

2.

Freeman has been an elementary school teacher since 2007. In 2009, she became employed at Matilda Hartley Elementary in Macon, Georgia. During the 2012-2013 school year, Freeman taught kindergarten at Hartley. She had approximately 23 students in her class that year and typically had a para-professional assigned to her classroom on a fulltime basis. (Tr. 80, 83)

3.

Y.M. was a six-year-old girl in Freeman's kindergarten class in January 2013. Y.M. had occasional behavior problems, and Freeman had spoken to Y.M.'s mother, T.C., during the school year about ways to motivate Y.M. to behave in class. On the morning of January 10, 2013, Y.M. was misbehaving. Freeman called T.C. on the telephone and asked her to speak to Y.M. (Tr. 84-87, 95)

4.

Instead of speaking to Y.M. on the telephone, T.C., who lived very near the school, came to Hartley at 9:49 a.m. and checked Y.M. out of school. A short time later, Y.M. and T.C. returned to the school. T.C. signed Y.M. back in at 10:02 a.m. and walked her to Freeman's class. Y.M. was crying. (Tr. 87-88; Ex. R-2)

5.

T.C. left the classroom before Freeman could talk to her. Around the same time T.C. brought Y.M. back to class, a substitute paraprofessional, who was filling in for Freeman's regular paraprofessional, arrived for the day. Freeman asked the paraprofessional to stay with the students so that Freeman could take Y.M. out into the hall and talk to her. Y.M. told Freeman that her mother had spanked her. Y.M. showed

Freeman an area on her upper right arm, which appeared to have redness on it. Y.M. also attempted to show Freeman an area on her upper leg, but because of the shortness of Y.M.'s dress, Freeman did not consider it appropriate to examine that area in the hallway. She suggested that Y.M. use the restroom and get a sip of water, and then return to class. (Tr. 83, 88-89; Ex. R-6)

6.

Freeman testified that the redness on Y.M.'s arm seemed consistent with a spanking and did not cause her to be concerned for Y.M.'s welfare. Although Y.M. showed Freeman her knuckles when she returned from the restroom, Freeman did not observe anything unusual. Y.M. did not discuss the incident or her physical condition with Freeman for the rest of that school day. Moreover, there is no evidence that any other teacher or staff person at Hartley, including the paraprofessional, observed any markings or injuries on Y.M.'s arms or elsewhere, despite Y.M. wearing a short, capped-sleeve dress and attending classes with other teachers throughout the day. However, at the end of the school day, while Y.M. was waiting for the bus, Hartley's principal, Shelia Garcia, observed Y.M. holding her arm and stating, "Don't look at me. Don't look at me." (Tr. 30, 45, 56, 89; Ex. R-6)

7.

Garcia questioned Y.M. and examined her arm. In reports dated on or around January 10, 2013, Garcia stated that she "noticed that [Y.M.'s arm] was red." At the administrative hearing, Garcia testified that she "saw bruises on her arm." However, she explained that she considered redness and bruising to be the same thing. Garcia asked the bus driver to hold Y.M.'s bus and took her inside to speak with Hartley's counselor,

Twanna White. White testified that she observed a "bruise" on Y.M.'s upper arm. Y.M. told Garcia and White that T.C. had spanked her with a back scratcher when she was checked out of school earlier that day. Y.M. also showed Garcia and White her legs, where they also observed bruises or marks. At Garcia's request, White took photographs of Y.M.'s arm and legs. These photographs were not entered into evidence at the hearing. (Tr. 30, 46, 62; Ex. R-1, R-4, R-5)

8.

Garcia allowed Y.M. to return home on the bus. Garcia called Freeman into her office and asked her whether she was aware that Y.M. had been spanked that day. Freeman acknowledged that Y.M. had told her that her mother had spanked her and that Y.M. had shown Freeman the markings on her knuckles and arms. Freeman told Garcia that she did not report it because of her understanding that sometimes children get spanked by their parents, and she did not think that the redness that she observed that morning needed to be reported. Nevertheless, the following morning, January 11, 2013, Freeman checked Y.M.'s arm and saw a little bruise. She called White at that time and reported what she observed. (Tr. 32-33, 62-64, 89-91)

9.

Before leaving school on January 10, 2013, Garcia made a report to the Department of Family and Children Services ("DFCS"). The next morning, Bobbi Nelson, a DFCS investigator came to Hartley to interview Y.M., who told Nelson about the spanking with the back scratcher. Nelson observed red linear marks on Y.M.'s left wrist, left bicep and right calf. Nelson also spoke with T.C., who admitted losing control while spanking Y.M. the previous day. DFCS made a finding of physical abuse and

provided the family with counseling services. Nelson, an experienced investigator, was unable to say whether the markings she observed on January 11 would have been more or less noticeable at the time Freeman looked at Y.M.'s arm shortly after the spanking occurred on January 10. (Tr. 69-71, 75-77)

10.

Prior to this incident, Freeman made referrals to DFCS with respect to her suspicions of child neglect and sexual abuse. Having closely observed her demeanor and manner of testifying, as well as considering the numerous character references admitted into the record from fellow teachers, former principals, and community and church leaders regarding Freeman's compassion and concern for children, her honesty and integrity, and her dedication to the teaching profession, the Court concludes that on the morning of January 10, 2013 Freeman did not believe that Y.M. had been physically injured or abused as a result of the spanking by T.C.

III. CONCLUSIONS OF LAW

1.

The Commission asserts that it is authorized to suspend Freeman's educator's certificate on the grounds that she engaged in unethical conduct by violating Standard 9 (Failure to Report) and Standard 10 (Professional Conduct) of the Code of Ethics for Educators. (Statement of Matters Asserted, ¶ 8) Pursuant to OSAH Rule 7, the Commission bears the burden of proof. GA. COMP. R. & REGS. 616-1-2-.07(1)(c). OSAH Rule 21 provides that the standard of proof is preponderance of the evidence. GA. COMP. R. & REGS. 616-1-2-.21(4).

2.

The Commission has adopted the Code of Ethics for Educators that sets forth the ethical standards for educators in Georgia. GA. COMP. R. & REGS. 505-6-.01(3). If an educator violates the Code of Ethics, disciplinary sanctions may include revocation or suspension of a certificate, reprimand, warning or monitoring. GA. COMP. R. & REGS. 505-6-.01 and O.C.G.A. 20-2-984.5.

3.

The Commission asserts that Freeman violated Standard 9 of the Code of Ethics for Educators. Commission Rule 505-6-.01(3)(i) provides, in pertinent part:

Standard 9: Required Reports – An educator should 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:

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: murder, voluntary manslaughter, aggravated assault, aggravated battery, kidnapping, any sexual offence, any exploitation of a minor, any offense involving a controlled substance and any abuse of a child if an educator has reasonable cause to believe that a child has been abused.

4.

The Court concludes that Freeman did not violate the letter or spirit of Standard 9. Under O.C.G.A. § 19-7-5(e), a mandated reporter must make an oral report “immediately, but in no case later than 24 hours from the time there is reasonable cause to believe a child has been abused.” First, the uncontroverted evidence proved that Freeman did, in fact, report her observations of bruising to White the following morning, January 11,

2013. Accordingly, Freeman met the twenty-four hour reporting requirement.¹ In addition, the Commission failed to prove that on the morning of January 10, 2013 Freeman had reasonable cause to believe that Y.M. had been abused based on the fact that Y.M. had been spanked, was crying and had redness on her arm. The statute defines “child abuse” as “physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child.” O.C.G.A. § 19-7-5(b)(4). The Commission failed to prove that the redness on Y.M.’s arm as observed by Freeman that morning was sufficient to cause a reasonable person to believe that Y.M. had been subject to child abuse as defined under Georgia law.

4.

Standard 10 of the Code of Ethics for Educators states in relevant part:

(j) Standard 10: Professional Conduct - 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). The Court concludes that the Commission failed to prove that Freeman violated Standard 10. Although Garcia and White testified that they believed it to be unprofessional not to report the markings they observed in the afternoon of January 10, 2013 as possible child abuse, there is insufficient evidence to prove that the bruises and markings they observed were the same or similar to the redness observed by Freeman shortly after the spanking occurred. The Court has considered

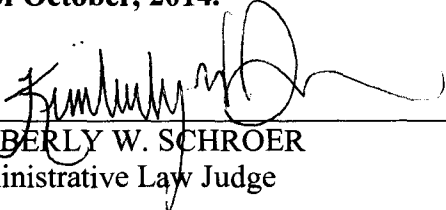
¹ Mandated reporters in the school setting may fulfill their duties to report by reporting child abuse to a designated person within the school, such as a principal or counselor. O.C.G.A. § 19-7-5(c)(2).

Freeman's past willingness to make reports of child abuse or neglect when she had reason to suspect it, as well as her credible testimony regarding her observations and assessment of Y.M.'s emotional and physical condition upon her return to school and throughout the school day. The Court concludes that the Commission has failed to prove by a preponderance of the evidence that Freeman's action with respect to this incident were unprofessional in violation of Standard 10 of the Code of Ethics for Educators.

IV. DECISION

The Code of Ethics for Educators has been designed to protect the health, safety, and general welfare of students in Georgia. In accordance with the foregoing findings of fact and conclusions of law, the Court concludes that Lisa Freeman did not violate the Code of Ethics for Educators. The Commission's finding of probable cause to sanction Freeman's educator's certificate is hereby **REVERSED**.

SO ORDERED THIS 10th day of October, 2014.



KIMBERLY W. SCHROER
Administrative Law Judge