

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**JOSEPH MCHUGH,
Respondent.**

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DOCKET NO. DI-06-27

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, which seeks the revocation of Respondent’s teaching certificate. Initially, the Department filed a Notice of Charges against Respondent on December 22, 2006, alleging that the Respondent had been convicted of the federal crime of Receipt and Possession of Child Pornography under 18 U.S.C. §2252A(a)(5)(B).

In its Motion for Summary Judgment, filed simultaneously with the Notice of Charges, the Department requests the Commission to revoke Respondent’s Instructional II teaching certificate endorsed in the area of Spanish and any and all other certificates issued to him by the Commonwealth of Pennsylvania pursuant to sections 5(a)(11.1) and 9.2 of the Professional Educator Discipline Act, 24 P.S. §§2070.5(a)(11.1) and 2070.9b. Section 9.2(2) of the Professional Educator Discipline Act requires the Commission to direct the Department to revoke the certificate of a professional educator convicted of a crime involving moral turpitude, a crime listed in

section 111(e) (1) through (3) of the Public School Code of 1949 (24 P.S. §1-111(e)), or a crime from another jurisdiction that is equivalent to the crimes that fall under the two preceding categories whenever a certified copy of the verdict, judgment or sentence of court is filed with the Commission. 24 P.S. §2070.9b(2).

In support of its Motion, the Department attached certified copies of the pertinent court documents reflecting Respondent's conviction. Respondent, having been served by certified mail with the Notice of Charges and the Motion for Summary Judgment, 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.

In the instant case, there is no dispute that Respondent was convicted of Receipt and Possession of Child Pornography under 18 U.S.C. §2252A(a)(5)(B). Thus, the only question before the Commission is whether this crime involves moral turpitude, is listed in section 111(e) (1) through (3) of the Public School Code of 1949, or is equivalent thereto. The determination of whether a crime involves moral turpitude is based solely upon the elements of the crime or misdemeanor. 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, 128 Pa. Commonwealth Ct. 110, 114, 652 A.2d 1005, 1007 (1989).

A person commits the federal crime of Receipt and Possession of Child Pornography if he:

knowingly possesses any book, magazine, periodical, film, videotape, computer disk or any other material that contains child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer.

18 U.S.C. §2252A(a)(5)(B). This federal crime is the equivalent to subsection (d) of Sexual Abuse of Children found in the Pennsylvania Crimes Code and listed in section 111(e)(1) through (3) of the Public School Code of 1949. Subsection (d) of Sexual Abuse of Children reads:

Any person who knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such acts is guilty of a felony of the third degree.

18 Pa.C.S.A. §6312(d).

Accordingly, there is no genuine issue as to any material fact. Under the Professional Educator Discipline Act, the Commission must revoke the certificates of an educator who is convicted of the crimes listed therein or their federal equivalents. See 24 P.S. §2070.9b(2); 24 P.S. §1-111(e).

ORDER

AND NOW, this 22nd day of March, 2007, upon consideration of the Motion for Summary Judgment filed by the Department of Education, it is hereby ORDERED that the professional teaching certificate(s) issued to Respondent Joseph McHugh shall be REVOKED by the Department pursuant to sections 5(a)(11.1) and 9.2 of the Professional Educator Discipline Act, *as amended*, 24 P.S. §§ 2070.5(a)(11.1) and 2070.9b.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

BY: _____
Nancy Stankus
Acting Chairperson

ATTEST: _____
Carolyn Angelo
Executive Director

Date Mailed: