# COMMONWEALTH OF PENNSYLVANIA PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

DEPARTMENT OF EDUCATION,

Petitioner

:

vs. : Docket No. DI-07-21

:

LAUREN DADERKO, :

Respondent :

## PROPOSED REPORT

# **INTRODUCTION**

On August 29, 2007, the Pennsylvania Department of Education [hereinafter "PDE"] filed a Notice of Charges with the Professional Standards and Practices Commission [hereinafter "Commission"] seeking disciplinary action against Lauren Daderko [hereinafter "Respondent"]. The Notice of Charges requested disciplinary action based upon immorality, incompetency, intemperance, and negligence. On October 29, 2007, Respondent, through her attorney, filed a Response to Notice of Charges.

The Blue Mountain School District [hereinafter "School District"] petitioned the Commission to intervene in the proceedings which petition was granted by the original Hearing Officer, Lynne M. Mountz, on February 22, 2008. An administrative hearing was initially scheduled for June 19, 2008 and January 13, 2009, both of which were continued. An administrative hearing was conducted on March 5, 2009 before Hearing Officer Lynne M. Mountz. PDE, Respondent, and School District appeared and participated in the hearing. A

request to allow Respondent to testify by telephone had been denied pre-hearing. Although subpoenaed, Respondent did not personally appear. All parties were provided a full opportunity to present testimony, examine and cross-examine witnesses, and present documentary evidence in support of their respective positions.

PDE and Respondent filed post hearing briefs. On July 8, 2009, the case was reassigned to Hearing Officer Debra K. Wallet. Based upon a thorough review of the testimony and evidence presented at the administrative hearing, as well as the briefs and all matters of record, the Hearing Officer proposes the following:

#### **FINDINGS OF FACT**

- 1. Respondent holds an Instructional I Pennsylvania teaching certificate endorsed in the area of Health and Physical Education, which was issued by PDE on May 1, 2000, and endorsed in the area of Safety and Drivers Education, which was issued by the Department on October 1, 2002. (Department's Notice of Charges [hereinafter "NOC"], ¶1; Respondent's Answer to Charges [hereinafter "Answer"], ¶1).
- 2. Respondent was employed as a physical education and health teacher with the School District from 2001 until her dismissal on September 6, 2005. (NOC ¶2; Answer ¶2).
- 3. Respondent's teaching certificate is both valid and active. (Notes of Testimony [hereinafter "N.T."] 8-9; PDE Exhibit 2).

- 4. Although subpoenaed, Respondent failed to appear at the March 5, 2009 professional educator discipline hearing. Respondent was represented at the hearing by counsel. (N.T. 5).
- 5. The parties stipulated that Respondent appeared in an Arts and Entertainment Network television show called "Intervention" which aired on December 20, 2006. (N.T. 6; PDE Exhibit 1).
- 6. Douglas Morgan is the lead teacher of the Health, Physical Education, and Driver Education departments at the School District. Mr. Morgan's duties include informally observing the job performance of teachers within his department. Mr. Morgan held the lead teacher position during the 2004-2005 school year. (N.T. 10-12).
  - 7. Mr. Morgan was assigned to be Respondent's mentor. (N.T. 17).
- 8. Mr. Morgan credibly testified that Respondent's job performance deteriorated during the 2004-2005 school year and she started to "do less of her job." (N.T. 12).
- 9. During the 2004-2005 school year, Respondent would arrive late to school, missing her homeroom coverage obligations; left early from school; did not turn in lesson plans; failed properly to maintain equipment at her office space; allowed her classroom instruction to fall behind the pace of the curriculum; and failed to arrange promptly for substitute teacher coverage. Because of Respondent's conduct, other educators in the department were required to cover for her. (N.T. 13).

- 10. When Mr. Morgan confronted Respondent on numerous occasions about the neglect of her job duties and poor job performance, Respondent denied any wrongdoing. (N.T. 13-14).
- 11. Mr. Morgan informed the school principal on multiple occasions about Respondent's deficiencies. (N.T. 14).
- 12. During the 2004-2005 school year, James Orwig was an assistant high school principal at the School District. Mr. Orwig held this position for approximately six years. (N.T. 16).
- 13. Assistant Principal Orwig's responsibilities included staff supervision. (N.T. 16-17).
- 14. Assistant Principal Orwig credibly testified that he became concerned about Respondent's conduct during the 2004-2005 school year. He issued both verbal and written reprimands to Respondent throughout the school year concerning Respondent's tardiness and poor attendance record. He had several conversations with Respondent about her ongoing performance issues. (N.T. 18; PDE Exhibits 3, 4, 5, 6).
- 15. On September 24, 2004, Respondent signed for a formal written reprimand for leaving work early without permission. By leaving, she neglected her assigned duty areas and left students without supervision. (N.T. 19-20; PDE Exhibit 3).
- 16. On November 15, 2004, Respondent signed for a formal written reprimand for excessive absenteeism. (N.T. 21; PDE Exhibit 4).

- 17. On December 21, 2004, Respondent signed for a formal written reprimand for failing to report to work on time and for failing to notify school personnel in advance of her absence. (N.T. 21-22; PDE Exhibit 5).
- 18. On March 17, 2005, a fourth written reprimand was prepared as a result of her returning to the school building forty minutes late. She failed to return on time after taking what was supposed to be a thirty-minute lunch period. As a result, Respondent missed her teaching assignment and caused other teachers to assume additional duties in her absence. Respondent did not sign this document because she was on extended leave. (N.T. 22-23; PDE Exhibit 6).
- 19. As Assistant Superintendent for Business Affairs at the School District, Dr. Andrew Smarkanic handles personnel matters, including attendance issues. (N.T. 28-29).
- 20. Between September 2004 and February 2005, Respondent took approximately ten sick days. (PDE Exhibit 7).
- 21. School District policy dictates that if an individual is using an extraordinary amount of sick time, the School District may ask for a doctor's verification for the absences. (N.T. 31).
- 22. On or about February 15, 2005, Respondent indicated she had a doctor's note from a particular physician. When Dr. Smarkanic followed up with the physician with whom Respondent claimed to have had an appointment, the physician's office informed Dr. Smarkanic that Respondent had not been seen in that office for more than a year. (N.T. 31).
- 23. On February 15, 2005, Respondent met with Dr. Smarkanic and other School District representatives regarding her attendance. Based upon Respondent's unkempt

appearance and conduct, School District personnel suspected that Respondent was abusing drugs and ordered her to seek medical help before returning to work. (N.T. 33-35).

- 24. David Mattson is the Chief of Police with the Tamaqua Borough Police Department. Prior to assuming this position, Chief Mattson worked as a patrolman with the Tamaqua Borough Police Department for eleven years. (N.T. 39).
- 25. Chief Mattson is trained in the detection of persons under the influence of drugs and/or alcohol. (N.T. 39-40).
- 26. On March 17, 2005, Chief Mattson responded to the scene of a motor vehicle accident within the Borough of Tamaqua. Respondent had rear-ended another vehicle and then fled the scene of the accident. (N.T. 40-42).
- 27. Chief Mattson made several observations which caused him to believe that Respondent was under the influence of either drugs and/or alcohol: Respondent's eyes were glazed over, she had trouble forming sentences and was not making sense, and Respondent staggered when she exited her vehicle. (N.T. 42).
- 28. Chief Mattson administered a field sobriety test and found that Respondent was unable to maintain her balance. He deemed her too impaired to be safely driving a vehicle. (N.T. 43-44).
- 29. Chief Mattson arrested Respondent and transported her to Pottsville Hospital where her blood was tested for the presence of drugs and alcohol. Respondent tested positive for cocaine and opiates, a derivative of heroin. (N.T. 44-45, 57; PDE Exhibit 9).

- 30. Upon her arrest, Respondent's vehicle was towed to an impound lot and she was explicitly ordered not to drive for a period of one day due to her impaired state. (N.T. 46).
- 31. Later that same day, Respondent, against explicit police orders, drove herself to the impound lot and attempted to access her vehicle. The lot operator summoned Chief Mattson to the scene. (N.T. 47).
- 32. Chief Mattson arrived at the scene and permitted Respondent to obtain items from her vehicle. Respondent was behaving in a suspicious manner at which point the tow truck operator indicated Respondent had obtained a hypodermic needle. Respondent denied possessing the needle. As Chief Mattson attempted to obtain the needle, Respondent threw it to the ground and stomped on the needle and Chief Mattson's hand as he tried to pick it up. (N.T. 47-48).
- 33. Respondent fought Chief Mattson and resisted arrest. When Chief Mattson finally subdued and handcuffed Respondent, he retrieved the needle and found that it contained a brown liquid which Respondent had just loaded and had not yet had the opportunity to "shoot up" or inject. Chief Mattson also retrieved a spoon from the front seat of Respondent's vehicle that contained a residue. (N.T. 48-49).
- 34. Both the needle and spoon were taken into evidence and sent to the Pennsylvania State Police Bureau of Forensic Services for testing. The substance in the needle and the residue on the spoon tested positive for heroin. (N.T. 49; 57; PDE Exhibit 10).
- 35. As a result of her conduct on March 17, 2005, Respondent was charged under two separate criminal complaints. (N.T. 49-50).

- 36. The first criminal complaint charged Respondent with one count of Driving Under the Influence of a Controlled Substance, 75 P.S. §3802(d)(1), one count of Careless Driving, 75 P.S. §3714, one count of Accidents Involving Damage to Attended Vehicle or Property, 75 P.S. §3743(a), and one count of Duty to Give Information and Render Aid, 75 P.S. §3744(a). (N.T. 50-51).
- 37. The second criminal complaint charged Respondent with two counts of Possession of a Controlled Substance, 35 P.S. §780-113(a)(16), and two counts of Possession of Drug Paraphernalia, 35 P.S. §780-113(a)(32). (N.T. 50).
- 38. On May 31, 2005, Respondent, who was represented by counsel, waived the charges into the Court of Common Pleas of Schuylkill County. (N.T. 51).
- 39. On September 12, 2005, Respondent failed to appear before the Honorable Judge William Baldwin to answer the outstanding criminal charges. A bench warrant was issued for her arrest. (N.T. 51).
- 40. As of March 5, 2009, the date of this administrative hearing, the criminal charges against Respondent were still pending. (N.T. 53).
- 41. As of March 5, 2009, the date of the hearing, there was an active bench warrant for Respondent's arrest. (N.T. 51-52).
  - 42. Respondent is guilty of Immorality. 24 P.S. §2070.5(a)(11), 22 Pa. Code §237.3.
- 43. Respondent is guilty of Negligence. 24 P.S. §2070.5(a)(11), 22 Pa. Code §237.8(a)-(b).

- 44. Respondent is guilty of Intemperance. 24 P.S. §2070.5(a)(11), 22 Pa. Code §237.5.
- 45. Respondent is guilty of Incompetency. 24 P.S. §2070.5(a)(11), 22 Pa. Code §237.4.

#### CONCLUSIONS OF LAW

- 1. The Commission has jurisdiction in this matter. 24 P.S. §2070.5.
- 2. Respondent is subject to discipline under the Act. 24 P.S. §2070.5(a)(11).
- 3. Respondent has been afforded reasonable notice of the hearing and an opportunity to be heard in accordance with the Administrative Agency Law. 2 Pa.C.S. §504.
- 4. Heroin is a Schedule I Controlled Substance pursuant to 35 P.S. §780-104(1)(ii)(10).
- 5. Schedule I Controlled Substances have a high potential for abuse, no currently accepted medical use in the United States, and lack accepted safety for use, even under medical supervision. 35 P.S. §780-104(1).
- 6. Cocaine is a Schedule II Controlled Substance pursuant to 35 P.S. §780-104(2)(i)(4).
- 7. Pursuant to 35 P.S. §780-113(a)(16), the Commonwealth prohibits an individual from knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State

board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by the act.

- 8. Immorality is conduct which offends the morals of the community and is a bad example to the youth whose ideals a professional educator or charter school staff member has a duty to foster and elevate. 22 Pa. Code §237.3; *Kinniry v. Professional Standards and Practices Commission*, 678 A.2d 1230, 1232 (Pa. Cmwlth. 1996).
- 9. In order to demonstrate Immorality as a basis for discipline under the Professional Educator Discipline Act, it must be established that (1) the conduct claimed to constitute Immorality actually occurred, (2) that such conduct offends the morals of the community, and (3) that such conduct is a bad example to the youth whose ideals a professional educator has a duty to foster and elevate. *See Kinniry v. Abington School District*, 673 A.2d 429, 432 (Pa. Cmwlth. 1996).
- 10. Negligence is a continuing or persistent action or omission in violation of a duty.

  22 Pa. Code §237.8(a).
- 11. A duty may be established by law, by promulgated school rules, policies or procedures, by express direction from superiors or by duties of professional responsibility, including duties prescribed by Chapter 235 (relating to Code of Professional Practice and Conduct of Educators). 22 Pa. Code §237.8.
- 12. Intemperance is a loss of self-control or self-restraint which may result from excessive conduct. 22 Pa. Code §237.5.

- 13. Incompetency is a continuing or persistent mental or intellectual inability or incapacity to perform the services expected of a professional educator or a charter school staff member. 22 Pa. Code §237.4.
- 14. The Department has sustained its burden of proving, by a preponderance of the evidence, the existence of grounds for professional disciplinary action against Respondent. 24 P.S. §2070.13(c)(2); 22 Pa. Code §233.117(2).

#### **DISCUSSION**

#### Burden of Proof

This matter is before the Commission as a result of a Notice of Charges filed by PDE accusing Respondent of immorality, incompetency, intemperance, and negligence. *See* Notice of Charges at ¶¶5-16. The burden of proving the existence of grounds for discipline of the Respondent rests with PDE. 24 P.S. §2070.13(c)(2); 22 Pa. Code §233.117(2). PDE must establish its case by a preponderance of the evidence, the lowest degree of proof recognized in a civil judicial proceeding. *Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). While a scintilla of evidence or evidence based on mere suspicion will not suffice, PDE's evidence need not be clear, precise, and indubitable as long as it is substantial and legally credible. *Id*.

# **Immorality**

The term "immorality" is defined as "conduct which offends the morals of the community and is a bad example to the youth whose ideals a professional educator or charter school staff member has a duty to foster and elevate." 22 Pa. Code §237.3.

Respondent failed to appear and deny any of the charges that she had violated the law when she possessed a controlled substance and drug paraphernalia. The Hearing Officer has found, based upon the testimony of Chief David Mattson together with the documentary evidence, that the seized substance tested positive for heroin. Sufficient evidence has been presented in this forum to meet PDE's burden of proving that Respondent possessed both a controlled substance and drug paraphernalia. In addition, Chief Mattson's testimony establishes that Respondent was driving under the influence of a controlled substance, was driving in a careless manner, and failed to give information and render aide as a result of an accident involving a motor vehicle. All of these actions constitute specific conduct which offends the morals of the community and is unquestionably a bad example to youth. For all of these reasons, Respondent is subject to discipline under the Professional Educator Discipline Act for engaging in immoral conduct.

#### <u>Incompetency</u>

According to the Pennsylvania Code, incompetency is "a continuing or persistent mental or intellectual inability or incapacity to perform the services expected of a professional educator. . .." 22 Pa. Code §237.4. The charge of incompetency focuses on Respondent's actions as a professional educator during the 2004-2005 school year.

During the relevant period, Respondent arrived late to work, left work early, and failed to follow the School District's attendance requirements. More critical, she at times left her students without supervision. Even after Respondent received verbal and written reprimands, she failed to correct her conduct. Her performance during the school year at issue evidenced a continuing or persistent incapacity to perform the services expected. The Hearing Officer agrees that Respondent is guilty of the charge of incompetency.

#### <u>Intemperance</u>

Intemperance is a loss of self-control or self-restraint. 22 Pa. Code §237.5. In order to establish "intemperance," conduct must be "exceeding the usual, proper, or normal." *Gow v. Department of Education, Professional Standards and Practices Commission*, 763 A.2d 528, 534 (Pa. Cmwlth. 2000).

The Hearing Officer relies upon the credible testimony of Assistant Principal Orwig who issued both verbal and written reprimands to Respondent concerning her tardiness and poor attendance. During the period between September 24, 2004 and March 17, 2005, Respondent received four written reprimands relating to her inability to conform to requirements of attendance and absenteeism. Respondent failed on several occasions to follow appropriate requirements of notifying the School District in advance of absences or arrange for substitute teacher coverage. Whether her lack of self-control resulted from her addiction to a controlled substance or simply represents a present lack of self-restraint, the actions for which there is undisputed testimony constitute "intemperance" as that term is defined.

## **Negligence**

The term "negligence" is defined as "continuing or persistent action or omission in violation of a duty." 22 Pa. Code §237.8(a). A "duty" arises from law, promulgated school rules, policies or procedures, by express direction of superiors, or by the generally accepted duties of professional responsibility, including those duties prescribed by the Code of Professional Practice and Conduct for Educators. 22 Pa. Code §237.8.

PDE contends that Respondent violated both School District attendance policies as well as the criminal laws of this Commonwealth. Record evidence establishes that she failed to follow the School District's attendance policy on numerous occasions. On at least one occasion, Respondent failed to provide a doctor's verification as required by School District policy.

There can be no doubt that if established at criminal trial, where an admittedly heightened standard of proof is imposed, Respondent violated the laws of the Commonwealth when she rear-ended another vehicle and fled the scene of a March 17, 2005 accident. It is most likely that the evidence presented here is indeed sufficient to support a guilty finding of the crime of possession of a controlled substance and drug paraphernalia. Perhaps most troubling in this case is Respondent's complete failure to appear in court to answer criminal charges. As a result, a bench warrant has been issued for her arrest.

A single incident of violation of law would not establish a finding of negligence, but the continuing course of conduct reflected in this transcript does establish that Respondent has engaged in "negligence" as that term is defined in the Pennsylvania Code.

#### **RECOMMENDATION OF DISCIPLINE**

The Hearing Officer must agree with PDE's argument that Respondent has engaged in a continuing pattern of inappropriate, unprofessional, and perhaps illegal conduct. She has failed to take responsibility for her actions or correct her behavior although given ample opportunity to do so.

Counsel for the Respondent admits that Respondent is addicted to heroin and cannot presently return to teaching. Counsel pleads for a suspension rather than revocation of Respondent's teaching certificate and contends that a suspension would signal that if she overcomes her addiction, Respondent could return to her chosen profession.

As much as the Hearing Officer may sympathize with a person troubled by addictive behaviors, there is simply no basis on this record to mitigate the sanction of revocation.

Therefore, it is recommended that Respondent's professional educator certificate be revoked in accordance with the attached Proposed Report.

# COMMONWEALTH OF PENNSYLVANIA PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

**DEPARTMENT OF EDUCATION,** :

Petitioner

:

vs. : Docket No. DI-07-21

:

LAUREN DADERKO, :

Respondent :

## PROPOSED FINAL ORDER

AND NOW, this	_ day of December, 2009, based upon the foregoing Findings of
Fact, Conclusions of Law, and I	Discussion, the Hearing Officer for the Professional Standards
and Practices Commission recor	mmends that the teaching certificate issued to Respondent,
Lauren Daderko, be REVOKED	).
	Debra K. Wallet, Esq.
	Hearing Officer

**Notice to Parties:** The Department and the Respondent may file exceptions to the Hearing Officer's recommended decision within thirty (30) days of December 7, 2009, the date of the Proposed Report.

The decision of the Hearing Officer will become final unless excepted to by the Department or the Respondent within thirty (30) days of the date of the Proposed Report. 24 P.S. §2070.14(a); 22 Pa. Code §233.118(b).

# COMMONWEALTH OF PENNSYLVANIA PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

DEPARTMENT OF EDUCATION,

Petitioner

:

vs. : Docket No. DI-07-21

:

LAUREN DADERKO, :

Respondent :

# **PROOF OF SERVICE**

I, Debra K. Wallet, Esquire, hereby certify that on December 7, 2009, I served a copy of the **PROPOSED REPORT** by regular first class mail addressed as follows:

Nicole M. Werner, Esquire Commonwealth of Pennsylvania Department of Education Office of Chief Counsel 333 Market Street, Ninth Floor Harrisburg, PA 17126

A. Martin Herring, Esquire Herring Law Office 4950 Medical Center Circle Allentown, PA 18106

Richard B. Galtman, Esquire Sweet Stevens Katz & Williams, LLP 331 East Butler Avenue P.O. Box 5069 New Britain, PA 18901

Carolyn Angelo, Esquire

Executive Director Professional Standards and Practices Commission 333 Market Street Harrisburg, PA 17126-0333

\_\_\_\_\_

Debra K. Wallet, Esq. Hearing Officer