

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**KEVIN E. NAGLE,
Respondent.**

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DOCKET NO. DI-19-058

MEMORANDUM AND ORDER

This matter is before the Professional Standards and Practices Commission (“Commission”) upon the Department of Education’s (“Department”) Motion for Summary Judgment. For the reasons set forth below, the Motion is granted.

On April 15, 2019, the Department filed a Notice of Charges alleging that Respondent has been convicted of crimes set forth in section 111(e)(1) through (3) of the Public School Code of 1949 and crimes involving moral turpitude, namely Institutional Sexual Assault (18 Pa.C.S. § 3124.2(a.2)(1)), Indecent Assault (18 Pa.C.S. § 3126(a)(1)), and Corruption of Minors (18 Pa.C.S. § 6301(a)(1)(i)). The Notice of Charges also alleges that Respondent is guilty of sexual abuse or exploitation. Simultaneous with the filing of the Notice of Charges, the Department filed a Motion for Summary Judgment requesting the Commission to immediately revoke Respondent’s Pennsylvania educator certification¹ and employment eligibility pursuant to section 9b(a)(2) of the Educator Discipline Act (“Act”). Section 9b(a)(2) of the Act requires the Commission to direct the Department to revoke the certification and employment

1. Respondent holds an Instructional II Pennsylvania teaching certificate in the areas of Data Processing 7-12, Marketing 7-12, Accounting 7-12, and Office Technologies 7-12.

eligibility of an educator convicted of a crime set forth in section 111(e)(1) through (3) of the Public School Code of 1949 or a crime involving moral turpitude upon the filing of a certified copy of the verdict, judgment or sentence of the court with the Commission. 24 P.S. § 2070.9b(a)(2). Attached to the Department's Notice of Charges are certified copies of the pertinent court documents reflecting Respondent's convictions.

The Department served the Notice of Charges and Motion for Summary Judgment on Respondent by first class and certified 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 failed to respond to either pleading. Accordingly, the facts alleged in the Notice of Charges are deemed admitted. 22 Pa. Code § 233.115(c)(1); 1 Pa. Code § 35.37.

We can grant summary judgment only when, after examining the whole record in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Snyder v. Department of Environmental Resources, 588 A.2d 1001 (Pa. Cmwlth. 1991). In the instant case, there is no dispute that Respondent has been convicted of Institutional Sexual Assault, Indecent Assault, and Corruption of Minors. Therefore, the only question before the Commission is whether these crimes involve moral turpitude or are among the crimes enumerated in section 111(e)(1)-(3) of the Public School Code of 1949. All three of these crimes are crimes enumerated in section 111(e)(1) of the Public School Code of 1949 and crimes involving moral turpitude *per se*. 24 P.S. § 1-111(e)(1); 22 Pa. Code § 237.9(c)(1). Thus, there is no genuine issue as to any

material fact and the Department is entitled to judgment in its favor as a matter of law as the Act mandates revocation. 24 P.S. § 2070.9b(a)(2); See *also* Bowalick v. Dep't of Educ., 840 A.2d 519 (Pa. Cmwlth. 2004)(revocation of a teaching certificate on summary judgment is appropriate upon proof of a conviction of a crime of moral turpitude).

The Department also requests that the Commission enter a finding that Respondent is guilty of sexual abuse or exploitation. The import of a finding of sexual abuse or exploitation is that the Commission is permanently barred from reinstating the educator's certification and employment eligibility. 24 P.S. § 2070.16. Pursuant to section 1b of the Act, sexual abuse or exploitation shall have the meaning given to the term by 23 Pa.C.S. Ch. 63 (relating to child protective services), which includes the following:

(2) Any of the following offenses committed against a child:

. . .

(v) Institutional Sexual Assault, as defined in 18 Pa.C.S. §3124.2 (relating to institutional sexual assault).

. . .

(vii) Indecent Assault, as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

. . .

24 P.S. § 2070.1b; 23 Pa.C.S. § 6303(a). As set forth above, Institutional Sexual Assault and Indecent Assault *per se* involve sexual abuse or exploitation when committed against a child. The facts underlying Respondent's convictions for these offenses are that he had inappropriate physical contact with two minor male students,

including touching the students' genitalia while taking their measurements in the back room of the school store. The Commission, therefore, finds that Respondent is guilty of sexual abuse or exploitation and permanently barred from serving as an educator in Pennsylvania.

Finally, pursuant to section 15 of the Act, an appeal shall not operate as a stay if the grounds for discipline include sexual misconduct or sexual abuse or exploitation or if the discipline is imposed under section 9b. 24 P.S. § 2070.15. Thus, our General Assembly has already determined that in cases such as this, the danger presented by the educator's conduct outweighs the educator's interest in deferring discipline until an appellate court reviews the Commission's decision. Therefore, the revocation of Respondent's certification and employment eligibility will be effective immediately.

Accordingly, we enter the following:

ORDER

AND NOW, this 20th day of August 2019, upon consideration of the Motion for Summary Judgment filed by the Department of Education and the lack of response thereto, it is hereby ORDERED that the educator certification and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member of Respondent KEVIN E. NAGLE shall be REVOKED by the Department pursuant to 24 P.S. § 2070.9b(a)(2). The Commission finds that Respondent's conduct constitutes sexual abuse or exploitation under 24 P.S. § 2070.1b and 23 Pa. C.S. § 6303. Pursuant to 24 P.S. § 2070.16(b)(1) and (c) the Commission shall not reinstate Respondent's educator certification or employment eligibility. This Order is effective IMMEDIATELY.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By:



Myron Yoder
Chairperson Pro Tempore



Attest:

Shane F. Crosby
Executive Director

Date Mailed: August 20, 2019