator has a duty to foster and elevate." 22 Pa. Code § 237.3. Sending text message communications to students that have no educational purpose, including text messages inquiring about what porn sites a student likes to visit, is conduct that clearly offends the Commonwealth's morals and sets the requisite bad example. Moreover, "immorality" under the school code includes misrepresentation, fraudulent conduct, and lying. See

Bethel Park School District v. Krall, 445 A.2d 1377, 1378 (Pa. Cmwlth. 1982); Balog v. McKeesport Area School District, 484 A.2d 198 (Pa. Cmwlth. 1984); Riverview School District v. Riverview Education Association, PSEA-NEA, 639 A.2d 974, 978 (Pa. Cmwlth. 1994) (holding that “immorality” under the School Code “may include lying and/or making false statements to school district staff”).¹ Respondent falsified scoring data for choir auditions and misrepresented his work hours, which resulted in him being paid for hours he did not work. Therefore, Respondent is guilty of immorality.

Intemperance is a loss of self-control or self-restraint, which may result from excessive conduct. 22 Pa. Code § 237.5. A single episode can be sufficient to establish intemperance. Gow v. Department of Education, 763 A.2d 528 (Pa. Cmwlth. 2000). Respondent’s conduct was unquestionably excessive and evidences a loss of self-control or self-restraint. Therefore, Respondent is guilty of intemperance.

Negligence is a continuing or persistent action or omission in violation of a duty. 22 Pa. Code § 237.8(a). A duty may be established by law, by promulgated school rules, policies or procedures, by express direction from superiors or by duties of professional responsibility, including duties prescribed by Chapter 235 (relating to Code of Professional Practice and Conduct for Educators). 22 Pa. Code § 237.8(b). By engaging in improper text message communications with students, falsifying audition scores, and misrepresenting his work hours, Respondent repeatedly violated his duty to exhibit acceptable and professional language and communication skills and impart to his students principles of good citizenship and societal responsibility. 22 Pa. Code §

1. While judicial interpretations of defined terms are not binding on the Commission, the Commission should regard those interpretations as persuasive authority. Seltzer v. Department of Education, 782 A.2d 48 (Pa. Cmwlth. 2001).

235.4(6) and (7). Therefore, Respondent is guilty of negligence.²

The Department has requested that the Commission issue an order directing it to revoke Respondent's certificate and employment eligibility. By defaulting, Respondent has forfeited the opportunity to provide the Commission with evidence in mitigation of any sanction. Accordingly, the Commission enters the following:

ORDER

AND NOW, this 24th day of February 2021, it is hereby Ordered:

1. The Motion for Judgment on Default is granted.
2. The Department is directed to revoke Respondent's certificate and his eligibility to be employed as a charter or cyber charter school staff member or contracted educational provider staff member. The revocation of Respondent's certificate and employment eligibility shall be effective upon the conclusion of any appeal from this order or, if no appeal is timely taken, the expiration of the time prescribed for appeal.
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 until his certificate and employment eligibility are reinstated in accordance with the Act.

2. The Department also requests a finding that Respondent is guilty of sexual misconduct. However, on the record before us, the Commission declines to make this finding.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By: 

Myron Yoder
Chairperson Pro Tempore



Attest:

Shane F. Crosby
Executive Director

Date Mailed: February 24, 2021