

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

SAMUEL THOMAS STEWART,
Educator/Petitioner,

v.

PROFESSIONAL STANDARDS
COMMISSION,
Respondent.

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: Docket No.:
: OSAH-PSC-SAN-1501735-17-Teate
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: Agency Reference No.: 14-2-544
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FINAL DECISION

I. Introduction


Kevin West, Esq., Assistant

Mr. Stewart requested a hearing in response to the proposed revocation of his teaching certificate by the Georgia Professional Standards Commission (“Commission” or “Respondent”). The hearing on this matter was held on October 17, 2014 at the Burke County Courthouse in Waynesboro, Georgia. John R. B. Long, Esq. represented Mr. Stewart. Rebecca Mick, Senior Assistant Attorney General represented the Commission. After consideration of the evidence and the arguments of the parties, and for the reasons stated below, the Commission’s decision to sanction Mr. Stewart’s teaching certificate is **AFFIRMED**. However, the Commission’s proposed sanction of revocation is hereby **MODIFIED** to a one-year suspension.

II. Findings of Fact

1. Mr. Stewart currently holds a valid certificate to teach in the State of Georgia and held such certificate at all times relevant to the issues before this Court. During the 2013-2014 school year, Mr. Stewart was employed as a teacher and coach at Burke County High School in the Burke County School System. (Testimony of Sam Adkins, Burke County High School Principal; Testimony of Mr. Stewart).
2. During the 2013-2014 school year, K.B., then a junior at Burke County High School, reported to teachers that Mr. Stewart had made inappropriate comments to her. Specifically, K.B. reported that, while she was in class, Mr. Stewart asked her teacher if he could speak with her in the hallway. While the two were outside of the classroom, Mr. Stewart asked K.B. if she had slept with older men and if she and her boyfriend were having sex. When K.B. answered “no”, Mr. Stewart was incredulous. He told K.B. that “walls talk.” (Testimony of K.B.).
3. Mr. Stewart’s comments made K.B. uncomfortable and, later that day, she reported Mr. Stewart to faculty members, who alerted Cynthia Leigh Cochran, a school counselor. The following day, K.B. spoke with Cochran and recounted her conversation with Mr. Stewart. Cochran noted that K.B. appeared “nervous” and “upset” as she described Mr. Stewart’s comments to her. After speaking with K.B., Cochran reported the allegations to Sam Adkins, principal of Burke County High School. (Testimony of K.B.; Testimony of Cynthia Cochran).

4. Based upon K.B.'s allegations, Adkins commenced an internal investigation. As part of this investigation, Adkins interviewed and obtained written statements from K.B. as well as several other female students: E.H., J.W., and Q.O. All of these students reported to Adkins that Mr. Stewart had made inappropriate comments of a romantic or sexual nature to them at various times during the 2013-2014 school year. (Testimony of Sam Adkins).

5. One of the students, J.W., then a junior at Burke County High School, reported an incident involving Mr. Stewart that took place at a school football game in August 2013. During this incident, J.W. alleged Mr. Stewart was standing near the entrance of the football stadium when he took her aside and engaged her in conversation.¹ After a few seconds of innocuous conversation, Mr. Stewart allegedly asked J.W. to "hook him up with one of her white friends."² J.W. also recalled separate instances where Mr. Stewart would ask her questions about her sex life. She also reported that Mr. Stewart had asked her if she would be willing to date men in their late 20s or early 30s.³ (Testimony of J.W.).

6. Another student, E.H., reported that, while she was a student in Mr. Stewart's weight training class, Mr. Stewart asked her if she would "ever talk to a guy in his late twenties, early thirties" and if she had ever had sex with another female student. According to E.H., after she lost weight due to an illness, Mr. Stewart told her "you need to get your figure back because that don't look good."⁴ E.H. further reported that she had witnessed Mr. Stewart make the inappropriate comment to J.W. at the high school football game as described above. At the hearing of this matter, E.H. testified that Mr. Stewart would also ask her questions about whether she engaged in sexual activity with another student.⁵ She further testified that Mr. Stewart's comments to her made her feel uncomfortable attending his class. (Testimony of E.H.).

7. Mr. Adkins next interviewed Mr. Stewart. Mr. Stewart made no admission as to the veracity of the students' allegations of inappropriate comments, but acknowledged that he had "made a mistake." Mr. Stewart also reported to Adkins that he had telephoned a student's parent to ask whether the parent knew about the student's sexual orientation.⁶ (Testimony of Sam Adkins).

8. At the conclusion of the interview, Adkins placed Mr. Stewart on administrative leave and requested that he submit a written statement. Mr. Stewart submitted this statement to Adkins in an e-mail on or about February 5, 2014. In his written statement, Mr. Stewart gave a different account of the incident at the high school football game, recalling that he commented "I need me a white girlfriend" to a student. He explained that his comments to K.B. were prompted by rumors that she had been "involved with older men" and that he was "simply trying to help [K.B]." (Testimony of Sam Adkins; Respondent Exhibit 2).

¹ Hr'g Tr. 18: 7-14.

² Hr'g Tr. 18: 12-14.

³ Hr'g Tr. 34: 6.

⁴ Hr'g Tr. 41: 9-10.

⁵ Hr'g Tr. 34: 14-18.

⁶ Following his interview with Mr. Stewart, Adkins contacted the parent and confirmed that the conversation took place. (Testimony of Samuel Adkins).

9. Based upon the findings of his investigation, Adkins recommended to the superintendent that Mr. Stewart be terminated or placed on unpaid leave. Adkins also reported Mr. Stewart's alleged conduct to the Professional Standards Commission. Despite Adkins' recommendation, the school board determined not to take adverse action against Mr. Stewart's employment. The school board allowed Mr. Stewart to return to teach at Burke County High School, where he finished out the school year. Mr. Stewart continues to teach at Waynesboro Primary School in the Burke County School System. (Testimony of Sam Adkins).

10. The Commission commenced an investigation into the allegations. During the course of this investigation, Brandon Elder, an Investigator with the Commission, interviewed the four students who alleged that Mr. Stewart had made inappropriate comments to them during the 2013-2014 school year. At Elder's request, Adkins supplied Mr. Stewart with a witness statement form so that Mr. Stewart could provide the Commission with a written statement concerning the allegations against him. Mr. Stewart returned the form on or about March 24, 2014, writing "No comment. I plead the Fifth Amendment. Unsure of what is being asked of me." (Testimony of Brandon Elder; Respondent Exhibit 3).

11. Based upon the foregoing facts, the Commission found probable cause that Mr. Stewart had committed violations of its laws, rules, and regulations. Specifically, the Commission determined that Mr. Stewart's conduct amounted to violations of Rule 505-6-.01(3)(b) [Conduct with Students] and Rule 505-6-.01(3)(j) [Professional Conduct] of the Rules of the Georgia Professional Standards Commission and recommended that Mr. Stewart's teaching certificate be revoked. Mr. Stewart requested a hearing on or about May 27, 2014 and the matter was referred to the Office of State Administrative hearings for adjudication. (Respondent's Statement of Matters Asserted dated July 8, 2014; Petitioner's Request for Hearing dated May 27, 2014).

12. K.B., E.H., and J.W. reaffirmed their accounts of Mr. Stewart's comments to them in their testimony at the hearing on this matter. Q.O. did not testify at the evidentiary hearing. The written statements of the students obtained by Burke County High School and the Commission during their respective investigations were not tendered into evidence. (Testimony of K.B., E.H., J.W.).

13. Mr. Stewart testified that his comments to K.B. were prompted by rumors that she was in a sexual relationship with a staff member at Burke County High School. Mr. Stewart testified that he taught sex education in his health class at the school and that he considered it appropriate for him to investigate rumors that a student was in a sexual relationship with an older man. Mr. Stewart acknowledged that none of the students were in his health class during the 2013-2014 school year. With regard to the alleged comments to J.W. at the football game, Mr. Stewart asserted that he commented something to the effect that he "need[ed] . . . a white woman,"⁷ but denied asking J.W. to "hook him up with one of her white friends."⁸ Mr. Stewart also acknowledged that he called one student's parent to ask if she was aware of the student's sexual preference. He explained that he contacted the parent because the student's relationship with another student was "conflicting with [his] class."⁹ Mr. Stewart denied asking students about

⁷ Hr'g Tr. 80: 6.

⁸ Hr'g Tr. 80: 7-8.

⁹ Hr'g Tr. 87: 16-18.

their sexual preferences and asserted that none of his comments to E.H., J.W., or K.B. were inappropriate. (Testimony of Petitioner).

14. In closing, Mr. Stewart, through argument of counsel, contended that he committed no violation of the Code of Ethics for Educators inasmuch as he did not solicit, encourage, or consummate an inappropriate relationship with any of the students.¹⁰

III. Conclusions of Law

1. The Commission is responsible for adopting standards of performance and a code of ethics for educators. O.C.G.A. § 20-2-984.1(a) (2014). Pursuant to this responsibility, the Commission has promulgated the Code of Ethics for Educators, which “defines the professional behavior of educators in Georgia and serves as a guide to ethical conduct.” GA. COMP. R. & REGS. 505-6-.01(1) (2013). The Code of Ethics also “defines unethical conduct justifying disciplinary sanction.” *Id.* Such disciplinary sanctions may include suspension or revocation of an educator’s teaching certificate. GA. COMP. R. & REGS. 505-6-.01(5)(a) (2013). In the present case, the Commission proposes to revoke Mr. Stewart’s certificate for violating Standards Two and Ten of the Code of Ethics. The undersigned concludes that Mr. Stewart violated Standards Two and Ten of the Code of Ethics.

2. Standard Two requires educators to “maintain a professional relationship with all students, both in and outside the classroom.” GA. COMP. R. & REGS. 505-6-.01(3)(b) (2013). Unethical conduct includes, but is not limited to:

1. committing any act of child abuse, including physical and verbal abuse;
2. committing any act of cruelty to children or any act of child endangerment;
3. committing any sexual act with a student or soliciting such from a student;
4. engaging in or permitting harassment of or misconduct toward a student that would violate a state or federal law;
5. soliciting, encouraging, or consummating an inappropriate written, verbal, electronic, or physical relationship with a student;
6. furnishing tobacco, alcohol, or illegal/unauthorized drugs to any student;
or
7. failing to prevent the use of alcohol or illegal or unauthorized drugs by students who are under the educator's supervision (including but not limited to at the educator's residence or any other private setting).

Id. The Commission introduced insufficient evidence to show that Mr. Stewart solicited, encouraged, or consummated an inappropriate relationship with a student. However, the Commission proved that Mr. Stewart made inappropriate comments of a sexual nature to three

¹⁰ Petitioner also asserted a constitutional objection to Standard Two of the Educator Code of Ethics, asserting that it was unconstitutionally vague. Although resolution of Petitioner’s constitutional challenge is beyond the purview of this administrative tribunal, it is preserved for the record. See *Ga. Bd. of Dentistry v. Pence*, 223 Ga. App. 603 (1996); *Ga. Real Estate Comm’n v. Burnette*, 243 Ga. 516 (1979).

students. Mr. Stewart's argument that the comments were appropriate in the context of his role as a former sex education teacher lacks merit. The comments were inappropriate. Mr. Stewart failed to maintain a professional relationship with his students and violated Standard Two.


3. Standard Ten of the Code of Ethics requires educators to "demonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the teaching profession." GA. COMP. R. & REGS. 505-6-.01(3)(j) (2013). According to Standard Ten "[u]nethical 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." *Id.* Mr. Stewart engaged in unprofessional conduct by unilaterally asking students searching questions about their sex lives and making comments of a sexual nature to them. As discussed *supra*, such conduct is deleterious to the professional relationship between educator and student and therefore diminishes the ability of the educator to function professionally. Moreover, the Commission introduced evidence that Mr. Stewart's conduct caused students discomfort and negatively affected their experience at school. Accordingly, the Commission introduced sufficient evidence to demonstrate that Mr. Stewart's conduct violated Standard Ten.

4. In seeking to sanction Mr. Stewart's teaching certificate, the Commission bears the burden of proof. GA. COMP. R. & REGS. 616-1-2-.07. The standard of proof is a preponderance of the evidence. GA. COMP. R. & REGS. 616-1-2-.21. Although Respondent met its burden in showing that Mr. Stewart's conduct violated Standards Two and Ten of the Code of Ethics, the undersigned concludes that the proposed sanction of revocation is inappropriate based on the totality of the evidence. Mr. Stewart's conduct, though inappropriate and unprofessional, falls short of the egregiousness that would warrant revocation of his teaching certificate. Mr. Stewart's comments, as shown by the competent evidence, did not amount to solicitations or attempts to encourage sexual relationships with students. The fact that Burke County School System determined to take no adverse action against Mr. Stewart, and allowed him to continue to teach in the System, further suggests that revocation of Mr. Stewart's teaching certificate is unwarranted. Accordingly, the undersigned concludes that Mr. Stewart's teaching certificate should be suspended for one year.

IV. Decision

The Commission's decision to sanction Mr. Stewart's teaching certificate is **AFFIRMED**. However, its proposed sanction is **MODIFIED** to a one-year suspension of Mr. Stewart's teaching certificate.

SO ORDERED this 19th day of November, 2014.


Steven W. Teate
Administrative Law Judge