

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**TIMOTHY A. DETWILER,
Respondent.**

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DOCKET NO. DI-20-068

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter is before the Professional Standards and Practices Commission (“Commission”) on a Notice of Charges and Motion for Summary Judgment filed by the Department of Education (“Department”). After consideration of the record in this matter and the applicable law, the Commission finds that summary judgment in favor of the Department is appropriate and enters this Order as follows:

BACKGROUND AND PROCEDURAL HISTORY

Timothy A. Detwiler (“Respondent”) holds an Instructional I certificate in the area of Biology 7-12. At all relevant times, Respondent was employed as a science teacher by the Hampshire County School District in West Virginia. The Department initiated disciplinary proceedings against Respondent with the filing of a Notice of Charges on September 17, 2020. The Notice of Charges alleges that Respondent was convicted of the West Virginia crime of Use of Obscene Matter with Intent to Seduce a Minor. Certified copies of the pertinent court documents are attached to the Notice of Charges. 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 that the Commission enter summary

judgment in its favor and revoke Respondent's certificate and employment eligibility based upon his conviction.

As required, the Department mailed copies of the Notice of Charges and Motion for Summary Judgment to Respondent at his last-known address. Respondent did not file an answer to either pleading.

The Commission heard oral argument at its regularly scheduled meeting on November 23, 2020. Respondent was not present.

SUMMARY JUDGMENT STANDARD

Summary Judgment is appropriate 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).

MATERIAL FACTS

The material facts are not in dispute.¹ On July 7, 2017, Respondent was convicted in the Circuit Court of Hampshire County, West Virginia of Use of Obscene Matter with Intent to Seduce a Minor, W.Va. Code § 61-8A-4. The facts underlying Respondent's convictions are that, on multiple occasions, he sent photographs of his erect penis to a 14-year-old student.

DISCUSSION

The Department seeks the revocation of Respondent's certificate and employment eligibility pursuant to section 9b(a)(2) of the Educator Discipline Act ("Act").

1. Since Respondent did not file a responsive pleading, the only facts considered by the Commission are those alleged in the Department's Notice of Charges, which are deemed admitted and incorporated herein by reference. See 22 Pa. Code § 233.115(c)(1); 1 Pa. Code § 35.37; See also Kinniry v. Professional Standards and Practices Commission, 678 A.2d 1230 (Pa. Cmwlth. 1996).

24 P.S. § 2070.9b(a)(2). That section mandates, in relevant part, that the Commission shall direct the Department to revoke the certificate and employment 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. Id.² Section 111(e)(3) of the Public School Code of 1949 includes crimes from another jurisdiction that are similar in nature to the Pennsylvania crimes listed in sections 111(e)(1) and (2). 24 P.S. § 1-111(e)(3). To determine whether an in-state offense and an out-of-state offense are similar in nature, the Commission carefully compares the elements of the two crimes in terms of the definition of the conduct or activity proscribed (the *actus reus*) and the requirements for culpability (the *mens rea*). The laws need not be identical to be similar; it is sufficient that the laws be nearly corresponding or have a general likeness. Com. v. Simpson, 294 A.2d 805 (Pa. Super. 1972). The Commission's purpose is to give the educator's conduct the same effect it would have if the conduct had occurred in Pennsylvania.

Here, the Department has presented the Commission with certified court records of Respondent's conviction for the West Virginia crime of Use of Obscene Matter with Intent to Seduce a Minor. The Department contends that the crime of Use of Obscene Matter with Intent to Seduce a Minor is similar in nature to the section 111(e)(1) crime of Obscene and Other Sexual Materials and Performances-Dissemination to Minors, 18 Pa.C.S. § 5903(c). After carefully reviewing the elements of each offense, the Commission agrees. Therefore, we find that Respondent has been convicted of a crime

2. The term 'conviction' includes a plea of guilty or nolo contendere. 24 P.S. § 2070.9b(a)(2).

set forth in section 111(e)(3) of the Public School Code of 1949.

The determination of whether a crime involves moral turpitude is based solely upon the elements of the crime. 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, 652 A.2d 1005, 1007 (Pa. Cmwlth. 1989). The West Virginia crime of Use of Obscene Matter with Intent to Seduce a Minor certainly requires “an act of baseness, vileness or depravity” and conduct “contrary to the accepted and customary rule of right,” 22 Pa. Code § 237.9(a)(1), conduct “done knowingly contrary to justice, honesty or good morals,” 22 Pa. Code § 237.9(a)(2), and a “reprehensible state of mind or *mens rea*.” Bowalick v. Commonwealth, 840 A.2d 519, 523-24 (Pa. Cmwlth. 2004). Moreover, crimes set forth in section 111(e)(3) of the Public School Code of 1949 *per se* involve moral turpitude. 22 Pa. Code § 237.9(c). Therefore, we find that Respondent has been convicted of a crime of moral turpitude.

Because Respondent has been convicted of a crime set forth in section 111(e)(3) of the Public School Code of 1949 and a crime of moral turpitude, the Commission must direct the Department to revoke Respondent’s certificate and employment eligibility. 24 P.S. § 2070.9b(a)(2); See also Bowalick, 840 A.2d at 522 (revocation of a teaching certificate on summary judgment is appropriate upon proof of a conviction of a crime of moral turpitude); citing Kinniry v. Professional Stds. & Practices Comm’n, 678 A.2d 1230, 1234 (Pa. Cmwlth. 1996).³

3. 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. Therefore, the revocation of Respondent’s certificate and employment eligibility will be effective immediately.

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:

- (1) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes, but is not limited to, the following:
 - (i) Looking at the sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.
 - (ii) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

24 Pa.C.S. § 6303. As noted above, Respondent sent multiple pictures of his erect penis to a 14-year-old child. Such conduct falls squarely within the above-definition. The Commission, therefore, finds that Respondent is guilty of sexual abuse or exploitation and permanently barred from serving as an educator in Pennsylvania.

ORDER

AND NOW, this 23rd day of December 2020, upon consideration of the Department of Education's Motion for Summary Judgment and the lack of response thereto, it is hereby ORDERED:

1. The Motion is granted.
2. Pursuant to 24 P.S. § 2070.9b(a)(2), the Department is directed to revoke

Respondent's certificate and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member effective on the date of this Order.

3. Respondent is not eligible to be employed in a school entity in a position requiring certification or as a charter or cyber charter school staff member or contracted educational provider staff member, or eligible for any certificate.
4. Respondent is guilty of sexual abuse or exploitation under 24 P.S. § 2070.1b and 23 Pa. C.S. § 6303.
5. Pursuant to 24 P.S. § 2070.16(b)(1), the Commission shall not reinstate Respondent's certificate and employment eligibility.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By: 

Myron Yoder
Chairperson Pro Tempore



Date Mailed: December 23, 2020

Attest: _____
Shane F. Crosby
Executive Director