

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**NIOMA B. BERNSTEIN,
Respondent.**

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DOCKET NO. DI-15-03

MEMORANDUM AND ORDER

On January 16, 2015, the Department of Education (“Department”) filed a Notice of Charges against Nioma B. Bernstein (“Respondent”) seeking the immediate suspension of her Pennsylvania teaching certification and employment eligibility pursuant to section 2070.9b(a)(1) of the Educator Discipline Act. Under section 2070.9b(a)(1), the Commission may direct the Department to suspend immediately the certificate and employment eligibility of an 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 educator poses a threat to the health, safety or welfare of students or other persons in the schools of this Commonwealth. Suspension may occur only after the educator 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(a)(1); 24 P.S. § 1-111(e)(1)-(3).

In the instant case, the Department properly served the Notice of Charges on Respondent. The Notice of Charges informed Respondent of her right to request a

hearing and cautioned her that the response and request for a hearing must be received by the Commission within 15 days of service of the Notice of Charges. The Notice of Charges also cautioned Respondent that failure to respond could result in the factual assertions being deemed admitted and the imposition of discipline without a hearing. Respondent did not file a responsive pleading with the Commission. In accordance with the Commission's bylaws, an 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.¹

Accordingly, the Commission makes the following findings of fact. Respondent holds an Instructional I Pennsylvania teaching certificate in the areas of Elementary K-6 and Mental and/or Physically Handicapped K-12. Respondent also holds an Administrative certificate in the area of Principal K-12. From December 18, 2013 to June 11, 2014, Respondent was employed by the Wyalusing Area School District as a substitute teacher. Respondent has been criminally charged in the Bradford County Court of Common Pleas with Corruption of Minors, which is a crime enumerated in

¹ Respondent sent a letter to the Department, which the Department received on February 3, 2015, one day after the response to the Notice of Charges was due. In her letter, Respondent acknowledged the criminal charges while maintaining her innocence. She also expressed her desire to "save [her] license" and inquired about the "next step." As contemplated by the Act, a panel of members of the Commission held a meeting on February 12, 2015 to consider the Department's request for immediate suspension. Despite her failure to file a responsive pleading with the Commission and to request a hearing, Respondent was given the opportunity to address the panel. During her comments, Respondent did not dispute the accuracy of the facts alleged by the Department as to her criminal charges and the allegations underlying the criminal charges. However, she maintained that she is not guilty of the charges and stated that she is mounting a vigorous defense in the criminal proceedings. She also requested that the Commission consider accepting an affidavit that she will not be in direct contact with children or students

section 111(e)(1) of the Public School Code of 1949. 24 P.S. § 1-111(e)(1); 18 Pa.C.S. § 6301(a)(1). The criminal charges stem from allegations that Respondent purchased alcohol for a seventeen-year-old minor in exchange for a ride to the liquor store.

Based on these facts, the Commission finds that the Department has presented sufficient evidence to support its claim that Respondent's alleged misconduct poses a threat to the health, safety or welfare of students or other persons in the schools of this Commonwealth. The burden then shifts to Respondent to rebut the evidence presented by the Department that she was indicted for the particular crime and/or that she poses the requisite threat. Respondent has forfeited the rebuttal opportunity.²

Accordingly, the Commission finds that Respondent's teaching certification and employment eligibility should be suspended immediately pursuant to 24 P.S. § 2070.9b(a)(1) and enters the following Order:

during the pendency of the criminal case, but the Commission declined to accept the affidavit in lieu of immediate suspension.

² The Commission's decision in this matter is based upon the nature and seriousness of the charges lodged against Respondent, the district court's finding that probable cause exists to believe that Respondent committed the acts charged, and Respondent's failure to provide evidence to rebut the Commission's reasonable belief that the health, safety or welfare of students or others would be jeopardized by the retention of her certification and employment eligibility during the pendency of the criminal proceedings. However, the Commission makes no findings herein regarding the truth of the factual allegations underlying the criminal charges filed against Respondent. Moreover, should the criminal charges be dismissed or otherwise removed, Respondent's teaching certification and employment eligibility will be immediately reinstated pursuant to section 2070.9b(a)(1)(iii) upon receipt of the appropriate documentation.

ORDER

AND NOW, this day of February, 2015, upon consideration of the Department of Education's Notice of Charges requesting immediate suspension, it is hereby ORDERED that the teaching certification and eligibility to be employed as a charter or cyber charter school staff member or contracted educational provider staff member of NIOMA B. BERNSTEIN shall be SUSPENDED IMMEDIATELY pursuant to 24 P.S. § 2070.9b(a)(1).

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

BY:

Gilbert R. Griffiths
Chairperson

ATTEST:

Shane F. Crosby
Executive Director

Date Mailed: