

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**BRIAN T. MCMULLEN,
Respondent.**

:
:
:
:
:
:
:
:
:
:
:

DOCKET NO. DI-13-52

MEMORANDUM AND ORDER

On June 27, 2013, the Department of Education (“Department”) filed a Notice of Charges against the Respondent, seeking an immediate suspension of his professional educator certification pursuant to section 2070.9b(1) of the Professional Educator Discipline Act. Under section 2070.9b(1), the Commission may direct the Department to suspend immediately the certificate of a professional educator indicted for a crime set forth in section 111(e)(1) through (3) of the Public School Code of 1949 if the Commission determines that the professional educator poses a threat to the health, safety or welfare of a student or other individual in a school. Suspension may occur only after the Respondent has received notice of the charges and request for immediate discipline and has an opportunity to be heard at a hearing if so requested. 24 P.S. §2070.9b(1); 24 P.S. §1-111(e)(1)-(3).

In the instant case, the Department served the Notice of Charges on the Respondent. 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 to request a hearing¹. 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.

The Commission finds that Respondent, at all times relevant to the instant matter, was employed as a substitute teacher in the Oswayo Valley School District. On or about May 16, 2013, he was criminally charged with Endangering the Welfare of Children, Corruption of Minors, and Indecent Assault. Each of the crimes for which the Respondent was charged is enumerated in section 111(e)(1) of the Public School Code of 1949. 24 P.S. §1-111(e)(1). The criminal charges stemmed from allegations that the Respondent engaged in sexual contact and inappropriate communications with a 15 year old female.

Based on these facts, the Commission finds that the Department has presented sufficient evidence to support its claim that the Respondent's alleged misconduct poses a threat to the health, safety or welfare of a student or other individual in a school. The burden then shifts to the Respondent to rebut the evidence presented by the Department that he was indicted for the particular crimes and/or that he poses the requisite threat. In this case, the Respondent forfeited the rebuttal opportunity.

¹ The Respondent did file a letter on July 10, 2013, with the Commission, indicating that he had retained counsel and providing an updated address. His letter did not, however, respond to the allegations in the Notice of Charges or request a hearing. The Commission has not received any further filings from the Respondent or his unnamed counsel.

Accordingly, the Commission finds that Respondent's professional educator certification² should be suspended immediately pursuant to 24 P.S. §2070.9b(1). Should the Respondent be acquitted of the criminal charges or the charges otherwise be dismissed, the Commission shall reinstate his certification upon submission of a certified copy of the appropriate documentation.

² The Respondent holds an Instructional I teaching certificate in the areas of Social Studies 7-12, Family-Consumer Science K-12, Library Science K-12 and English 7-12..

ORDER

AND NOW, this 21st day of AUGUST, 2013, upon consideration of the Notice of Charges requesting immediate suspension 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 BRIAN T. MCMULLEN shall be SUSPENDED IMMEDIATELY pursuant to 24 P.S. §2070.9b(1).

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

BY: _____
Gilbert R. Griffiths
Chairperson

ATTEST: _____
Carolyn Angelo
Executive Director

Date Mailed: August 21, 2013