

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

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**BENJAMIN DURAN TOBIAS,
Respondent.**

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DOCKET NO. IS-22-021

ORDER GRANTING REQUEST FOR IMMEDIATE SUSPENSION

This matter is before the Professional Standards and Practices Commission (“Commission”) on a Notice of Charges filed by the Department of Education (“Department”) against Benjamin Duran Tobias (“Respondent”).

BACKGROUND

Respondent currently holds an Instructional I certificate in the area of Chemistry 7-12. The Department initiated disciplinary proceedings against Respondent with the filing of a Notice of Charges on November 18, 2022. The Notice of Charges alleges that Respondent was criminally charged with Aggravated Indecent Assault by Forcible Compulsion, Institutional Sexual Assault, Corruption of Minors, Unlawful Contact with Minor, Indecent Assault, and Sexual Abuse of Children-Possession of Child Pornography. Copies of the pertinent court documents are attached to the Notice of Charges. The Notice of Charges also alleges that Respondent poses a threat to the health, safety or welfare of students or other persons in a school and requests that the Commission issue an Order directing the Department to immediately suspend Respondent’s certificate and employment eligibility based upon the criminal charges.

As required, the Department mailed a copy of the Notice of Charges to

Respondent at his last-known address.¹ Respondent did not file an answer or request a hearing.

In accordance with section 9b(a)(1)(i) of the Educator Discipline Act (“Act”), if the educator fails to request a hearing within 15 days of service of the Notice of Charges, the Commission or a panel of members of the Commission must promptly convene a meeting to consider the request for immediate suspension. 24 P.S. § 2070.9b(a)(1)(i). Accordingly, the Commission considered the Department’s request for immediate suspension at its regularly scheduled meeting on January 9, 2023. Respondent did not appear.

FACTS

The relevant facts are not in dispute.² On April 8, 2022, Respondent was charged in Franklin County, Pennsylvania with Aggravated Indecent Assault by Forcible Compulsion, 18 Pa.C.S. § 3125(a)(2), Institutional Sexual Assault, 18 Pa.C.S. § 3124.2(a)(1), Corruption of Minors, 18 Pa.C.S. § 6301, Unlawful Contact with Minor, 18 Pa.C.S. § 6318(a)(1), and Indecent Assault, 18 Pa.C.S. § 3126. The criminal charges stem from allegations that Respondent sexually assaulted a juvenile female student on two occasions in the classroom. The charges were waived for court on April 19, 2022. On April 21, 2022, Respondent was charged in Franklin County Pennsylvania with

1. Depositing in the post office of a properly addressed letter with prepaid postage raises a natural presumption that the letter reached its destination by due course of mail. In re Rural Route Neighbors, 960 A.2d 856, 861 (Pa. Cmwlth. 2008).

2. 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).

Sexual Abuse of Children-Possession of Child Pornography, 18 Pa.C.S. § 6312(d), and Corruption of Minors, 18 Pa.C.S. § 6301. The criminal charges stem from allegations that Respondent encouraged a second juvenile female student to engage in sexually explicit conversations with him and viewed a nude photo of the student on her cell phone. The charges were waived for court on May 10, 2022.

DISCUSSION

Section 9b(a)(1) of the Act requires the Commission to order the immediate suspension of an educator who is indicted³ for a crime set forth in section 111(e)(1) through (3) of the Public School Code of 1949, or the attempt, solicitation or conspiracy to commit same, 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.” 24 P.S. § 2070.9b(a)(1). The purpose of the law is to protect children and others in a school from the alleged perpetrator during the pendency of the litigation so as not to allow them to be subject to the crimes involved. Petron v. Department of Education, 726 A.2d 1091, 1095 (Pa. Cmwlth. 1999). The Department bears the burden of showing both that the educator has been indicted for an enumerated crime and that the educator poses a threat of harm to the health, safety or welfare of students or other persons in the schools. As we detailed in Department of Education v. Sean D. Minnich, PSPC Docket No. DI-16-031, the determination whether the immediate suspension of an educator’s certificate and employment eligibility is warranted involves a three-step process. First, the Department can meet the first prong, *i.e.*, can show that

3. The term indictment includes a bill of indictment, police criminal complaint, criminal information or other similar document.

an educator has been charged with an enumerated crime, by presenting court documents, *e.g.*, an indictment. Second, the allegations underlying the criminal charges may serve as a basis to show that an educator poses the requisite threat of harm. Finally, the educator is afforded the opportunity to present evidence as to why the charges and underlying allegations do not establish reasonable cause to believe that he or she poses a threat of harm to students or others.

Here, the Department has presented the Commission with court documents showing that Respondent has been charged in Franklin County, Pennsylvania with Aggravated Indecent Assault by Forcible Compulsion, Institutional Sexual Assault, Corruption of Minors, Unlawful Contact with Minor, Indecent Assault and Sexual Abuse of Children-Possession of Child Pornography, which are crimes set forth in section 111(e)(1) of the Public School Code of 1949. 24 P.S. § 1-111(e)(1). Therefore, the Department has satisfied the first prong of its two-prong burden. The court records show that Respondent is accused of sexually abusing a juvenile female in the classroom, engaging in sexually explicit conversations with a second juvenile female and viewing a nude photograph of the student on her cell phone. Therefore, we find that the Department has also met its burden of proving that Respondent poses a threat to the health, safety or welfare of students or other persons in a school. Since Respondent has failed to present any evidence as to why immediate suspension is unwarranted, the Commission will direct the Department to immediately suspend Respondent's certificate and employment eligibility.

ORDER

AND NOW, this 10th day of February 2023, upon consideration of the Department

of Education's Notice of Charges requesting immediate suspension and the lack of response thereto, it is hereby ORDERED:

1. The Department is directed to immediately suspend Respondent's certificate and eligibility to be employed as a charter or cyber charter school staff member or contracted educational provider staff member pursuant to 24 P.S. § 2070.9b(a)(1).
2. 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.
3. If the criminal charges are dismissed or if Respondent is acquitted, the Commission will direct the Department to immediately lift the suspension of Respondent's certificate and employment eligibility upon receipt of the appropriate documentation. 24 P.S. § 2070.9b(a)(1)(iii).

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By:



Myron Yoder
Chairperson Pro Tempore



ATTEST:

Shane F. Crosby
Executive Director

Date Mailed: February 10, 2023