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OSAH  
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*Virginia Ramsey*  
Virginia Ramsey, Legal Assistant

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

<b>WANDA B. KINNAMAN,</b>	:	
<b>Petitioner,</b>	:	
	:	<b>Docket No.</b>
<b>v.</b>	:	<b>OSAH-PSC-SAN-1331669-141-Miller</b>
	:	
<b>PROFESSIONAL STANDARDS</b>	:	<b>Agency Reference No. 12-3-939</b>
<b>COMMISSION,</b>	:	
<b>Respondent.</b>	:	

**FINAL DECISION**

**I. SUMMARY OF PROCEEDINGS**

The Petitioner, Wanda B. Kinnaman, appeals a decision by the Professional Standards Commission (“Commission”) to revoke her Georgia teaching certificate. The evidentiary hearing took place on April 15, 2013,<sup>1</sup> pursuant to O.C.G.A. §§ 20-2-984.5(d), 50-13-41, and 50-13-13, before the undersigned administrative law judge of the Office of State Administrative Hearings. The Petitioner appeared and was represented by Anitra R. Price, Esq. The Commission was represented by Kim Beal, Assistant Attorney General.

After consideration of the evidence and the arguments of the parties, and for the reasons stated below, the Commission’s decision to revoke the Petitioner’s Georgia teaching certificate is **AFFIRMED.**

**II. FINDINGS OF FACT**

**A. Background**

1.

The Petitioner holds a certificate to teach in the State of Georgia, and she held a teaching certificate at all times relevant to these proceedings. She lives and works in LaGrange, Georgia.

<sup>1</sup> The record closed on May 10, 2013, upon receipt of the hearing transcript and the parties’ proposed Findings of Fact and Conclusions of Law.

(Statement of Matters Asserted (“Matters Asserted”), ¶ 1; Defenses of Law and Answer of Petitioner to Statement of Matters Asserted (“Answer”), ¶ 1.)

2.

The Petitioner and her ex-husband, Jeff Hall, are the adoptive parents of two girls, K.H. and S.H.<sup>2</sup> After the Petitioner and Mr. Hall divorced, the girls continued to live with the Petitioner in LaGrange, and they visited Mr. Hall, who lives in Jonesboro, on weekends. Both the Petitioner and Mr. Hall have since remarried. (T. 38-39, 81-83.)

**B. 2007 Incident**

3.

In 2007, the Petitioner was living in LaGrange with her two daughters and her husband, John Kinnaman.<sup>3</sup> K.H., who was then ten years old, told some friends at school that Mr. Kinnaman had been touching her and “acting weird.” K.H.’s friends reported her statements to a teacher, and a police officer came to the school to interview K.H. Later in the evening, after K.H. had returned home, two police officers and a social worker visited the family residence, where they spoke with Mr. Kinnaman and the Petitioner. K.H. recanted the allegations after determining that neither the police officers nor her mother believed that she was telling the truth. (T. 40-41, 78-79; Exhibits R-5, R-6, R-12.)

4.

When this incident occurred, the Petitioner did not question K.H. about Mr. Kinnaman’s behavior. Rather, she instructed K.H. not to discuss it and told her that she “shouldn’t lie about

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<sup>2</sup> To protect minors’ privacy, they will be referred to herein only by their initials. Although S.H. has reached the age of eighteen, she was a minor at the time of the events described herein.

<sup>3</sup> Prior to July 24, 2012, Mr. Kinnaman was a certified teacher in Georgia. (T. 28.)

stuff that never happened.” Mr. Hall was not informed of the allegations. (T. 41; Exhibits R-6, R-12.)

5.

For approximately three years after this incident, Mr. Kinnaman did not touch K.H. in a way that made her feel uncomfortable. However, in the summer of 2010, he began molesting her. (T. 41-42; Exhibits R-5, R-6.)

**C. 2010 Sexual Abuse**

6.

Mr. Kinnaman’s sexual abuse of K.H. began when she was thirteen years old. One evening during the summer of 2010, K.H. was watching television with the Petitioner and Mr. Kinnaman in their bed. After the Petitioner fell asleep, Mr. Kinnaman kissed K.H. and touched her breasts. (T. 42; Exhibit R-5.)

7.

Mr. Kinnaman repeated this behavior on several occasions, and the abuse escalated over a period of months. Sometime later in the summer, while the Petitioner was at an art show, K.H. spent the night with Mr. Kinnaman in a recreational vehicle (“RV”) that he used as his temporary residence when he worked at Dobbins Air Force Base. On this occasion, Mr. Kinnaman kissed K.H., touched her breasts, and masturbated in her presence. (T. 44; Exhibit R-5.)

8.

Also during the summer of 2010, the Petitioner and Mr. Kinnaman took K.H. and S.H. on an RV trip. Throughout the trip, at times when the Petitioner and S.H. were either asleep or driving the RV, Mr. Kinnaman touched K.H.’s breasts, masturbated in her presence, and compelled her to touch his penis. (T. 45; Exhibit R-5.)

9.

At the end of the RV trip, the family visited the Petitioner's mother, Jan Burgess, at her home in Lavonia, Georgia. That evening, K.H. and Mr. Kinnaman went swimming in Ms. Burgess' pool while the Petitioner, Ms. Burgess, and S.H. watched television inside the house. Mr. Kinnaman touched K.H.'s breasts in the pool. Later, Mr. Kinnaman and K.H. walked to the RV, which was parked a short distance away, for the purported purpose of checking that it had not been disturbed. However, inside the RV, Mr. Kinnaman again touched K.H.'s breasts, masturbated in her presence, and compelled her to touch his penis. The Petitioner consented to this excursion and was aware that Mr. Kinnaman and K.H. were absent for a lengthy period of time, but she did not inquire regarding their activities. (T. 45-48; Exhibits R-6, R-12.)

10.

Mr. Kinnaman's sexual abuse of K.H. continued to escalate during the late summer and fall of 2010, when the family was at home in LaGrange. Mr. Kinnaman frequently visited K.H.'s room at night and stayed there for up to two hours. On many occasions, Mr. Kinnaman touched K.H.'s breasts and vagina, masturbated in her presence, compelled her to touch his penis, and performed oral sex on her. K.H. refused Mr. Kinnaman's repeated requests that she perform oral sex on him. (T. 48-49; Exhibits R-5, R-6, R-12.)

11.

During this period of time, the Petitioner either knew or should have known that Mr. Kinnaman was sexually abusing her daughter. As K.H. correctly observed, "normally a dad would not stay in a thirteen-year-old daughter's room at nine o'clock at night for two hours." The Petitioner was aware that Mr. Kinnaman visited K.H.'s room at night for extended periods of time, but she never asked K.H. what was happening. Instead of protecting her daughter, the

Petitioner drank wine every night and spent her time either downstairs or in her bedroom, reading a book or sleeping as the abuse transpired. (T. 49-50; Exhibits R-5, R-6, R-12.)

12.

One night, a short time before Christmas 2010, the Petitioner walked into K.H.'s room while Mr. Kinnaman was present. Moments before the Petitioner entered the room, the lights were turned off and Mr. Kinnaman was laying opposite K.H. (head-to-toe) on her bed, performing oral sex on her. Mr. Kinnaman was on top of the blanket, while K.H. was partially covered, with her pants pulled down. Mr. Kinnaman was wearing only boxer shorts, and his penis was pulled out. When he heard the Petitioner approach, he put his penis back inside his boxer shorts and moved to a more upright position. The Petitioner entered the room and turned on the lights. She stood silently for a period of time, then told Mr. Kinnaman to leave the room. Mr. Kinnaman complied. (T. 51-52; Exhibits R-3 at 425, R-5.)

13.

The Petitioner spoke briefly with K.H., asking her how long "it" had been going on. K.H. answered, "Awhile." The Petitioner apologized to K.H. but did not inquire further, and she took no action other than instructing K.H. to go to sleep. After witnessing this incident, the Petitioner had actual knowledge that her husband was molesting her daughter. (T. 52-53; Exhibit R-5.)

14.

Approximately one week later, the Petitioner and Mr. Kinnaman had a discussion with K.H. They told her that Mr. Kinnaman had experienced a "come to Jesus" moment; that he was sorry; and that K.H. should keep quiet about what had happened. They never discussed the incident again. (T. 53.)

15.

Mr. Kinnaman did not resume his molestation of K.H. after this incident occurred. However, he continued to live in the home, and the Petitioner permitted him to spend time alone with K.H. when he took her to tennis practice or Dairy Queen. The Petitioner did not seek counseling for her daughter. (T. 53-54.)

16.

As a certified teacher, the Petitioner is a mandated reporter of suspected child abuse, including suspected abuse of her own child. The Petitioner did not report Mr. Kinnaman's sexual abuse of her daughter to the police or other appropriate authority. (T. 53-54, 128, 200-01, 206-07.)

**D. K.H.'s Disclosure**

17.

K.H. experienced significant psychological distress as a result of Mr. Kinnaman's abuse and the Petitioner's failure to take appropriate protective action. In the spring of 2011, K.H. began cutting herself on the wrists with a knife. When the Petitioner discovered the cutting, she gave her daughter some scar cream. The Petitioner instructed K.H. to apply the scar cream daily and not to tell anyone about the cutting "because it wouldn't be good." K.H. also used a knife to cut the words "I hate you," directed at her mother, onto her stomach. (T. 57-58; Exhibit R-5.)

18.

K.H. made a suicide pact with a close friend, E.S. They discussed different methods of suicide and decided to kill themselves in August 2011, just before the next school year began. (T. 56-57; Exhibit R-5.)

19.

On May 9, 2011, K.H. ingested Advil at school “to relieve the pain that [she] was feeling.” The school counselor, Mandi Pike, became aware that K.H. was in possession of Advil and discussed the matter with her. During their conversation, K.H. disclosed that Mr. Kinnaman had sexually abused her and that the Petitioner was aware of the abuse. Ms. Pike reported the allegations to the Department of Family and Children Services and the LaGrange Police Department immediately, in fulfillment of her duty as a statutorily mandated reporter of child abuse. (T. 55-56; 125-28; Exhibit R-19.)

20.

Following her disclosure to Ms. Pike, K.H. spent approximately five days in a mental health facility. Mr. Hall learned of the abuse at this time, and he obtained an emergency order granting him sole custody of his daughter. K.H. has lived with Mr. Hall and his wife, Lisa Hall, since her discharge from the facility. The Halls have ensured that she receives counseling to help her deal with the abuse and its aftermath. (T. 56-57, 81, 83-86, 97; Exhibits P-21, P-22, P-23, P-24, P-25, P-26, P-27.)

#### **E. Criminal Charges**

21.

Between August and December 2011, Mr. Kinnaman was charged with multiple felony charges of Child Molestation and related offenses in Cobb, Franklin, and Troup Counties. (T. 155, 176; Exhibits R-15, R-16.)

22.

In November 2011, the Petitioner was arrested in Franklin County and charged with one felony count of Cruelty to Children in the Second Degree, based on her failure to protect her daughter from Mr. Kinnaman's abuse. (T. 176; Exhibits R-13, R-14, R-15, R-17, R-18.)

23.

At Mr. Kinnaman's criminal trial in February 2012, the Petitioner conceded that she had "perhaps" witnessed something that crossed a boundary, but she professed ignorance of her husband's molestation of her daughter. Nonetheless, on February 17, 2012, in the Superior Court of Cobb County, a jury found Mr. Kinnaman guilty of three felony counts of Child Molestation. He was sentenced to serve forty years, with thirty years in prison and the remainder on probation. (Exhibits R-3 at 415-19 and 513, R-16.)

24.

The Petitioner's criminal charge was dismissed after she agreed to testify at Mr. Kinnaman's Cobb County trial. The Petitioner has had only minimal contact with K.H. since June 2011, and she has never acknowledged that Mr. Kinnaman abused her daughter. (T. 116-17, 119.)

#### **F. The Petitioner's Employment**

25.

For approximately eight years, the Petitioner has been employed by the Troup County School District. The Petitioner teaches art and chairs the fine arts department at LaGrange High School. At all times, the Petitioner's colleagues and supervisors have found her to be a talented, dedicated, and effective teacher. (Matters Asserted, ¶ 2; Answer, ¶ 2; T. 189-91, 199, 203-05.)



26.

In November 2011, the Petitioner was placed on administrative leave after she notified school administrators of the criminal charge pending against her in Franklin County. When the charge was dismissed, in February 2012, she returned to work. During her absence, the quality of instruction provided to her students declined significantly. (T. 190-91, 198, 203-05; Exhibit R-18.)

27.

The Commission found probable cause to revoke the Petitioner's teaching certificate. The Petitioner timely appealed. (OSAH Form 1 and attachments; Matters Asserted, ¶¶ 8-9.)

### III. CONCLUSIONS OF LAW

1.

The Commission bears the burden of proof in this matter. Ga. Comp. R. & Regs. r. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

The Commission is authorized to sanction an educator who has violated the standards of performance contained in the Code of Ethics for Educators. O.C.G.A. § 20-2-984.1; see Ga. Comp. R. & Regs. r. 505-6-.01. Pursuant to O.C.G.A § 20-2-984.5(c):

If the commission finds that there is probable cause for imposing a sanction against the educator, it may recommend any combination of the following:

- (1) That the educator be warned, reprimanded, monitored, or any combination thereof; or
- (2) That the certificate of the educator be suspended, revoked, or denied.

See also Ga. Comp. R. & Regs. r. 505-6-.01(5).

3.

Standard 1 of the Code of Ethics for Educators, entitled “Legal Compliance,” provides as follows:

An educator shall abide by federal, state, and local laws and statutes. Unethical conduct includes but is not limited to the commission . . . of a felony . . . .

Ga. Comp. R. & Regs. r. 505-6-.01(3)(a) (Exhibit R-2).

4.

Under Georgia law, “Any person commits the offense of cruelty to children in the second degree when such person with criminal negligence causes a child under the age of 18 cruel or excessive physical or mental pain.” O.C.G.A. § 16-5-70(c). The term “criminal negligence” is defined as “an act or failure to act which demonstrates a willful, wanton, or reckless disregard for the safety of others who might reasonably be expected to be injured thereby.” O.C.G.A. § 16-2-1(b).

5.

The Commission proved, by a preponderance of the evidence and as set forth in the Findings of Fact, above, that the Petitioner committed the felony offense of Cruelty to Children in the Second Degree. By failing to protect her daughter from sexual abuse by Mr. Kinnaman, the Petitioner exhibited a willful disregard for the safety of K.H. and caused her excessive mental pain. O.C.G.A. §§ 16-5-70(c), 16-2-1(b); Adorno v. State, 314 Ga. App. 509 (2012) (mother’s conviction for cruelty to children upheld based on evidence that she took no protective action after being informed that her boyfriend was sexually abusing her daughter). This conduct by the Petitioner violated Standard 1 of the Code of Ethics for Educators.

6.

Standard 2 of the Code of Ethics for Educators, entitled “Abuse of Students,” provides, in relevant part:

An educator shall always maintain a professional relationship with all students, both inside and outside the classroom. Unethical conduct includes but is not limited to:

...

2. committing any act of cruelty to children or any act of child endangerment . . . .

Ga. Comp. R. & Regs. r. 505-6-.01(3)(b) (Exhibit R-2). A “student” is “any individual enrolled in the state’s public or private schools from preschool through grade 12 or any individual under the age of 18.” Ga. Comp. R. & Regs. r. 505-6-.01(2)(c) (Exhibit R-2). Therefore, K.H. is a student within the meaning of the Code of Ethics for Educators.

7.

The Commission proved, by a preponderance of the evidence and as set forth in the Findings of Fact, above, that the Petitioner committed acts of cruelty to children<sup>4</sup> and child endangerment,<sup>5</sup> in violation of Standard 2 of the Code of Ethics for Educators.

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<sup>4</sup> The term “cruelty to children” is not defined in the Code of Ethics for Educators. However, as noted above, the Commission proved that the Petitioner committed the felony criminal offense of Cruelty to Children in the Second Degree. O.C.G.A. § 16-5-70(c). The Court finds that the Petitioner’s conduct further constituted an act of cruelty to children within the meaning of Standard 2.

<sup>5</sup> Like “cruelty to children,” the term “child endangerment” is not defined in the Code of Ethics for Educators. However, Georgia’s criminal code addresses endangerment in two distinct statutory provisions. The first, found at O.C.G.A. § 40-6-391(l), establishes the misdemeanor offense of “endangering a child.” However, this statute applies only under circumstances involving driving under the influence of alcohol or drugs. See O.C.G.A. § 40-6-391(l). The second statute establishes the misdemeanor offense of Reckless Conduct, which penalizes a person who “endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his act or omission will cause harm or endanger the safety of the other person and the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation . . . .” O.C.G.A. § 16-5-60(b). This Court therefore finds, with guidance from O.C.G.A. § 16-5-60(b), that an educator who acts (or fails to act) with a “conscious[] disregard[]” for a “substantial and unjustifiable risk” of harm to a child has committed an act of child endangerment within the meaning of Standard 2. The Petitioner’s conduct amounted to an act of child endangerment under this definition.

8.

Standard 9 of the Code of Ethics for Educators, entitled "Required Reports," provides, in relevant part:

An educator shall file reports of a breach of one or more of the standards in the Code of Ethics for Educators, child abuse (O.C.G.A. § 19-7-5), or any other required report. Unethical conduct includes but is not limited to:

...

2. failure to make a required report of a violation of one or more standards of the Code of Ethics for [E]ducators of which they have personal knowledge as soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner; and
3. failure to make a required report of any violation of state or federal law [as] soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner. These reports include but are not limited to: . . . any abuse of a child if an educator has reasonable cause to believe that a child has been abused.

Ga. Comp. R. & Regs. r. 505-6-.01(3)(i) (Exhibit R-2). The Commission argues that the Petitioner violated Standard 9 in two ways: first, by failing to report an alleged violation of the Code of Ethics for Educators by Mr. Kinnaman, who was a certified teacher at the time he molested K.H.; and second, by failing to fulfill her duty as a mandated reporter to notify the proper authorities of Mr. Kinnaman's sexual abuse of her daughter.

9.

The Court declines to find that the Petitioner violated Standard 9 by failing to report Mr. Kinnaman's conduct to the Commission. Under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1, et seq., the Petitioner was entitled to receive "[a] short and plain statement of the matters asserted" against her. O.C.G.A. § 50-13-13(a)(2)(D). "The fundamental requirement is notice calculated to apprise the party of each claim asserted so that he can prepare

any defense he may have as to each charge.” Schaffer v. State Bd. of Veterinary Med., 143 Ga. App. 68, 69 (1977). Here, the Statement of Matters Asserted filed by the Commission did not allege that Mr. Kinnaman was a certified educator or that the Petitioner was required to report his conduct to the Commission. Therefore, the Petitioner was not aware that the Commission intended to present evidence on these allegations at the hearing. Because the Commission failed to provide the Petitioner with sufficient notice of the charge, it is not authorized to sanction her certificate on this basis.

10.

The Commission proved, by a preponderance of the evidence and as set forth in the Findings of Fact, above, that the Petitioner failed to make a required report of suspected child abuse. Under Georgia law, educators and other specified individuals are required to report child abuse whenever there is “reasonable cause<sup>6</sup> to believe that a child<sup>7</sup> has been abused.” O.C.G.A. § 19-7-5(c)(1). Such reports must be made to the appropriate child protective services agency, police authority, or district attorney “immediately, but in no case later than 24 hours from the time there is reasonable cause to believe a child has been abused.” O.C.G.A. § 19-7-5(e). By failing to report Mr. Kinnaman’s abuse of K.H., the Petitioner violated her duty as a mandated reporter under Standard 9 of the Code of Ethics for Educators and O.C.G.A. § 19-7-5.

11.

Standard 10 of the Code of Ethics for Educators, entitled “Professional Conduct,” provides as follows:

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<sup>6</sup> For purposes of the statute, the term “reasonable cause to believe” means “reasonable cause to suspect.” 1976 Ga. Op. Att’y Gen. 76-131; O’Heron v. Blaney, 276 Ga. 871, 873 (2003). In this case, the Petitioner had more than a reasonable suspicion; she had actual knowledge of the abuse.

<sup>7</sup> The term “child” is defined as “any person under 18 years of age.”

An educator shall demonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the teaching profession. Unethical conduct includes but is not limited to any . . . behavior or conduct that is detrimental to the health, welfare, discipline, or morals of students.

Ga. Comp. R. & Regs. r. 505-6-.01(3)(j) (Exhibit R-2).

12.

The Commission proved, by a preponderance of the evidence and as set forth in the Findings of Fact, above, that the Petitioner failed to protect K.H. from repeated and pervasive sexual molestation by Mr. Kinnaman. This conduct was detrimental to the health and welfare of K.H., a student, in violation of Standard 10 of the Code of Ethics for Educators.


13.

The Commission seeks to revoke the Petitioner's Georgia teaching certificate. The Court concludes, without reservation, that revocation is the appropriate sanction in this case, due to the gravity of the Petitioner's conduct and its devastating consequences for her daughter.

#### IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Petitioner's certificate to teach in the State of Georgia is hereby **REVOKED**.

SO ORDERED, this 7 day of June, 2013.

  
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**KRISTIN L. MILLER**  
**Administrative Law Judge**