

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

DEPARTMENT OF EDUCATION,	:	
Petitioner,	:	
	:	
	:	
v.	:	DOCKET NO. DI-21-054
	:	
ELIZABETH G. NIELSEN,	:	
Respondent.	:	

ORDER GRANTING JUDGMENT ON DEFAULT

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 Elizabeth G. Nielsen (“Respondent”) with the filing of a Notice of Charges on June 10, 2021. The Notice of Charges alleges that Respondent was under the influence of alcohol at school. The Notice of Charges also alleges that Respondent’s conduct constitutes immorality, intemperance, and negligence under the Educator Discipline Act (“Act”) and the Commission’s regulations and requests that the Commission enter an Order directing the Department to suspend Respondent’s certificate and employment eligibility.

Respondent’s response to the Notice of Charges was due on or before July 27, 2021.¹ When no response was filed, on August 19, 2021, 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 suspend Respondent’s certificate and

1. Respondent’s counsel requested and was granted a 15-day extension on July 12, 2021. Subsequently, Respondent’s counsel informed the Department that Respondent did not intend to file a response to the Notice of Charges.

employment eligibility. The Commission considered the Motion at its September 13, 2021, meeting. Respondent did not appear.

FINDINGS OF FACT

1. Respondent holds an Instructional II certificate in the areas of Mentally Retarded K-12, English 7-12, and Social Studies 7-12.
2. Respondent was most recently employed by the Central Dauphin School District ("District") as a learning support teacher until her retirement on June 8, 2015.
3. On May 4, 2015, Respondent arrived at work late and was subsequently observed to be under the influence of alcohol by multiple District staff persons. More specifically, Respondent was slurring her speech, acting "out of sorts," and smelled of alcohol. When questioned by administration, Respondent admitted to having a "night cap" the previous evening.
4. As a result of Respondent's conduct on May 4, 2015, breathalyzer testing was administered and demonstrated that Respondent had a blood alcohol content in excess of .2% which further demonstrated that Respondent had a level of impairment by which she could not operate a motor vehicle much less report to work.
5. Additionally, on or about May 4, 2015, while Respondent was under the influence of alcohol at school, she worked directly with a student and was in contact with several other students who were in her classroom during the time period between her arrival at school and her removal from the classroom.
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's counsel on June 10, 2021. Respondent's counsel received the Notice of Charges. After laying out the charges against Respondent and calling for the suspension of Respondent's 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, pages 3-4.

Respondent's response to the Notice of Charges was due on or before July 27, 2021. Despite the clear directive in the Notice of Charges, Respondent declined to 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. Respondent's conduct clearly offends the Commonwealth's morals and sets a bad example for the students whose ideals she as a teacher is supposed to foster and elevate. Respondent's conduct is inconsistent with attempts to discourage students from

drinking and impacts Respondent's ability to serve as an effective role model.

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. "Conduct that extended over a period of time, whether it is hour upon hour or day after day, may be considered excessive." Gow v. Department of Education, 763 A.2d 528, 534 (Pa. Cmwlth. 2000). "Excessive is defined as 'exceeding the usual, proper, or normal.'" Id. Respondent's behavior was excessive and unquestionably 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). Among the duties prescribed for educators by the Code of Professional Practice and Conduct for Educators ("Code") is the requirement that educators impart to students principles of good citizenship and societal responsibility.² 22 Pa. Code § 235.4(b)(6). Respondent's actions are inconsistent with these principles. Therefore, Respondent is guilty of negligence.

The Department has requested that the Commission issue an order directing it to suspend Respondent's certificate and employment eligibility. By defaulting,

2. The Code was amended effective August 21, 2021. For purposes of this Order, the Commission will apply only those provisions of the Code that were in existence at the time Respondent's misconduct occurred.

Respondent has forfeited the opportunity to provide the Commission with evidence in mitigation of any sanction. Accordingly, the Commission agrees that the indefinite suspension of Respondent's certificate and employment eligibility is warranted.

ORDER

AND NOW, this 8th day of October 2021, it is hereby Ordered:

1. The Motion for Judgment on Default is granted.
2. The Department is directed to suspend Respondent's certificate and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member. The suspension 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. To have the suspension lifted, Respondent must apply to the Commission for an order lifting the suspension pursuant to 24 P.S. § 2070.16.
4. 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 her certificate and employment eligibility are reinstated in accordance with the Act.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By: 

Myron Yoder
Chairperson Pro Tempore



Attest: _____
Shane F. Crosby
Executive Director

Date Mailed: October 8, 2021