

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

DEBRA CAMPBELL WHITE,	:	
Petitioner,	:	Docket No.:
	:	OSAH-PSC-SAN-1512159-33-Malihi
v.	:	
	:	Agency Reference No.: 14-1-468
PROFESSIONAL STANDARDS	:	
COMMISSION,	:	
Respondent.	:	
	:	

Warren Fortson, Esq.
For Petitioner

Allen Lightcap, Asst. Attorney General and
Amanda Jones, Asst. Attorney General
For Respondent.

FINAL DECISION

I. INTRODUCTION

Petitioner 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. For the reasons stated below, the Commission’s decision to sanction Petitioner’s teaching certificate is **AFFIRMED**. However, the Commission’s proposed one-year suspension of Petitioner’s teaching certificate is **MODIFIED** to a suspension for forty-five contract days.

II. FINDINGS OF FACT

1.

Petitioner holds an educator’s teaching certificate in the State of Georgia, and held such certificate at all times relevant to this Decision. *Statement of Matters Asserted; Response to Statement of Matters Asserted.*

2.

At all times relevant to the events at issue, Petitioner was employed as an elementary school teacher at Sope Creek Elementary School in Cobb County School System (“School System”). *Statement of Matters Asserted; Response to Statement of Matters Asserted.*

3.

On the night of December 17, 2013, Petitioner spent the evening with her brother. Over the course of the evening, she opened up to her brother about the financial stress she had been experiencing. During the conversation, her brother made her an alcoholic drink. She shared several more alcoholic drinks with her brother over the course of the evening. *Testimony of Debra White.*

4.

The next morning, December 18, 2013, Petitioner woke up feeling like she was “having a panic attack” and took two Xanax. She then drove herself and her daughter to Sope Creek Elementary School. *Testimony of Debra White.*

5.

At approximately 9:45 a.m., the Sope Creek Elementary Principal, Martha Whalen, made contact with Petitioner and noticed she was stumbling, swaying from side to side, and smelled of alcohol. Ms. Whalen returned to the front office and asked assistant administrator Karen Carstens to assess Petitioner. *Testimony of Martha Whalen.*

6.

Ms. Carstens joined Petitioner in her classroom. During that time, Ms. Carstens noticed Petitioner was slurring her words and “swaying a little bit.” Ms. Carstens did not notice a smell of alcohol around Petitioner. Ms. Carstens reported her findings to Ms. Whalen, and was then

asked to bring Petitioner to Ms. Whalen's office. *Testimony of Karen Carstens and Martha Whalen.*

7.

Petitioner, Ms. Whalen, and Ms. Carstens sat in Ms. Whalen's office for approximately two hours while they waited for the arrival of a breath alcohol technician. The technician arrived and a breath alcohol test was administered to Petitioner at 11:30 a.m. on a Lifeloc Technologies breath testing device. *Statement of Matters Asserted; Testimony of Martha Whalen, Karen Carstens, and Officer Dennis Wright.*

8.

On January 10, 2014, Petitioner resigned from the School System effective January 24, 2014. *Statement of Matters Asserted; Response to Statement of Matters Asserted; Testimony of Martha Whalen.*

9.

Prior to this incident, Petitioner had never been disciplined by an employer. At the hearing, Angela Dallis, Roberta Aronson, and Teresa Terrell—all former colleagues of Petitioner—testified to Petitioner's character, professionalism, and excellence as a teacher. In addition to the character testimony, Petitioner also introduced an assortment of teaching evaluations and recommendation letters praising her abilities as a teacher and extolling her personal and professional virtues. *Petitioner Exhibits 1–24; Testimony of Angela Dallis, Roberta Aronson, and Teresa Terrell.*

10.

Based on the facts and circumstances set forth above, the Commission found probable cause that Petitioner had violated Rule 505-6-.01(3)(c) (Alcohol or Drugs) and Rule 505-6-

.01(3)(j) (Professional Conduct) of the Rules of the Professional Standards Commission and the standards articulated in the Code of Ethics for Educators. The Commission recommended a one-year suspension of Petitioner's teaching certificate. Petitioner timely appealed. *Statement of Matters Asserted.*

11.

At the hearing on this matter, Petitioner argued that the Commission's proposed sanction against her constituted "disparate treatment" and cited several Consent Orders in which the Commission had imposed more lenient sanctions in response to similar conduct. The Commission acknowledged *in judicio* that it was unwilling to entertain a lesser sanction for Petitioner because this case presented it with clear evidence of Petitioner's intoxication, namely the results of the above-described breath analysis. *Petitioner Exhibits 29-33; Respondent Exhibit A.*

12.

The technician who administered the breath alcohol test to Petitioner did not testify at the hearing. The Commission submitted no evidence as to whether the breath testing device had been calibrated or whether the technician had obtained training or certification to operate the breath testing device.

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 Professional Standards Commission is the state agency responsible for certifying professional educators in Georgia and establishing standards for the teaching profession. O.C.G.A. § 20-1A-4(5). The Commission has issued Rules that adopt the Code of Ethics for Educators. O.C.G.A. § 20-2-984.1. 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.

In this case, the Commission charges that Educator has violated the Rules of the Professional Standards Commission and the Code of Ethics for Educators, specifically Ga. Comp. R. & Regs. 505-6-.01(3)(c), Standard 3: Alcohol or Drugs, and Ga. Comp. R. & Regs. 505-6-.01(3)(j), Standard 10: Professional Conduct, and recommends that Petitioner's teaching certificate be suspended for one year.

3.

Standard 3 of the Code of Ethics for Educators states in relevant part:

Standard 3: Alcohol or Drugs – An educator shall refrain from the use of alcohol or illegal or unauthorized drugs during the course of professional practice. Unethical conduct includes but is not limited to . . .

2. Being on school premises or at a school-related activity involving students while under the influence of, possessing, or consuming alcohol.

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

By attending school while under the influence of alcohol and/or an un-prescribed prescription medication, Petitioner violated Standard 3 of the Code of Ethics for Educators.

4.

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

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 the students.

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

5.

Given that Petitioner’s attendance at school while under the influence of alcohol and/or an un-prescribed prescription medication impaired her ability to safeguard her students and maintain control of her classroom, Petitioner’s conduct was detrimental to the health, welfare, discipline, or morals of her students and violated Standard 10 of the Code of Ethics for Educators.

6.

The Commission cites the availability of the breath analysis results as the reason for its unwillingness to impose a lesser sanction in the present case. However, the breath analysis results are of no evidentiary value. Due process requires that a party be afforded the right to confront witnesses. *Neal v. Augusta-Richmond County Personnel Board*, 304 Ga. App. 115, 116–17 (2010) (“A fair hearing includes the right to confront and cross-examine witnesses.”); *see also Finch v. Caldwell*, 155 Ga. App. 813, 816 (1980). In this case, Petitioner was denied the right to confront and cross-examine the technician who actually performed the breath test. Officer Wright could not testify as to the accuracy of the breath analysis in the technician’s stead; the record is devoid of any evidence that Officer Wright had knowledge that the machine was calibrated at the time the test was performed, that he was familiar with the Lifeloc Technologies breath analysis device, or that he was certified and trained to operate the device.

Id. at 117–18. Accordingly, the breath analysis results have no bearing in the consideration of the appropriateness of the Commission’s proposed sanction.

7.

All testimony at the evidentiary hearing indicated that Petitioner’s behavior on December 18, 2013 was an isolated and unusual incident. Further weighing in Petitioner’s favor is that she has been teaching for twenty-four years without incident; her principal and colleagues view her as a model of teaching ability, professionalism, and hard work; and her teaching evaluations show she is an excellent teacher. Moreover, the Court notes that the Commission’s recommended sanction is significantly more onerous than those it has imposed for similar ethical violations. *In re Adkins*, PSC. No. 12-1-773 (Sept. 13, 2012) (five-day suspension for consumption of alcoholic beverage during school trip); *In re Powers*, PSC No. 12-8-244 (June 12, 2014) (five-day suspension for consumption of two alcoholic beverages at a football camp for students); *In re Walton*, PSC No. 11-1-674, (Sept. 12, 2013) (thirty-four day suspension for coming to school intoxicated). Accordingly, the Court concludes that the Commission’s proposed sanction should be modified to a forty-five day suspension. *See Leggett v. Professional Standards Commission*, Docket No. OSAH-PSC-SAN-1503074-106-Walker (Sept. 12, 2014) (recommended one-year suspension for violation of Standards Three and Ten modified to forty-five-day suspension after considering educator’s excellent reputation and otherwise sound disciplinary record).

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 undersigned concludes Petitioner’s conduct violated the Code of Ethics

for Educators and the Commission's decision to sanction Petitioner is **AFFIRMED**. However, for the reasons stated, the Commission's proposed one-year suspension of Petitioner's teaching certificate is **MODIFIED** to a suspension for forty-five contract days.

SO ORDERED, this __ day of February, 2015.

MICHAEL MALIHI, Judge