COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

DEPARTMENT OF EDUCATION,	:	
Petitioner,	:	
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	:	
v.	:	**PSPC DOCKET NO. DI-08-13**
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	:	
JAMES PRUSAK,	:	
Respondent.	:	

MEMORANDUM AND ORDER

This matter is before the Professional Standards and Practices Commission ("Commission") upon the Respondent's Exceptions to the Hearing Officer's Proposed Decision and Order. The Hearing Officer issued her Proposed Decision on May 7, 2009, finding that the Respondent had covertly photographed the legs and buttocks of five 12-13 year-old students for the benefit of piquing his sexual interest. She also found that the Respondent failed to exhibit equitable treatment of male and female students in his classroom. Finding that the Respondent's conduct constituted immorality, negligence and intemperance, the Hearing Officer recommended that the Commission revoke the professional educator certification[1] of the Respondent.

After a careful review of the record, the Hearing Officer's Proposed Report and the Respondent's Exceptions thereto, the Commission hereby enters an order

1 The Respondent holds an Instructional II teaching certificate in the area of Secondary Biology and Secondary General Science.

accepting the Hearing Officer's Proposed Decision and Order of Revocation and denying the Respondent's Exceptions in accordance with the discussion below.

PROCEDURAL AND FACTUAL HISTORY

The Department initiated formal disciplinary proceedings against the Respondent with the filing of Notice of Charges on May 22, 2008. On June 2, 2008, the Department reissued the charges upon learning of the Respondent's change of address. In the Notice of Charges, the Department alleged that the Respondent, while serving as a teacher in the Downington Area School District ("District"), engaged in misconduct, including surreptitiously photographing five 12-13 year-old female students for an inappropriate purpose. In addition, the Department alleged that the Respondent gave preferential treatment to his female students and inappropriately stared at the female students. The Department alleged that such conduct constituted immorality, negligence, and intemperance and warranted revocation of the Respondent's professional educator certification.

The Respondent filed an Answer to the Notice of Charges on July 9, 2008, denying the allegations and requesting a hearing. On July 21, 2008, the Commission appointed a hearing officer and a hearing was held on October 30, 2008. Upon the completion of briefing, the Hearing Officer issued her Proposed Decision on May 7, 2009. The Respondent filed his Exceptions to the Hearing Officer's Proposed Decision on June 8, 2009.

RESPONDENT'S EXCEPTIONS

Respondent objects generally to the Hearing Officer's findings of fact and her credibility determinations. Specifically, he asserts that his testimony was credible and

the testimony of the students incredible. Based on its independent and careful review of the record, the Commission agrees with the Hearing Officer's determination that the testimony of the female students was credible. Contrary to the Respondent's argument that the Hearing Officer's credibility determination was baseless, the Hearing Officer's credibility determination was based on her observation of the witnesses' demeanor, which she found to be forthright and honest, and the inconsistencies in the Respondent's "defense" throughout the investigation and prosecution of this matter. H.O. Opinion at p. 25. The central evidence in the case is the photographs, which are not in dispute. The students' testimony provided some context to the photographs but related more to the Respondent's preferential treatment of female students and their reactions to his staring, teaching methods and covert photography. Overall, their testimony was consistent[2] and straightforward. Further, there is no evidence in the record that the students had any reason to fabricate their testimony.

In contrast, the Respondent's reaction throughout the investigation and hearing is replete with evasiveness and untruths. When first confronted by the police, the Respondent indicated that he had taken photographs of both female and male students with his 35 millimeter camera. He also stated that the students were aware that the photographs were being taken. During the police interview, the Respondent subsequently admitted, however, that the photographs were taken with a digital camera and the students were not aware that he was taking the pictures. Upon being

2 The Respondent in his Brief in Support of his Exceptions hypothesizes that the testimony of the students was colored by the passage of time and the rumors about the Respondent that in all likelihood persisted. Hypothesis cannot, however, substitute for evidence. In this case, the evidentiary record

confronted with the photographs, the Respondent was then forced to admit that he had taken only pictures of female students. At the interview, the Respondent admitted that he took the pictures of the 12-13 year old female students to pique or keep his interest in *women* because his past relationships with women had failed.

The Commission agrees with the Hearing Officer that the Respondent's attempts to renunciate this admission and his corollary written statement at the hearing are incredible. This conclusion is supported by the Respondent's repeated self-serving alterations to his "story". Further, the Hearing Officer correctly rejected the subsequent justification for taking the pictures proffered by the Respondent at the hearing.

Specifically, at the hearing the Respondent asserted that he was taking the photographs for inclusion in his portfolio to be used in conjunction with a job search. The photographs were to demonstrate "hands on activities" that were part of his pedagogy. The 24 photographs in evidence taken by the Respondent were of the buttocks and legs of five 7th grade female students. All of the photographs were taken from behind the students and no faces are evident in any of the photographs. Eight of the photographs depict bare legs, eleven of the photographs show students standing at a counter and thirteen of the photographs depict the students writing on the board. The photographs do not reflect any hands-on or educational activity. On their face, the photographs belie the Respondent's subsequently invented justification for taking the pictures[3].

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does not support Respondent's argument that the students collaborated in presenting their testimony, that the bulk of their testimony related to rumors, or that their testimony relied on any rumors.

3 The Respondent's attempt to explain why he did not offer this justification to the police is also not

Similarly, the Hearing Officer properly concluded that the Respondent had in fact admitted to the investigating police detective that he took the photographs for his own prurient interests and that he had attested to that fact in his written, signed statement. Respondent's protestations that the police detective had forged the statement are contrived and implausible.

The Respondent also argues that the Hearing Officer erred in crediting the police detective's testimony. The Respondent points to what he characterizes as gaps in the detective's testimony and suggests that her recollection of the events were questionable. The Commission finds that the detective's lack of recall, such as in which room an interview transpired or who was present when the Respondent signed his statement the second time, to be immaterial. The Respondent does not contest that he wrote and signed a statement reading:

> I Jim Prusak took some photos of students in my classroom without their knowledge. I took these pictures to have pictures of my students. I did not have any intentions of sharing the photos with anyone through any means, I am willing to cooperate with local police to show that (sic) have any pornography.

Following this paragraph, there was a second statement that reads:

> I only took the pictures to keep my interest in women, because most past relationships with women have failed.

While the Respondent admits that he affixed his signature a second time after this statement, he now contends that he did not write the second statement.

In claiming that the statement is a forgery, the Respondent insists that he does

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credible. At the hearing, the Respondent asserts that he didn't tell the police detectives that he planned to use the photo array in his portfolio because he did not want his principal to find out that he was job hunting. The undisputed fact that the principal was not present during the interview conducted by the police detectives undermines the Respondent's contention.

not accuse the detective of deliberately perjuring herself when she testified that he made the second statement and subsequently reduced it to writing. This statement is somewhat disingenuous for if Respondent were to be believed the only plausible explanation for the damaging second statement is that the police forged the statement above his signature. The Commission agrees with the Hearing Officer that such a suggestion is without support in the record and is further undermined by the Respondent's lack of veracity throughout the police investigation and this proceeding.

For the reasons set forth above, the Commission thus accepts the Hearing Officer's findings of fact and of credibility.

Finally, the Respondent argues that the Hearing Officer erred in determining that his conduct constituted grounds for discipline. To the contrary, the record in this case when viewed in its totality evidences that the Respondent covertly took pictures of several female students in his science class over a two-week period. The pictures were taken by the Respondent to satisfy his own prurient interests and served no legitimate educational purpose. That the photographs were designed to "keep" or "pique" the Respondent's interest in his relationships with women is a tacit admission that he inappropriately viewed his 7th grade female students as sexual objects. The Hearing Officer juxtaposed these facts to the actionable grounds for discipline as defined by the Commission and correctly concluded that the Respondent's conduct constituted immorality, intemperance and negligence.

The Commission adopts the analysis leading to this conclusion as set forth in the Hearing Officer's Proposed Opinion. Further, the Commission agrees that the

appropriate revocation is warranted under the facts unique to this case[4]. Accordingly, we enter the following:

4 The appropriate discipline is determined on a case by case basis. The Respondent has cited cases involving alleged inappropriate and unprofessional conduct that resulted in a sanction short of revocation as persuasive authority for a lesser sanction. The cited cases, however, reflect a negotiated settlement of the charges without an evidentiary hearing. The factors that enter into resolution of a particular case prior to an evidentiary hearing are various and peculiar to each case. These negotiated settlements and resulting disciplinary sanctions are not controlling in the instant case, where the appropriate discipline is determined by the facts adduced in the evidentiary record. Moreover, as a counterpoint to the Respondent's argument, there are innumerable decisions in which the Commission has imposed revocation for inappropriate and unprofessional conduct. While the Commission is committed to ensuring that discipline is imposed fairly, the uniqueness of each case militates against any "cookie cutter" sanctioning.

ORDER

AND NOW, this ___27th__ day of October, 2009, upon consideration of the Exceptions filed by the Respondent James Prusak, it is hereby ORDERED that the Respondent's Exceptions are DENIED in accordance with the foregoing memorandum. The Commission ACCEPTS the Hearing Officer's Proposed Decision and Order and ORDERS that the professional educator certification of the Respondent James Prusak be hereby REVOKED.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By: _____
Gilbert R. Griffiths
Chairperson

Attest: _____
Carolyn Angelo
Executive Director

Date Mailed: