

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

**DEPARTMENT OF EDUCATION,  
Petitioner,**

v.

**ZACHARY CERRONE,  
Respondent.**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**DOCKET NO. IS-2024-010**

**ORDER GRANTING THE DEPARTMENT’S REQUEST FOR IMMEDIATE  
SUSPENSION**

Background

The Department of Education (Department) initiated disciplinary proceedings against Zachary Cerrone (Respondent) with the filing of a Notice of Charges on April 19, 2024. The Notice of Charges alleges that Respondent was criminally charged with Institutional Sexual Assault, Unlawful Contact with Minor, Indecent Assault and Corruption of Minors. 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.

On May 3, 2024, Respondent, through his counsel, timely filed an Answer to Notice of Charges and Demand for Hearing.

By letter dated May 7, 2024, the Commission appointed Chief Hearing Examiner Debra Sue Rand, Esquire to act as hearing officer and directed her to conduct an evidentiary hearing and to certify the record without a proposed report in accordance

with 1 Pa. Code § 35.201 (relating to certification of record without proposed report).

A videoconference hearing was held as scheduled on June 3, 2024, beginning at 1:00 p.m. Following the hearing, both parties timely filed briefs. The Department filed a Reply Brief. On July 8, 2024, the hearing officer issued an Order Certifying Record.

The Commission heard oral argument at its regularly scheduled meeting on July 15, 2024. After careful consideration, the Commission voted to grant the Department's request for immediate suspension.

#### Findings of Fact

The Commission has carefully reviewed the record and makes the following findings of fact:

1. Respondent holds an Instructional II certificate in the areas of Social Studies 7-12 and Special Education 7-12. PDE Ex. 1 at p. 4 ¶ 1, p. 36 ¶ 1.
2. At all times relevant, Respondent was employed by the Middletown Area School District as a teacher and by the Elizabethtown Area School District as a girls' wrestling coach. Most recently, Respondent was hired by the Lower Dauphin School District and was previously employed by the Derry Township School District and Propel Charter School. PDE Ex. 1 at p. 4 ¶ 2, p. 36 ¶ 2.
3. On February 8, 2024, Respondent was criminally charged in Dauphin County, Pennsylvania with Institutional Sexual Assault, 18 Pa.C.S. § 3124.2(a.2)(1), Unlawful Contact with Minor, 18 Pa.C.S. § 6318(a)(1), Indecent Assault, 18 Pa.C.S. § 3126(a)(1), and Corruption of Minors, 18 Pa.C.S. § 6301(a)(1)(i). PDE Ex. 2 at pp. 6-13.
4. According to the Affidavit of Probable Cause (Affidavit) prepared by Detective

Robert H. Appleby of the Lower Swatara Township Police Department, on multiple occasions between September 2023 and November 2023, Respondent inappropriately touched D.T., a minor female student, on the buttocks, shoulders, and elbows. PDE Ex. 2 at p. 11.

5. According to the Affidavit, Respondent also stared at D.T.'s private parts when she wore leggings, gave D.T. test answers and his shirt on one occasion, and told D.T. that she "looked good.". Id.
6. According to the Affidavit, the alleged incidents involving D.T. occurred in the classroom while Respondent was her teacher and continued until she reported him to another teacher. Id.
7. According to the Affidavit, C.C., another minor female student, reported that D.T. told her about each of the incidents, including how uncomfortable Respondent made her feel, when they occurred and that she (C.C.) witnessed Respondent touch D.T.'s body on several occasions and encouraged D.T. to report the incidents. C.C. also reported that Respondent touched her on the hip and buttocks while in school. Id.
8. According to the Affidavit, Respondent also inappropriately touched H.S., an adult female staff member. Specifically, H.S. reported that Respondent rubbed his penis area on her body as he walked behind her in the classroom on multiple occasions, even after she told him it was inappropriate. Id.
9. According to the Affidavit, Respondent's actions made D.T., C.C., and H.S. feel extremely uncomfortable. Id.
10. According to the Affidavit, several other Middletown Area School District staff

members expressed concerns about Respondent's interactions with female students. Id.

11. On March 13, 2024, following a preliminary hearing before Magisterial District Judge Michael J. Smith, all charges were bound over for trial in the Dauphin County Court of Common Pleas, where they remain pending at docket number CP-22-CR-0001009-2024. PDE Ex. 2 at pp. 1-5, 16-20.

#### Conclusions of Law

1. The Commission has jurisdiction in this matter. 24 P.S. § 2070.5.
2. Respondent has been afforded reasonable notice of hearing and an opportunity to be heard in accordance with the Administrative Agency Law. 2 Pa.C.S. § 504.
3. The Department has proven by a preponderance of the evidence that Respondent was indicted for crimes set forth in section 1-111(e)(1) of the Public School Code of 1949.
4. The Department has proven by a preponderance of the evidence that Respondent poses a threat to the health, safety, or welfare of students or other persons in the schools of the Commonwealth.
5. Respondent is subject to discipline under the Educator Discipline Act (Act). 24 P.S. § 2070.9b(a)(1).

#### Discussion

Section 9b(a)(1) of the Act requires the Commission to order the immediate suspension of an educator who is indicted<sup>1</sup> 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

---

1. The term indictment includes a bill of indictment, police criminal complaint, criminal information or other similar document. 24 P.S. § 2070.1b.

to commit such a crime, 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 Department bears the burden of showing, by a preponderance of the evidence, 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 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 certified court documents showing that Respondent has been criminally charged in Dauphin County, Pennsylvania with Institutional Sexual Assault, Unlawful Contact with Minor, Indecent Assault and Corruption of Minors, which are crimes set forth in section 111(e)(1) of the Public School Code of 1949. 24 P.S. § 1-111(e)(1). Respondent admits that he has been so charged. Therefore, the Department has satisfied the first prong of its two-prong burden.

Regarding the second prong, the court records show that Respondent is accused of engaging in indecent contact with two minor female students and an adult female staff member. It is also alleged that Respondent singled out one of the minor females for special attention, including giving the student test answers, his shirt and compliments on her appearance, ostensibly for the purpose of establishing an inappropriate personal relationship with her. The allegations in the criminal complaint, combined with the district court's finding that probable cause exists to believe that Respondent committed the acts charged, support a finding that Respondent poses a threat to the health, safety or welfare of students or others in a school. The primary professional obligation of educators is to the students they serve. 22 Pa. Code § 235.5a(a). Educators in this Commonwealth have a duty to exercise their rights and powers in good faith and for the benefit of the student and to maintain appropriate professional relationships and boundaries with all students at all times, both in and outside the classroom. 22 Pa. Code §§ 235.5a(b)(1) and (2). Educators also have a duty to protect students from harm, which is defined as "[t]he impairment of learning or any physical, emotional, psychological, sexual or intellectual damage to a student or a member of the school community." 22 Pa. Code §§ 235.3a and 235.5a(b)(4). Finally, in fulfillment of their commitment to colleagues, educators shall not sexually harass a colleague. 22 Pa. Code § 235.5b(3). If true, the allegations represent a serious departure from the high standards expected of educators in this Commonwealth and call into question Respondent's fitness to carry out his most basic obligation: to protect the health, safety and welfare of the students entrusted to his care. Respondent's alleged criminal conduct served no educational purpose, undoubtedly interfered with

learning and subjected his young students and a colleague to a pattern of predatory and harassing behavior that endangered their safety and well-being and left them feeling very uncomfortable. Therefore, we conclude that the Department has met the second prong of its two-prong burden.

The Commission also finds that Respondent failed to present any evidence as to why the immediate suspension of his certificate and employment eligibility is unwarranted. At the hearing, Respondent did not testify, nor did he call any witnesses. Instead, Respondent argues the Department has not met its burden of proving he poses the requisite threat and that his due process rights have been violated.<sup>2</sup>

Respondent first argues that the Commission's three-step process cannot be applied in this case due to the hearing officer's decision to exclude objected to hearsay statements contained in the Affidavit of Probable Cause. Without those statements, Respondent argues, there is no evidence showing what led police to charge Respondent.<sup>3</sup> This argument is without merit. First, the Commission is "the ultimate fact finder, with the authority to affirm, reverse, or modify the hearing officer's decision as well as to impose discipline accordingly." Gow v. Department of Educ., Prof'l Stds. & Practices Comm'n, 763 A.2d 528, 532 (Pa. Cmwlth. 2000); Boguslawski v. Dep't of Educ., 837 A.2d 614, 618 (Pa. Cmwlth. 2003). As such, the Commission is "empowered to substitute its own independent judgment instead of deferring to the

---

2. Though not raised in his brief, Respondent also argued at the hearing that the certified court documents (PDE Exhibit 2) were improperly authenticated. We conclude that the hearing officer properly admitted the documents pursuant to Pa.R.E. 902 and 42 Pa.C.S. §§ 6103 and 6106.

3. In Dep't of Educ. v. Shawn D. Minnich, PSPC Docket No. DI-16-031, the Commission explained, "The indictment is not dispositive. One cannot be validly indicted on abstract charges; an indictment must set forth specifically the alleged criminal conduct. Thus, in some cases the filing of 111(e) charges will support a finding of threat based upon the specific allegations set forth in the charges and in other cases not."

judgment of the hearing officer.” Id. More importantly, Respondent’s argument misconstrues the hearing officer’s ruling, and ignores the purpose for which the certified court documents were offered. In response to Respondent’s hearsay objection, the hearing officer did not, as Respondent asserts, exclude the statements contained in the Affidavit of Probable Cause.<sup>4</sup> Rather, the hearing officer admitted the Department’s Exhibit 2 in its entirety, including the Affidavit, while sustaining Respondent’s objection only “to the extent that it’s [the Affidavit] being used to prove the truth of the allegations that are there.” Notes of Testimony at p. 16. Thus, the hearing officer recognized, correctly, that the allegations in the Affidavit of Probable Cause are hearsay only if offered for their truth. Hearsay is defined as “a statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” Pa.R.E. 801(c). Hearsay evidence is presumed to be unreliable because the original declarant is not before the trier of fact and, therefore, cannot be challenged as to the accuracy of the information conveyed. Commonwealth v. Smith, 568 A.2d 600, 608 (Pa. 1989). While the technical rules of evidence are relaxed in administrative proceedings, hearsay evidence, properly objected to, is not competent evidence to support a finding of fact. Walker v. Unemployment Compensation Board of Review, 27 Pa. Cmwlth. 522, 367 A.2d 366, 370 (1976). Conversely, the hearsay concern is not present where statements of an out-of-court declarant are not being offered for the truth of the content of those statements. Smith, 568 A.2d at 608 (Pa. 1989); *See also* Castellani v. Scranton Times, L.P., 124 A.3d 1229, 1244 (Pa. 2015) (“A statement that is not offered for

---

4. To the extent that the hearing officer’s ruling can be interpreted as excluding the statements, it is reversed.

its truth...is not hearsay.”). Here, the record reflects that the Affidavit of Probable Cause was offered by the Department as proof of the reason why Respondent was criminally charged. It was not offered for the truth of the statements contained in the Affidavit. The Commission has repeatedly stated that the allegations underlying the criminal charges may serve as sufficient support for a finding that the educator poses the requisite threat to justify the suspension of the educator’s certificate pending disposition of the criminal charges. The truth of those allegations is immaterial because the Commission makes no assertion about the educator’s guilt or innocence of the charges alleged in the indictment. Accordingly, as the Affidavit of Probable Cause was not offered for the truth of the matter asserted, it cannot be characterized as hearsay. It is admissible to establish the allegations undergirding the charges for the purpose of determining whether Respondent poses a threat.

Second, Respondent argues that the Commission’s three-step process violates his due process rights because he is barred from challenging the credibility and truthfulness of the allegations in the indictment, rendering the right to be heard meaningless. The essence of Respondent’s argument is that in order to sustain its burden of proving he poses a threat, the Department must prove the allegations underlying the criminal charges before the courts have even had a chance to determine his guilt or innocence. Because neither the Act nor due process requires a full adversarial hearing on the merits of the criminal charges, Respondent’s argument must fail.

*The Act*

Before the Commission can order an immediate suspension pursuant to section 9b(a)(1) of the Act, the Commission must determine that the educator poses a threat to the health, safety or welfare of students or other persons in the schools of this Commonwealth. The Commission is required to hold a hearing, if requested by the educator, to consider facts relevant to that determination. 24 P.S. § 2070.9b(a)(1). The statute is silent with respect to the contours of the required hearing. However, the Commission has repeatedly stated that an indictment alone can satisfy both prongs of the Department's burden because the indictment is an "objective fact" that must be based upon probable cause to believe the educator committed the acts charged.<sup>5</sup> Dep't of Educ. v. Minnich, PSPC Docket No. DI-16-031, at 3, fn. 3; *See also* Dep't of Educ. v. Deppen, PSPC Docket No. DI-10-03, at 4 (a formal judicial determination by a district magistrate that probable cause exists to believe that an individual has committed the acts charged may serve as sufficient support for the Commission's finding that there is reasonable cause to suspend). Reading section 9b(a)(1) in the context of the Act as a whole supports this interpretation. First, the Act does not allow a suspension based upon the filing of any type of criminal complaint. Rather, only an indictment for a crime so serious the educator would be permanently barred from school employment upon

---

5. In Pennsylvania, a person accused of a crime has a right to a preliminary hearing. Commonwealth ex rel. Fitzpatrick v. Mirarchi, 392 A.2d 1346 (1978). The purpose of a preliminary hearing is to prevent a person from being imprisoned or required to post bail for a crime that was not committed or with which there is no evidence of his connection. Commonwealth ex rel. Buchanan v. Verbonitz, 581 A.2d 173, 174 (Pa. 1990). At the preliminary hearing, the Commonwealth has the burden of producing legally competent evidence "which demonstrates the existence of each of the material elements of the crime charged and legally competent evidence to demonstrate the existence of facts which connect accused to the crime charged. Id. In this matter, the charges filed against Respondent were held for court following a preliminary hearing.

conviction will support a suspension under section 9b(a)(1).<sup>6</sup> Thus, an indictment supported by probable cause should certainly be a sufficient fact in and of itself to support a finding of a threat to justify the temporary suspension of an educator pending disposition of the criminal charges. Second, section 9b(a)(1) requires the Commission to hold a hearing within thirty (30) days of the receipt of the request for a hearing and to issue a decision within twenty (20) days of the conclusion of the hearing. 24 P.S. § 2070.9b(a)(1)(i). Clearly, the legislature intended to provide an expedient method to suspend an educator's certificate and employment eligibility. Requiring a full-blown administrative hearing at which the Department must prove the allegations underlying the indictment before an educator can be suspended would clearly run counter to the legislative purpose. Had the legislature intended such a result, there would have been no need to carve out a special provision for educators charged with certain offenses because it could have simply required the Department to bring a case under sections 9c and 13 of the Act or wait for a conviction. See 24 P.S. § 2070.9c (relating to imposition of discipline on other grounds) and 24 P.S. § 2070.13 (relating to hearing). Finally, an immediate suspension under section 9b(a)(1) is clearly intended as a temporary measure to protect students and others in a school while the *courts* determine the educator's culpability. If the educator is convicted, his or her certificate will be revoked. See 24 P.S. § 2070.9b(a)(2). If the educator is acquitted or the criminal charges are otherwise removed, the educator will be immediately reinstated. 24 P.S. § 2070.9b(a)(1)(iii). If, the Department believes that despite the acquittal or dismissal, the

---

6. Section 111 of the Public School Code of 1949 disqualifies from school employment anyone who has been convicted of any of the offenses enumerated in subsections (e)(1)-(3). 24 P.S. § 1-111(e).

educator's alleged conduct is sufficient to warrant discipline, it must bring a new proceeding and the educator is entitled to a full-blown administrative hearing at which the Department must prove that the conduct actually occurred. 24 P.S. § 2070.9b(b); 24 P.S. § 2070.13. Therefore, direct evidence of Respondent's wrongdoing at the immediate suspension stage would be superfluous because the educator's guilt or innocence is not at issue. The only issue is whether the educator poses a threat.

#### *Due Process*

The Commission's interpretation is also consistent with principles of due process. The essential elements of due process are notice and opportunity to be heard. Soja v. Pennsylvania State Police, 455 A.2d 613, 615 (Pa. 1982). This procedural due process requirement is codified in the Pennsylvania Administrative Agency Law, which provides, "No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard." 2 Pa.C.S. § 504. "Further, due process is a 'flexible' concept, not a technical one, and it imposes only such procedural safeguards as the situation warrants." Fountain Capital Fund, Inc. v. Pa. Secs. Comm'n, 948 A.2d 208, 214 (Pa. Cmwlth. 2008) (citations omitted). The amount of process that is due in any particular circumstance must be determined by application of the three-part balancing test first established in Mathews v. Eldridge. This balancing test considers three factors: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation together with the value of additional or substitute safeguards; and (3) the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state. Friends of Devito v. Wolf, 227

A.3d 872, 897 (Pa. 2020); *citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); See also Firman v. State Board of Medicine, 697 A.2d 291 (Pa. Cmwlth. 1997).

In this case, the private interest is Respondent's property right in the practice of the teaching profession. It is well-settled that a teaching certificate is a constitutionally protected property right entitled to due process protection. Bowalick v. Commonwealth, Department of Education, 840 A.2d 519, 522 (Pa. Cmwlth. 2004). The protections given to the right to practice a profession are, however, "subject to the lawful exercise of the power of the State to protect the public health, safety, welfare, and morals by promulgating laws and regulations that reasonably regulate occupations." Khan v. State Bd. of Auctioneer Exam'rs, 842 A.2d 936, 946 (Pa. 2004).

The risk of an erroneous deprivation of an educator's interest is negligible because the "objective fact" of the indictment is sufficiently reliable to provide an adequate basis for the suspension in that an independent third party has determined that there is probable cause to believe the educator committed a serious crime. Moreover, the fact that an indictment is considered adequate evidence does not, as Respondent argues, render the hearing meaningless. That's because the indictment is not conclusive. The filing of charges will support a finding of threat of harm in some cases but not in others depending upon the specific allegations set forth in the indictment.<sup>7</sup> Finally, as noted above, the educator has an opportunity to present

---

7. In Department of Education v. R.L., PSPC Docket No. DI-19-177, the Commission emphasized that a threat will not be presumed from the mere filing of charges and found the Department's argument wanting where the educator was charged with Endangering the Welfare of Children based upon allegations she left her six-year-old son home alone for approximately two and-a-half hours while she was drinking and eating at a neighbor's house.

evidence on why a suspension is not warranted. For these reasons it is unlikely that any particular suspension would be erroneously imposed.

Finally, while the private interest is substantial, the Commission has a paramount interest that is served by the current process, namely removing educators who may constitute a threat to the health, safety or welfare of the students, the teachers or the school and in preserving the integrity of the profession. Petron v. Department of Education, 726 A.2d at 1091,1094; Bowalick, 840 A.2d at 522-3 (Pa. Cmwlth. 2004). The only alternative to allowing suspension on the basis of the indictment is to require the Department to conduct a mini-trial to prove independently that the educator committed the crime(s) with which he or she has been charged. Such a procedure would impose a substantial burden on the Department and undermine the purpose of the law, which 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, 726 A.2d at 1095 (Pa. Cmwlth. 1999) (Pellegrini, J. concurring). Practically speaking, the Department is not a criminal justice agency and cannot compel access to police reports and other evidence that may be necessary to prove the underlying allegations. Moreover, a hearing on the merits of the criminal charges would also constitute an improper interference with the criminal proceedings and raise a number of issues for the affected educator, including Fifth Amendment issues. For these reasons, and also because the risk of erroneous deprivation of the private interest is negligible, the three-step process articulated by the Commission satisfies due process.

To reiterate, an immediate suspension under section 9b(a)(1) of the Act is clearly intended as a temporary measure to maintain the safety of students and others in a school while awaiting the certainty produced by a court decision. The Department bears the burden of proving both that the educator has been charged with an enumerated offense and that the educator poses the requisite threat. To meet its burden, the Department must produce evidence. To be sure, an indictment is not evidence of the acts charged therein, but it is evidence that the person named has been indicted on the charges recited. Such evidence is sufficient to satisfy both prongs of the Department's burden because the foundation of the suspension action is the reasonable belief that the educator committed a crime implicating school safety, not that the offense was committed. Once that belief is resolved through the resolution of the criminal matter, the Commission must act to lift the suspension, revoke the educator's certificate, or take further administrative action.

In the present case, the record reflects that Respondent was afforded the statutorily required pre-deprivation hearing before a neutral hearing examiner where he was represented by counsel and given the opportunity to rebut the Department's evidence. Therefore, the record demonstrates that Respondent received all the process he was due.

### Conclusion

Based upon the totality of the evidence, the Commission finds that the Department has met its burden of proving that Respondent poses a threat to the health, safety, or welfare of students or other individuals in a school. Accordingly, the

Commission will direct the Department to immediately suspend his certificate and employment eligibility.

Order

AND NOW, this 23<sup>rd</sup> day of July 2024, 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).
4. An appeal of this Order shall not operate as a stay of the discipline imposed. 24 P.S. § 2070.15(b)(3).

PROFESSIONAL STANDARDS AND  
PRACTICES COMMISSION

By: 

---

Myron Yoder  
Chairperson Pro Tempore



ATTEST:

---

Shane F. Crosby  
Executive Director

Date Mailed: July 23, 2024