

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**GERALD F. MAXWELL, III,
Respondent.**

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DOCKET NO. DI-05-21

MEMORANDUM AND ORDER

On February 3, 2006, the Department of Education ("Department") filed a Motion for Judgment on Default, seeking revocation of Respondent's Instructional II teaching certificate endorsed in the area of Music. Initially, the Department filed a Notice of Charges on December 5, 2005, alleging that the Respondent had engaged in conduct that constituted immorality, intemperance, negligence and sexual abuse or exploitation. Similarly, the Department averred that Respondent's conduct violated Pennsylvania's Code of Professional Practice and Conduct for Educators

The Department served the Notice of Charges on Respondent on December 13, 2005, by 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 declined to file an answer or otherwise respond to the Notice of Charges. Accordingly, the Department has filed the instant Motion, requesting that the factual allegations in the Notice of Charges be deemed admitted and that revocation of Respondent's

professional educator certificate be ordered.

In accordance with the Commission's bylaws, a professional educator who fails to respond to the Notice of Charges is in default as provided for in section 35.37 of the General Rules of Administrative Practice and Procedure. 22 Pa. Code §233.115(c)(1); 1 Pa. Code §35.37. Thus, all relevant facts stated in the Notice of Charges will be deemed admitted. Accordingly, the Commission finds that:

1. Respondent served as a music teacher and band director for the Slippery Rock Area School District during the 2004-05 school year;
2. Respondent instructed five female students to try on new band uniforms in the music library at the school;
3. Respondent advised the girls to completely disrobe;
4. While the students were changing, Respondent was watching or filming them through a broken tile in the ceiling and thus viewed the girls in a state of full or partial nudity; and
5. As a result of Respondent's conduct, he was convicted of five counts of Invasion of Privacy on July 14, 2005.

The Commission finds that Respondent's professional misconduct, as enumerated above, constitutes immorality and negligence and also violates the Code of Professional Practice and Conduct. Specifically, the Commission defines immorality as "conduct which offends the morals of a community 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. It is beyond question that Respondent's reprehensible conduct offends the morals of the community and is the antithesis of the ideals that a teacher should be fostering. Respondent breached his duty to protect students and violated the trust that students and the community at large place in educators. In violating his duty to his

students and his profession, Respondent is guilty of immorality and negligence¹ and has failed to fulfill his obligations under the Code of Professional Practice and Conduct ².

The Commission also finds that Respondent's misconduct warrants revocation of his teaching certificate. In addition, the Department requests that the Commission find that Respondent's conduct constituted sexual abuse or exploitation. The term "sexual abuse or exploitation" is defined in the Professional Educator Discipline Act as:

the employment, use, persuasion, inducement, enticement or coercion of a child or student to engage in, or assist any other person to engage in, any sexually explicit conduct or a simulation of any sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of any sexually explicit conduct or conduct that constitutes an offense under 18 Pa.C.S. Ch 31 (relating to sexual offenses) or section 6312 (relating to sexual abuse of children) or other forms of sexual exploitation of children or students.

24 P.S. §2070.1b. A finding of sexual abuse or exploitation precludes reinstatement of a professional educator under section 16 of the Act. 24 P.S. §2070.16(b).

While the Act does not prescribe how or when the Commission should make a finding of sexual abuse or exploitation, the Commission believes that in most cases such a finding should be made only after sufficient facts are presented to allow for a proper analysis and conclusion. Typically, summary disposition of a case is not conducive to a finding of sexual abuse or exploitation. The Commission finds, however, that in those cases in which a professional educator has been convicted of a crime included in the Act's definition, a finding of sexual abuse or exploitation can be made on a motion for summary disposition of the case. In this case, however, Respondent was

1. Negligence is a continuing or persistent action or omission in violation of a duty. 22 Pa. 238.8(a).

not convicted of a crime that falls *per se* within the definition of sexual abuse or exploitation and thus the Commission declines to enter the requested finding in the absence of a more complete factual record. Accordingly, we enter the following:

2. Having found that Respondent's conduct constitutes immorality and negligence, the Commission will not reach the questions of whether it also involves intemperance.

ORDER

AND NOW, this 13th day of March, 2006, upon consideration of the Motion for Judgment on Default filed by the Department of Education and the failure of Respondent to respond thereto, it is hereby ORDERED that the professional certificate issued to Respondent Gerald Maxwell, III shall be REVOKED by the Department pursuant to section 5(a)(11) of the Professional Educator Discipline Act, *as amended*, 24 P.S. § 2070.5(a)(11).

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

BY: _____

David J. Krauser
Chairperson

ATTEST: _____

Carolyn Angelo
Executive Director

Date Mailed: