

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

MYRA JOAN ARMOUR,	:	
Educator/Petitioner,	:	
	:	Docket No.:
v.	:	OSAH-PSC-SAN-1330840-69-Miller
	:	
PROFESSIONAL STANDARDS	:	
COMMISSION,	:	
Respondent.	:	

FINAL DECISION

I. INTRODUCTION

The Petitioner, Myra Joan Armour, appeals a decision by the Professional Standards Commission (“Commission”) to suspend her Georgia teaching certificate for one year based on alleged violations of the Code of Ethics for Educators. The evidentiary hearing took place on June 6, 2013,¹ pursuant to Georgia Code Sections 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 was represented by Kristine Orr Brown, Esq. The Commission was represented by Assistant Attorneys General Allen Lightcap and Jennifer Colangelo.

After consideration of the evidence and the arguments of the parties, and for the reasons stated below, the Commission’s decision to sanction the Petitioner’s teaching certificate is **AFFIRMED**. However, her certificate shall be suspended for a term of sixty contract days, rather than one year as proposed by the Commission.

¹ The record closed on July 11, 2013, upon receipt of the hearing transcript.

II. FINDINGS OF FACT

A. Background

1.

The Petitioner is a state-certified educator who has spent approximately twenty-one years working in the Hall County School District. From 2005 through 2010, she served as an assistant principal at West Hall Middle School (“West Hall”). (Statement of Matters Asserted [“Matters Asserted”] ¶¶ 1, 3; Myra Joan Armour’s Response to Statement of Matters Asserted [“Answer”] ¶¶ 1, 3; T. 156-57.)

2.

During her tenure at West Hall, the Petitioner assumed oversight of student data reporting and collection and was given the title of Student Information System Assistant Principal. In this capacity, she worked closely with Sarah Justus, the school principal, and supervised Teresa Orr, the school’s data entry clerk.² (T. 57-58, 77, 158, 160-65, 167, 169; Exhibit P-4.)

3.

The incident that is the subject of this proceeding arose during the 2009-10 school year, when the Petitioner participated in the manipulation of attendance data for eighty-four special education and English Language Learner (“ELL”) students at West Hall, in an effort to ensure that the school passed the state’s annual Adequate Yearly Progress (“AYP”) assessment. (T. 78-81, 84, 96-97, 109-110, 159-60, 167; Exhibit R-H.)

² The Petitioner worked with Dr. Justus and Ms. Orr on data collection and reporting beginning in 2006, but she did not assume formal responsibility until 2008. (T. 80-82, 108-09, 158.)

B. Measures of AYP

4.

AYP is the federal method used to hold states and local schools accountable for their students' academic progress under the No Child Left Behind Act.³ Failure to meet AYP standards is stigmatizing and causes a school to be placed on a probationary status. If the school fails to meet AYP for several consecutive years, the state becomes increasingly involved in its administration. Ultimately, the school may be subject to restructuring and removal of personnel. (T. 37-38, 138-39.)

5.

In 2009-10, West Hall's compliance with AYP standards, like that of other schools in Georgia, was measured with a three-step assessment of its students' test participation, academic performance and achievement, and attendance. (T. 37-38, 139-140; Exhibits P-1, R-F.)

1. Test Participation

6.

The first component of AYP, test participation, requires the school to ensure that 95% of its student body has taken the Criterion-Referenced Competency Test ("CRCT"). All students who are continuously enrolled in the school during the state CRCT testing window are included in this measure, even if they have not been enrolled for the full academic year ("FAY"). The state testing window, which is established by the Georgia Department of Education, varies from year to year. The testing window lasts approximately one month and generally encompasses most or all of April. (T. 139-40, Exhibits P-1, P-4, R-F.)

³ AYP will be replaced in 2013 by the Career Readiness Index. (T. 60.)

2. Academic Performance and Achievement

7.

The second component, academic performance and achievement, requires the school to ensure that a specified percentage of its FAY students achieve passing scores on the CRCT. The academic performance and achievement measure is the most complex measure of AYP, as well as the most difficult to meet. (T. 140-41, 148-50; Exhibits P-1, R-F.)

8.

In Georgia, the full academic year begins around the first of October and runs through the end of the CRCT testing window, which is generally in late April or early May, depending on the school year. For a student to be considered FAY, he or she must be continuously enrolled in the school during this period, known as the FAY window.⁴ A student with even a one-day break in service⁵ is not considered a FAY student. Thus, while the scores of all students enrolled for the duration of the state testing window are counted for purposes of the test participation component of AYP, only the scores of FAY students are counted for purposes of the academic performance and achievement component. (T. 44-45, 133-36, 142-43; Exhibits R-F, P-1.)

9.

In addition to evaluating the test performance of the student body as a whole, the academic performance and achievement measure of AYP looks at CRCT scores across certain demographic subgroups of students. For the school to make AYP, a specified percentage of FAY students in each subgroup must also pass the CRCT. However, only those subgroups consisting of at least forty FAY students are counted toward this measure. Consequently, if a

⁴ A student who transfers from one school to another within the same school district does not count as FAY at either school. However, the student is considered FAY at the district level. (T. 73, 142-43; Exhibit P-1.)

⁵ The terms “break in service,” “withdrawal,” and “disenrollment” are used interchangeably, although only the term “withdraw” is defined in state regulations. (T. 61; Exhibits P-1, R-C.)

school has only thirty-nine FAY students in a particular subgroup, the subgroup ceases to exist for AYP purposes. In addition, adding or removing a relatively small number of students from a particular subgroup can have a significant impact on the subgroup's overall pass rate. (T. 132-36, 139-41.)

10.

The school can fulfill the academic performance and achievement requirements of AYP in one of four ways, each of which applies to all subgroups as well as the student body as a whole. The four methods are as follows, in order of preference: (1) by absolute bar, wherein the required percentage of students achieves passing scores on the CRCT; (2) by confidence interval, wherein the required percentage of students, within a permissible standard deviation, passes the CRCT; (3) by multi-year averaging, wherein the required percentage of students, averaged over the most recent three years, passes the CRCT; or (4) by safe harbor, wherein ten percent fewer students failed the CRCT in the current year than failed in the year prior. (T. 148-50.)

11.

Students who fail the CRCT have an opportunity to take the test a second time without penalty. All schools in the Hall County School District offer remediation instruction to these students and administer the retest prior to the end of the school year. When students pass the CRCT retest, their original failing scores are no longer counted toward the academic performance and achievement component of AYP. (T. 147-48, 153-54.)

3. Attendance

12.

The third AYP component, attendance, requires the school to ensure that less than 15% of its student body has more than fifteen absences during the school year. (T. 150-51; Exhibits P-1, R-F.)

C. 2009-10 AYP Data at West Hall

13.

On May 10, 2010, the Hall County School District received its CRCT scores report for the spring 2010 test administration. Immediately thereafter, Eloise Barron, the district's assistant superintendent, and Michael Catledge, an expert in data analysis with the district's regional education agency, reviewed the report and determined which schools were at risk of not making AYP. Several schools, including West Hall, appeared to have come close to meeting the academic performance and achievement standard for AYP. At West Hall, the math scores of special education students were a particular area of concern. The scores of its ELL students were also of concern, but to a lesser degree. Dr. Barron believed that with appropriate remedial intervention, West Hall would be able to meet the standard following the CRCT retest, which would be held a few weeks later. (T. 127-31, 140-41.)

14.

On May 12, 2010, Tracy Bishop, the district's database administrator, sent a list of FAY students and their scores to each school. After reviewing the data, the Petitioner, Dr. Justus, and Ms. Orr attempted to reduce the number of students in the ELL and special education subgroups until they crossed below the forty-member threshold for AYP consideration. To this end, Ms. Orr, under the supervision of the Petitioner and Dr. Justus, began disenrolling students in the ELL and special education subgroups who had been absent at any time during the seven-month

FAY window. These students were retroactively withdrawn on the first date of absence, then immediately re-enrolled as of the date they returned to school. At the Petitioner's direction, Ms. Orr began by withdrawing the students with the most absences and continued until she had disenrolled even those students with only one absence, for a total of eighty-four students.⁶ Ms. Orr did not succeed in reducing the number of students in either subgroup below the forty-member threshold. However, the remaining students had passed the CRCT at rates high enough to ensure that their subgroups, and consequently West Hall as a whole, met the academic performance and achievement standard for AYP. (T. 38-39, 78-81, 84, 87-88, 100, 122-23, 167; Exhibits R-A, R-B, R-E.)

15.

Each of the eighty-four students was withdrawn using a particular code designated "serious illness/accident." This code is defined by the state and reserved for children who are so ill, due to terminal illness or traumatic brain injury, that they are unable to receive hospital/homebound educational services. West Hall was the only school in the district to apply the serious illness/accident code in this manner. In fact, during the prior school year, the code was invoked only thirteen times at all other Hall County schools combined. (T. 34-35, 124, 137; Exhibit R-A.)

16.

On May 13, 2010, shortly after the withdrawals were completed, Ms. Orr contacted Ms. Bishop and asked her to run a new score report based on the corrections she had made to West Hall's data. The same day, Dr. Barron emailed Dr. Justus and extended an offer for the district's math consultant to assist West Hall teachers with student remediation. Later that afternoon, Dr.

⁶ Ms. Orr did not follow this procedure for West Hall students who were not members of the ELL or special education subgroups. In fact, non-members of the subgroups were disenrolled only if they had been absent on at least fifteen occasions during the FAY window. (T. 86-87, 101-03.)

Justus alerted Dr. Barron that the West Hall's numbers had changed. (T. 93-94, 122-23, 128-33; Exhibit R-B.)

17.

When Ms. Bishop ran the revised report on May 14, 2010, she noticed that the serious illness/accident code had been used to withdraw an unusual number of students the previous day. More specifically, each student had been retroactively withdrawn and reenrolled at West Hall following one or more absences that had occurred earlier in the school year. Ms. Bishop brought the revised report to the attention of her supervisor, Aaron Turpin, who reported the data anomalies to Dr. Barron. An investigation by the district later revealed that West Hall had used the serious illness/accident code to withdraw large numbers of students from their subgroups, beginning in the 2006-07 school year and continuing through the 2009-10 school year. (T. 34-35, 123-24, 137.)

18.

At the evidentiary hearing, the Petitioner testified that it was her understanding, based on information she received from the district and Dr. Justus, that subgroup members who had been absent for just one day were no longer considered FAY students due to a "break in service." For example, the evidence presented by the Petitioner included an email that Dr. Justus forwarded to the Petitioner on May 13, 2008. The email, which originated from Dr. Turpin, elaborated at length on certain AYP requirements. During an explanation of the AYP academic performance and achievement measure, the email stated as follows:

Any FAY student is a student who has been continuously enrolled from the 1st FTE [Full Time Equivalent] count through the end of the state's testing window. If a student has moved during that time from one Hall County school to another Hall County school, they will not count as a FAY student for either school but they will count at the district level. A break in service for one day during the FAY window will result in a student not being a FAY student.

Although this discussion of a “break in service” occurred in conjunction with a discussion of intra-district transfers, the Petitioner contends that she misinterpreted the final sentence to mean that students who are absent for one day can be disenrolled temporarily and thereby excluded from the FAY count. The Petitioner also testified that Dr. Justus directed her to interpret a one-day absence as a break in service, based on information she received at a conference in 2006. (T. 159-60, 167; Exhibit P-1.)

19.

The Petitioner’s interpretation simply defies all logic and common sense.⁷ Although the Court recognizes that the regulations and procedures governing AYP assessments are rife with acronyms and terms of art that may be subject to misinterpretation by a lay person, the Petitioner is not a lay person. Instead, she is a certified educator with many years of experience, and her position as assistant principal during the 2009-10 school year included a specifically-assigned responsibility for student data collection and reporting. She was required to abide by the standards of her profession, even if this meant disregarding a directive of her supervisor, Dr. Justus. Further, notwithstanding the Petitioner’s contention that the district did not provide her with adequate training on AYP requirements and FAY status,⁸ it was her duty to find the information she needed and to ensure that the school’s data was reported correctly.⁹ Similarly,

⁷ Every certified educator understands that students may be absent yet remain “continuously enrolled” in school. In fact, schools may not withdraw students involuntarily unless they have missed ten consecutive days of school, subject to certain exceptions that are not at issue here. Moreover, the Petitioner’s inconsistent application of the purported “one absence” rule demonstrates that she did not believe that all students who missed one day of school were no longer considered FAY students. Instead, this unique interpretation applied only to students who belonged to a subgroup and whose exclusion might increase the subgroup’s pass rate. (T. 45, 51-52, 56-57, 144, 172-73 Exhibits P-4, R-C.)

⁸ Dr. Turpin’s office offered AYP training to the district’s principals, data clerks, and assistant principals overseeing student data collection and reporting, including the Petitioner. (T. 58-60.)

⁹ Judy Mancuso, the Assistant Principal of Tadmore Elementary School, where the Petitioner currently teaches, testified that she has not participated in FAY training. However, Ms. Mancuso acknowledged that if her job

the Petitioner's professed assumption that Dr. Turpin, Dr. Barron, or other district personnel would correct any errors in West Hall's data cannot justify her abdication of her responsibility. Even at the hearing, however, the Petitioner did not acknowledge the absurdity of her interpretation. (T. 57, 61, 145, 159-60, 165, 167, 176-77, 178.)

D. Aftermath

20.

Following its investigation, the Hall County School District reversed the eighty-four student withdrawals that West Hall had reported improperly. After the corrections were made and the CRCT retest took place, West Hall met the academic performance and achievement measure of AYP under the safe harbor provision. (T. 70, 148-150, 162-63.)

21.

The district also removed both Dr. Justus and the Petitioner from their administrative positions. Dr. Justus retired from the district, while the Petitioner was demoted to a teaching position, causing a reduction in her salary. She currently teaches fifth grade at Tadmore Elementary School, where she has worked for the past three years. Her current and former colleagues and supervisors have found her to be an honest, dedicated, and effective educator. The Petitioner received a teacher of the year award in 2002, and prior to this incident, she had never been investigated by the Commission for suspected misconduct. (T. 92, 156-57, 177, 180, 182-83, 187.)

required her to understand the rules governing student withdrawals, she would conduct the research necessary to acquire the appropriate knowledge. (T. 177-78.)

22.

The Professional Standards Commission conducted an investigation and found probable cause to suspend the Petitioner's teaching certificate for one year. The Petitioner timely appealed. (Matters Asserted ¶¶ 11-12; Answer ¶¶ 11-12.)

III. CONCLUSIONS OF LAW

1.

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

2.

The Commission is authorized to sanction an educator who has violated the statutes and rules governing the teaching profession, including 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. 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. 505-6-.01(5). Here, the Commission proposes to sanction the Petitioner's teaching certificate based on violations of Standards 4 and 10 of the Code of Ethics for Educators.

A. State Regulations Governing Student Withdrawals

3.

The Georgia Department of Education has promulgated extensive rules regarding when a student may be enrolled in or withdrawn from school. Ga. Comp. R. & Regs. 160-5-1-.28(2)(e). “Enroll” means “the registration of a student in the local education agency (LEA) of residence Once enrolled, the child shall be eligible to attend the assigned school.” Ga. Comp. R. & Regs. 160-5-1-.28(1)(j). “[W]ithdraw[al]” is defined as “the removal of a student from the official roll of a Georgia [] public school.” Ga. Comp. R. & Regs. 160-5-1-.28(1)(x).

4.

Either the school or the child’s parent may withdraw a student from enrollment. Ga. Comp. R. & Regs. 160-5-1-.28(2)(e). Proof that the student has enrolled in another school or education program will effectuate a withdrawal from the original school as of “the last school day of student attendance.” Ga. Comp. R. & Regs. 160-5-1-.28(2)(e)3.(i). If there is no evidence that the student has been enrolled elsewhere, “a student shall be withdrawn from a school after 10 consecutive unexcused absences.” Ga. Comp. R. & Regs. 160-5-1-.28(2)(e)3.(ii). In that event, the superintendent must notify the child’s parent if the school intends to withdraw the student, and the appropriate withdrawal code shows that “the student was removed for lack of attendance.” Ga. Comp. R. & Regs. 160-5-1-.28(2)(e). Absent evidence that a student has enrolled elsewhere, a student cannot be withdrawn for missing one day of school unless that day is the first day. Ga. Comp. R. & Regs. 160-5-1-.28(2)(e)4. In that case, the student may be “withdrawn as a no-show student.”¹⁰ Id.

¹⁰ In Hall County, students are withdrawn as no-shows after they have missed the first five days of school. (T. 68-69.)

5.

A local school district that fails to document the reasons for student withdrawals as required by state regulations is subject to an in-depth audit of its records. Ga. Comp. R. & Regs. 160-5-1-.28(2)(e)10.(i). If the audit findings reveal a lack of compliance, the district may forfeit its ability to appeal an adverse AYP determination. Ga. Comp. R. & Regs. 160-5-1-.28(2)(e)10.(i)(I).

B. Standard 4

6.

Standard 4 of the Code of Ethics for Educators, entitled “Honesty,” provides, in relevant part:

An educator shall exemplify honesty and integrity in the course of professional practice. Unethical conduct includes but is not limited to, falsifying, misrepresenting or omitting:

...

2. information submitted to federal, state, local school districts and other governmental agencies;
3. information regarding the evaluation of students and/or personnel;

...

6. information submitted in the course of professional practice.

Ga. Comp. R. & Regs. 505-6-.01(3)(d).

7.

The term “misrepresentation” is defined as “an assertion that is not in accord with the facts.” Restatement (Second) of Contracts § 159 (1981). See also Black’s Law Dictionary 1016 (7th ed. 1999) (“misrepresentation” means “[t]he act of making a false or misleading statement about something, usu[ally] with the intent to deceive”). Inadvertent misrepresentations are generally not penalized:

[A]n assertion need not be fraudulent to be a misrepresentation. Thus a statement intended to be truthful may be a misrepresentation because of ignorance or carelessness, as when the word “not” is inadvertently omitted or when inaccurate language is used. But a misrepresentation that is not fraudulent has no consequences under this Chapter unless it is material.

Restatement (Second) of Contracts § 159 (1981) cmt. a. Fraudulent misrepresentations, however, are treated differently. A “fraudulent misrepresentation” is “a false statement that is known to be false or is made recklessly – without knowing or caring whether it is true or false – and that is intended to induce a party to detrimentally rely on it.” Black’s Law Dictionary 1016 (7th ed. 1999). Conduct is “reckless” when one “deliberate[ly] clos[es]. . . one’s eyes to facts that one had a duty to see or stating as fact, things of which one was ignorant.” Office of Disciplinary Counsel v. Price, 732 A.2d 599, 604 (Pa. 1999) (citation omitted) (in attorney disciplinary proceeding, agency makes *prima facie* case of false statements by showing licensee filed affidavit containing false statements; burden then shifts to licensee to show “an objective reasonable belief that the allegations were true, based upon a reasonably diligent inquiry.”) (emphasis added). Here, the Petitioner participated in the manipulation of AYP data regarding West Hall students, without knowing or caring whether her actions were permissible under the applicable rules. Her conduct, then, is sanctionable as a fraudulent misrepresentation.

8.

The Commission proved, by a preponderance of the evidence and as detailed in the Findings of Fact, above, that the Petitioner violated Standard 4 of the Code of Ethics for Educators when she participated in the manipulation of attendance data for ELL and special education students at West Hall. By engaging in this conduct, the Petitioner misrepresented information regarding the evaluation of students that was submitted, in the course of her professional practice, to the Hall County School District and intended for submission to the Georgia Department of Education.

C. Standard 10

9.

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

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 conduct that impairs and/or diminishes the certificate holder’s ability to function professionally in his or her employment position, or behavior or conduct that is detrimental to the health, welfare, discipline, or morals of students.

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

10.

The Commission proved, by a preponderance of the evidence and as detailed in the Findings of Fact, above, that the Petitioner failed to follow generally recognized professional standards and engaged in conduct that impaired her ability to function professionally in her employment position, in violation of Standard 10 of the Code of Ethics for Educators. Specifically, in an effort to ensure that West Hall was rated as making AYP for the 2009-10 school year, the Petitioner participated in the submission of student attendance data that any reasonable educator would have known was misleading and inaccurate.

D. Sanction

11.

The Commission’s proposal for a one-year suspension of the Petitioner’s certificate is excessive, taking into account a number of factors. First, more than three years have passed since this episode occurred, and there is no evidence that the Petitioner has engaged in any further unprofessional conduct. Second, the Petitioner has already been demoted from her administrative position and no longer bears responsibility for school data collection and

reporting. Third, she acted, in part, at the direction of Dr. Justus, who was her supervisor and the lead administrator at West Hall. Finally, with the exception of this incident, she has otherwise displayed honesty and competence during a career in education that has exceeded twenty years. Therefore, although the Court remains concerned that the Petitioner has failed to accept responsibility for her role in the improper manipulation of student attendance data at West Hall, a reduced period of suspension better fits the particular circumstances of this case.

12.

Contrary to the Commission's assertion, this Court is not required to defer to its recommended sanction.¹¹ The Court's decision is "de novo in nature and the evidence on the issues in a hearing is not limited to the evidence presented to or considered by the Referring Agency prior to its decision." Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 768 (2009) (administrative law judge may not defer to the agency's decision) (quoting Ga. Comp. R. & Regs. 616-1-2-.21(1) and (3)). The administrative law judge steps into the shoes of the referring agency and "may make any disposition of the case that could have been made by the Referring Agency." Ga. Comp. R. & Regs. 616-1-2.21(1).

¹¹ The Commission argues that this Court should defer to the sanction recommended by the Agency, citing the Georgia Court of Appeals decision in Professional Standards Commission v. Alberson, 273 Ga. App. 1 (2005). However, the Alberson case, which involved the "any evidence" standard of review applied by the Superior Court on appeal, does not support the Commission's position. Id. at 4-5.

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Commission's decision to sanction the Petitioner's Georgia teaching certificate is hereby **AFFIRMED**. However, the proposed sanction is **MODIFIED**, and the Petitioner's teaching certificate shall be suspended for a period of sixty contract days.

SO ORDERED, this _____ day of August, 2013.

KRISTIN L. MILLER
Administrative Law Judge