

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**MICHAEL J. TATMAN,
Respondent.**

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PSPC DOCKET NO. DI-07-22

MEMORANDUM AND ORDER

This matter is before the Professional Standards and Practices Commission (“Commission”) upon the Commonwealth Court’s August 5, 2010, order remanding the case to the Commission to consider whether, in light of the Court’s partial reversal of the Commission’s September 30, 2009¹, adjudication, revocation is still the appropriate sanction.

Procedural History

On November 9, 2007, the Department initiated disciplinary proceedings against the Respondent with the filing of a Notice of Charges with the Commission, alleging that the Respondent had engaged in conduct constituting immorality, negligence, intemperance, cruelty, incompetency, sexual abuse or exploitation, and violations of the Code of Professional Practice and Conduct. Specifically, the Department alleged that the Respondent had been involved in a romantic and sexual relationship with a high school student during the 2001 through 2004 school years while serving as an

¹ The Commission initially issued its Adjudication on September 24, 2009, but subsequently issued an Amended Order on September 30, 2009, which clarified its earlier order by specifying that the revocation was to be implemented immediately.

Instrumental Music Teacher/ Band Director in the Palisades School District (“District”).

The Respondent filed a timely response, denying the allegations and demanding a hearing on December 3, 2007. On December 11, 2007, the Commission appointed a Hearing Officer, who granted the District’s Petition to Intervene on December 28, 2007. Hearings were held on May 14, July 10 and October 2, 2008, respectively. On April 9, 2009, the Hearing Officer issued his Proposed Decision and Order, finding the Respondent guilty of immorality, negligence, intemperance, cruelty, sexual abuse or exploitation, and violating section 10(3) of the Code of Professional Practice and Conduct. The Hearing Officer did not find, however, that the Respondent posed a danger to the health, safety or welfare of students or other persons in the schools of this Commonwealth. Both the Department and the Respondent filed timely exceptions to the Hearing Officer’s Proposed Decision.

Respondent’s exceptions can be summarized into six grounds for appeal: (1) the Hearing Officer’s Findings generally were not supported by the record as the Hearing Officer erred in crediting the Department’s witnesses over those proffered by the Respondent; (2) the Hearing Officer erred in concluding that the Respondent was guilty of immorality, negligence, intemperance, cruelty, sexual abuse or exploitation, and violating section 10(3) of the Code of Professional Practice and Conduct; (3) the Hearing Officer erred in concluding that the instant messages exchanged between the Respondent and the student were inappropriate and unprofessional; (4) the Hearing Officer erred in finding revocation was warranted; (5) the Hearing Officer erred in concluding that the Respondent’s due process rights were not violated; and (6) the Hearing Officer erred in failing to find laches.

The Department, in its exceptions, argued that the Hearing Officer erred in rejecting its assertion that immediate discipline is necessary to protect the health, safety or welfare of students or other persons in the schools of this Commonwealth. Under the Act, an appeal of a Commission adjudication acts as a stay of the discipline during the pendency of the appeal. 24 P.S. §2070.15(b). In the event, however, that the Commission finds that immediate discipline is necessary, an appeal will not operate as a stay of the discipline. 24 P.S. §2070.15(b). Accordingly, in those cases where a stay is operational, an educator may continue to teach or seek employment as a teacher during the appeal period. Conversely, if danger is found and the stay thus not in force, the educator's certification would be invalid during the appeal period and he would not be able to secure employment in a public school in this Commonwealth.

In its adjudication issued on September 30, 2009, the Commission denied the Respondent's exceptions² and granted the Department's exception, finding that Respondent posed a threat to the health, safety or welfare of students or other persons in the schools of this Commonwealth thereby warranting immediate discipline.

The Respondent filed a Petition for Review of the Commission's adjudication with the Commonwealth Court on October 20, 2009. In its Memorandum Opinion issued on August 5, 2010, the Commonwealth Court affirmed the Commission's adjudication in part and remanded the matter to the Commission for the limited purpose of consideration of the appropriateness of revocation given the Court's holding that Respondent's misconduct did not constitute "cruelty" or "incompetency" as defined by

² The Commission adopted the Hearing Officer's Findings of Fact and affirmed his conclusion that the Respondent was guilty of immorality, negligence, cruelty, incompetency, intemperance violations of the Code of Professional Practice and Conduct and sexual abuse or exploitation.

the Commission.

On September 3, 2010, the Respondent filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania, which issued an order denying the Petition on March 31, 2011. The Respondent filed an Application for Reconsideration on April 12, 2011, which was denied by the Supreme Court on May 24, 2011. Accordingly, jurisdiction of the instant matter has been relinquished and the question posed by the Commonwealth Court for the Commission's consideration is now ripe for review.

Reconsideration of Disciplinary Sanction

While the Commonwealth Court reversed the Commission with respect to its finding of cruelty and incompetency, it upheld the Commission's findings of fact and affirmed its determination that Respondent's misconduct constituted:

1. immorality;
2. negligence;
3. intemperance;
4. sexual abuse or exploitation; and
5. a violation of the Code of Professional Practice and Conduct.

Moreover, the Court upheld the Commission's finding that immediate discipline was necessary to protect the health, safety or welfare of students or other persons in the schools of this Commonwealth.

In its limited remand to the Commission, the Commonwealth Court did not disturb the Commission's conclusion that the Respondent engaged in a predatory pattern of conduct involving the pursuit and grooming of one of his students, culminating in a physical and sexual relationship. An educator is entrusted with the physical, mental, intellectual and emotional well-being of his or her students. Maintenance of this trust

and the integrity of the student-teacher relationship is the foundation of a school's educational mission. There can be no greater breach of that trust and integrity than an educator preying on a student sexually. The Commission has consistently found revocation to be warranted in those cases where an educator, such as Respondent, has pursued or engaged in a romantic, physical or sexual relationship with a student. The Commonwealth Court's decision affirming the Commission's findings that Respondent's conduct constituted immorality, negligence, intemperance, sexual abuse or exploitation, and a violation of the Code of Professional Practice and Conduct, but **not** intemperance or cruelty, does **not** alter our conclusion that revocation is the appropriate sanction in this case.

Accordingly, we enter the following:

ORDER

AND NOW, this __19th__ day of July, 2011, upon remand by the Commonwealth Court, it is hereby ORDERED that the IMMEDIATE REVOCATION of the professional educator certification issued to Respondent MICHAEL J. TATMAN by order dated September 30, 2009, shall be reaffirmed by the Department in accordance with the foregoing Memorandum. The Commission further affirms its finding that the Respondent's conduct constitutes sexual abuse or exploitation under 24 P.S. §2070.1b.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By: _____
Gilbert R. Griffiths
Chairperson

Attest: _____
Carolyn Angelo
Executive Director

Date Mailed: July 19, 2011