

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**REGINALD K. HIGHTOWER,
Respondent.**

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DOCKET NO. DI-12-195

MEMORANDUM AND ORDER

On January 7, 2013, the Department of Education (“Department”) filed a Motion for Judgment on Default, seeking revocation of the professional educator certification and eligibility to be employed in a charter or cyber charter school of Respondent. Initially, the Department filed a Notice of Charges on November 30, 2012, alleging that between 1990 and 1993, the Respondent had been convicted in Florida of Felony Cocaine Possession, Resisting an Officer, Burglary, Theft and Possession of a Controlled Substance with Intent to Sell, Manufacture or Deliver. In four applications for certification in Pennsylvania submitted in 2002, 2003 and 2006, respectively, and in an application for employment submitted to the Erie City School District in 2006, the Respondent failed to disclose his Florida convictions. Finally, the Department alleges that during the 2010-11 school year, the Respondent served as a teacher and a coach in the Erie City School District. During the period of his employment with the District, the Respondent engaged in a pattern of misconduct with a 16 year-old female student

including:

- a) Rubbing R.T.'s thigh and rubbing her genitals over her shorts;
- b) Asking R.T. about her sexual experiences and telling R.T. that she should be with an experienced man like him;
- c) Telling R.T. she was beautiful and that she looked like his ex-girlfriend; and
- d) Sending R.T. text messages depicting cartoon couples having sex.

The Department asserts that the Respondent's convictions for several crimes involving moral turpitude (Theft, Burglary and Possession of a Controlled Substance with Intent to Sell, Manufacture or Deliver) mandate revocation of his professional educator certification. Moreover, the Department charges that the falsification of his applications for certification and employment and his inappropriate relationship with a student constitutes immorality, negligence, intemperance and cruelty.

The Department served the Notice of Charges on Respondent by certified and first class 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 Respondent was convicted in Florida of the crimes of Felony Cocaine Possession, Resisting an Officer, Burglary, Theft and Possession of a Controlled Substance with Intent to Sell, Manufacture or Deliver. The Respondent falsified applications for certification and employment by failing to disclose his convictions. Moreover, the Respondent secured employment with the Erie City School District after submitting the falsified application for employment and while employed at the District engaged in an inappropriate relationship with a student.

Section 9b(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 similar in nature 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. In the instant case, there is no dispute that Respondent was convicted of the Florida crimes of Felony Cocaine Possession, Resisting an Officer, Burglary, Theft and Possession of a Controlled Substance with Intent to Sell, Manufacture or Deliver. Thus, the only question before the Commission is whether these crimes involves moral turpitude, are listed in section 111(e) (1) through (3) of the Public School Code of 1949, or are similar in nature 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).

The Professional Standards and Practices Commission has defined moral turpitude as including:

- (1) That element of personal misconduct in the private and social duties which a person owes to his fellow human beings or to society in general, which characterizes the act done as an act of baseness, vileness, or depravity, and contrary to the accepted and customary rule of right and duty between two human beings.
- (2) Conduct done knowingly contrary to justice, honesty or good morals.
- (3) Intentional, knowing or reckless conduct causing bodily injury to another or intentional, knowing or reckless conduct which, by physical menace, puts another in fear of imminent serious bodily injury.

22 Pa. Code § 237.9(a). The elements of the Florida crimes of Theft¹ and Burglary² involve conduct done knowingly contrary to justice, honesty and good morals and thus constitute crimes involving moral turpitude. Moreover the Florida felony of Possession of a Controlled Substance with Intent to Sell, Manufacture or Deliver is similar in nature

1. The relevant portion of the definition of the Florida crime of Theft is as follows:

A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

- (a) Deprive the other person of a right to the property of another or a benefit from the property.
- (b) Appropriately the property to his or her own use or to the use of any person not entitled to the use of the property.

Florida Statute 812.014.

2. The relevant portion of the definition of the Florida crime of Burglary is as follows:

(1)(a) For offenses committed on or before July 1, 2001, "burglary" means entering or remaining in a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain.
Florida Statute 810.02(1)(a).

to the Pennsylvania felony of Manufacture, Delivery or Possession with Intent to Manufacture or Deliver a Controlled Substance (35 P.S. §780-113(a)(30)), which is a crime of moral turpitude *per se*. 22 Pa. Code §237.9(c)(2). Accordingly, revocation of the Respondent's professional educator certification is mandated under section 2070.9b(2) of the Professional Educator Discipline Act. 24 P.S. §2070.9b(2).

Finally, the Respondent's brazen falsification of applications for certification and employment, as well as his pursuit of an inappropriate and sexualized relationship with a student, constitute immorality³, which also warrants revocation.

The Department also requests that the Commission enter a finding that the Respondent was guilty of sexual abuse or exploitation as defined by 24 P.S. §2070.1b. 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. Respondent's pattern of misconduct involving sexual contact with a student and engaging in sexualized dialogue surely was exploitive of a student to whom he owed a duty to protect.

Finally, the Department requests that the Commission enter a finding that immediate discipline is necessary to protect the health, safety or welfare of students or

other persons in the schools of this Commonwealth. The import of this finding is that in the event an appeal is filed of the Commission's adjudication imposing discipline, the finding prevents the appeal from acting as a stay of the discipline. Thus, in those cases where the Commission finds that the danger presented by an educator's conduct outweighs the educator's interest in deferring discipline until an appellate court reviews the Commission's decision, it will enter the requested finding. In the instant case, the Respondent's exploitive and predatory sexual contact with a female student poses the requisite threat to students to warrant a finding that immediate danger is necessary.

Accordingly, we enter the following:

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3. 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. See 22 Pa. Code § 237.3.

ORDER

AND NOW, this 13th day of March, 2013, upon consideration of the Motion for Judgment on Default filed by the Department of Education, it is hereby ORDERED that the professional educator certification and eligibility to be employed in a charter or cyber charter school of Respondent REGINALD K. HIGHTOWER shall be REVOKED IMMEDIATELY by the Department. The Commission further finds 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: March 13, 2013