

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

ERNESTINE KIRBY
Educator/Petitioner,

v.

**PROFESSIONAL STANDARDS
COMMISSION,**
Respondent.

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: **Docket No.:**
: **OSAH-PSC-SM-1617619-98-Woodard**
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: **PSC No.: 14-4-777**
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MAR 3 2016

FINAL DECISION

I. Introduction

Kevin Westray, Legal Assistant

Petitioner Ernestine Kirby requested a hearing in response to notification from Respondent, the Professional Standards Commission (hereinafter “the Commission” or “Respondent”) that it proposed to revoke her teaching certificate for alleged violations of the Code of Ethics for Educators. An evidentiary hearing was held on December 16, 2015 at Brunswick Municipal Court, Glynn County, Georgia, before the undersigned Administrative Law Judge of the Office of State Administrative Hearings. N. Daniel Lovein, Esq., represented Petitioner at the hearing and Rebecca S. Mick, Senior Assistant Attorney General, represented the Commission. For the reasons stated below, the Commission’s proposed sanction of revocation is **REVERSED**.

II. Findings of Fact

1.

Dr. Kirby 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. *Statement of Matters Asserted*.

2.

Dr. Kirby was appointed Superintendent of Schools for McIntosh County in 2012, and served in that capacity until January 2, 2015, on which date the McIntosh County School Board voted to suspend her with pay until the date of her retirement in March 2015. *Kirby Test., Tr. 199: 18-23*.

3.

On March 14, 2014, Lori Quigley, a high school mathematics teacher at McIntosh County Academy, was arrested for three counts of Sexual Assault by a Person with Supervisory

or Disciplinary Authority based on her alleged sexual relationship with three McIntosh County Academy students. One count of criminal intent to commit sexual assault was added on May 30, 2014. These alleged crimes were committed while Dr. Kirby was Superintendent. *Statement of Matters Asserted*.

4.

Dr. Kirby was arrested on April 16, 2014 on misdemeanor charges of Failure to Report Child Abuse and Obstruction of an Officer. *Respondent's Exhibit 2; Kirby Test., Tr. 194: 6-7*. The charges against Dr. Kirby were disposed of by an Order of Nolle Prosequi entered in the Superior Court of McIntosh County on December 4, 2014. *Respondent's Exhibit 2*.

5.

On July 28, 2014, the Commission issued a letter to Dr. Kirby indicating that it had found probable cause to believe that she breached the Code of Ethics, and that revocation of her teacher's certification was appropriate. Dr. Kirby thereafter requested a hearing. The Commission subsequently issued a Statement of Matters Asserted on or about October 8, 2015 advising Dr. Kirby that it had found probable cause to believe that her conduct violated Rules 505-6-.01(3)(a) [Legal Compliance], 505-6-.01(3)(a)(i) [Required Reports], and 505-6-.01(3)(j) [Professional Conduct]. Specifically, the Commission alleged that Dr. Kirby violated the Code of Ethics by failing to report, or otherwise investigate, allegations of child abuse and/or misconduct on the part of Ms. Quigley. Dr. Kirby filed an Answer to the Statement of Matters Asserted on November 12, 2015. *Letter from Commission dated July 28, 2014; Statement of Matters Asserted; Petitioner's Answer to Statement of Matters Asserted*.

6.

Terrance Haywood was principal of McIntosh County Academy during the 2013-2014 school year. At the hearing, Mr. Haywood testified that during a telephone conversation with Dr. Kirby in the fall of 2013, Dr. Kirby mentioned that she was hearing allegations of a math teacher at McIntosh County Academy "not teaching," "using profane language," and of "inappropriate behavior going on in the classroom." *Haywood Test., Tr. 87: 23 to 88: 5*. After speaking with Dr. Kirby, Mr. Haywood interviewed Lori Quigley regarding the allegations. *Haywood Test. Tr. 88: 8-16*. According to Mr. Haywood, Ms. Quigley vehemently denied the allegations. *Haywood Test. Tr. 88: 18-20*. Following the interview, Mr. Haywood reported to

Dr. Kirby that, in his opinion, the rumors of misconduct were unsubstantiated. *Haywood Test. Tr. 94: 5-22.*

7.

Mr. Haywood testified that he heard nothing further regarding allegations of misconduct on the part of Lori Quigley until February 2014, when a teacher reported that two students in Ms. Quigley's class had approached her, and were very upset over Ms. Quigley's conduct. *Haywood Test., Tr. 95:15-17.* Mr. Haywood thereupon obtained written statements from the students. *Haywood Test., Tr. 96: 6-8.* In their statements, the students reported that Ms. Quigley used profanity, discussed her personal life, and talked on her cell phone during class. *Haywood Test., Tr. 96: 1-3; Petitioner's Exhibit 7.*

8.

A co-teacher in Ms. Quigley's classroom also submitted a written statement to Mr. Haywood. In her written statement, the co-teacher reported that Ms. Quigley made sexual remarks to male students and "seem[ed] to have inappropriate relationships towards a few of them." The co-teacher further reported that she had heard Ms. Quigley "talk to students about having orgasms, penis sizes, and other inappropriate sexual remarks." The co-teacher's statement was not tendered at the hearing. *Haywood Test., Tr. 90: 9-12; Petitioner's Exhibit 7.*

9.

The above-described statements were not tendered as exhibits during the hearing, and there is no evidence that the students or the co-teacher reported Ms. Quigley engaged in sexual activity with a student. *See Haywood Test.; Kirby Test; Petitioner's Exhibit 7.*

10.

After obtaining the above-described statements, Mr. Haywood contacted Dr. Kirby and apprised her of the allegations against Ms. Quigley. *Haywood Test., Tr. 96: 20-23.* Dr. Kirby reviewed the statements from the students and the co-teacher, then advised Mr. Haywood that they would need to have a meeting with Ms. Quigley and remove her from the school pending an investigation. *Kirby Test., Tr. 176: 14-22.*

11.

At Dr. Kirby's direction, Mr. Haywood obtained statements from all of the students in Ms. Quigley's class. *Haywood Test, Tr. 96: 24 to 97: 3; Kirby Test., Tr. 178: 11-13.* These statements included allegations that Ms. Quigley used profanity during class and made

comments of a sexual nature to male students, including one instance in which she told a male student: "if you are not paying my bills or f***** me you don't get to charge your phone in here anymore." *Kirby Test., Tr. 209: 24 to 210: 5; Petitioner's Exhibit 7.* After reading the additional statements, none of which were tendered into evidence, Dr. Kirby and Assistant Superintendent Dr. Diane Richardson determined that the appropriate course of action was to ask for Ms. Quigley's resignation. *Kirby Test., Tr. 178: 22 to 179: 5.*

12.

On February 26, 2014, Dr. Kirby, Mr. Haywood, and Dr. Richardson met with Ms. Quigley at McIntosh County Academy and advised her of the allegations of misconduct raised by her students and co-teacher. *Haywood Test., Tr. 98: 8-10; Kirby Test., Tr. 181: 24 to 182: 5.* Ms. Quigley was given the option to resign or face termination proceedings. *Kirby Test., Tr. 181: 24 to 182: 5.* Ms. Quigley subsequently resigned on March 5, 2014. *Kirby Test., Tr. 181: 24 to 182:13; Petitioner's Exhibits 3, 7, and 9.*

13.

Officer Daniel Lodise served as Chief of the Campus Police Department for the McIntosh County Public School System during the 2013-2014 school year. Office Lodise testified that, in November 2013, he was contacted by Dr. Kirby's secretary, Missy Brigman, who informed him that she received information that Lori Quigley was having sexual relations with "K.F", a student. *Lodise Test., Tr. 24: 13-16.* According to Office Lodise, he immediately conveyed Ms. Brigman's report to Dr. Kirby and indicated to her that it was imperative that he begin a criminal investigation into Ms. Quigley, "because we had specific names." *Lodise Test., Tr. 25: 3-9, 26: 2-3.* Officer Lodise testified that Dr. Kirby took no action in response to his report. *Lodise Test. Tr. 25: 19-20.* He did not conduct a criminal investigation into allegations that Ms. Quigley was having sexual relations with a student in the fall of 2013. *Lodise Test., Tr. 33: 1-3.*

14.

Officer Lodise further testified that, in February 2014, one of his officers at McIntosh County Academy indicated that he had received reports that Ms. Quigley was in a sexual relationship with a student, whom the officer identified by name. *Lodise Test., Tr. 25: 22 to 26: 3.* According to Officer Lodise, he then returned to Dr. Kirby and restated his position that an immediate criminal investigation was warranted. *Lodise Test., Tr. 26: 6-8.* He testified that Dr. Kirby called him "a couple of days later" and instructed him to begin a criminal investigation.

Lodise Test., Tr. 26: 16-18. However, Officer Lodise testified, he was subsequently directed by Dr. Kirby and the McIntosh County School Board to turn the investigation over to the sheriff's department. *Lodise Test., Tr. 28: 6-8.*

15.

In May 2014, approximately two months after Ms. Quigley's arrest, Officer Lodise generated a report of his investigation into the allegations against Ms. Quigley. In this report, Lodise wrote that during the last week of November 2013:

Brigman told me another teacher at [McIntosh County Academy], Rose Harrison, had told her that the staff and the students at the high school were talking about the inappropriate relationship Quigley is having with a male student [K.F.]

Petitioner's Exhibit 16.

16.

Officer Lodise was interviewed by the Georgia Bureau of Investigation on March 20, 2014 pursuant to a criminal investigation at McIntosh County Academy. During this interview, he indicated that he heard a "comment about something possibly between a teacher and a student" in or around November 2013. However, although he was asked for specifics regarding allegations of child abuse during this interview, Officer Lodise did not indicate that he had received a report from Missy Brigman concerning Ms. Quigley having sexual relations with any student, including K.F. *Petitioner's Exhibit 14.*

17.

Dr. Kirby tendered the sworn affidavit of Missy Brigman into evidence at the hearing on this matter.¹ In her affidavit, Ms. Brigman denies ever reporting to Officer Lodise that Ms. Quigley had sexual relations with K.F., or that she even knew the name of a student who had sexual relations with Ms. Quigley. *Petitioner's Exhibit 12.*

18.

Dr. Kirby testified that she first became aware of allegations of misconduct after Mr. Haywood contacted her by telephone in September 2013 and told her "that there were some rumors going around about a teacher having sex with the football players." *Kirby Test., Tr. 172: 22-25.* However, according to Dr. Kirby, Mr. Haywood did not know the name of the teacher or the students involved, so she instructed him to "keep [his] eyes open and listen." *Kirby Test., Tr.*

¹ The affidavit was admitted into evidence without objection.

173: 1-3. She further testified that, immediately after she received the call from Mr. Haywood, Assistant Superintendent Larry Day entered her office and reported that someone—a teacher who did not work for McIntosh County, but whom he knew—had overheard two women talking in a local grocery store about “a teacher having sex with the football players.” *Kirby Test., Tr. 173: 8-18.* She testified that, the next day, Haywood called her and reported that he had interviewed Lori Quigley, that Ms. Quigley had denied the allegations, and that he found her denial to be credible. *Kirby Test., Tr. 174: 4-19.* Based on Mr. Haywood’s report and the lack of specific complaints of misconduct from students or parents, Dr. Kirby did not investigate further, and did not report the allegations to DFCS or law enforcement. *Kirby Test., Tr. 174.* Dr. Kirby disputed Mr. Haywood’s testimony that she had called him in September 2013 asking about rumors concerning a math teacher at McIntosh County Academy. *Kirby Test, Tr. 206: 23 to 207: 3.*

19.

Dr. Kirby testified that Mr. Day and Mr. Haywood made reports to the School Board. *Kirby Test., Tr. 173: 20-25.* According to Dr. Kirby, the Board’s attorney, Mr. Alvin Leaphart, advised her that the reports did not provide sufficient information to warrant further action. *Id.* Holly Boone, member of the McIntosh County School Board from 2011 to 2014, recalled this board meeting in her testimony. To her recollection, the allegation was “a minor thing at the time because when it was mentioned, there were no names to go by . . . somebody heard something maybe in the grocery store. . . . We didn’t have a name to go by, no teacher’s name, no student’s name.” *Boone Test., Tr. 112: 4-8.*

20.

Dr. Kirby denied that Officer Lodise approached her in November 2013 and informed her of allegations that Ms. Quigley was having sexual relations with a student, or that he identified K.F. *Kirby Test., Tr. 175: 6-13.* She denied, further, that her secretary, Missy Brigman, had ever reported hearing rumors “regarding Lori Quigley and [K.F.] having sex at the high school.” *Kirby Test., Tr. 195: 20-23.*

21.

Dr. Kirby affirmed Mr. Haywood’s testimony concerning the February 2014 allegations of misconduct and the subsequent disciplinary action taken against Ms. Quigley. Dr. Kirby further testified that, at a board meeting on March 6, 2014, during which Officer Lodise was

present, the board indicated that any criminal investigation into Ms. Quigley's misconduct would be turned over to the Sheriff's Office. *Kirby Test., Tr. 184: 2-12.*

22.

Dr. Kirby testified that Dr. Richardson had been designated by her predecessor as the individual responsible for reporting possible child abuse to the Division of Family and Children Services (DFCS). *Kirby Test., Tr. 177: 1-7.* According to Dr. Kirby, Dr. Richardson did not report any allegations concerning Ms. Quigley to her prior to the February 2014 reports of misconduct. *Kirby Test., Tr. 177: 8-12.*

23.

Dr. Kirby acknowledged that she did not immediately report Ms. Quigley's conduct to the Commission because she was "in the process of doing the investigation." *Kirby Test., Tr. 212: 3-4.* However, she knew that she had "30 or 90 days" to make such a report, and testified that the misconduct was reported shortly after Ms. Quigley was given the charge letter on February 28, 2014. *Kirby Test., Tr. 213: 6-7.* She testified that she believed it was Dr. Richardson who made the report, though she was not positive. *Kirby Test., Tr. 213: 9-10*

24.

Dr. Kirby also introduced the testimony of Dwight Jordan, member, McIntosh County School Board, 1998-2014 and Joe Maulden, member, McIntosh County School Board, 2004-present. Mr. Jordan, Mr. Maulden, and Ms. Boone attested to Dr. Kirby's good character and reputation in the community, as well as her effectiveness as a superintendent. *Boone Test.; Jordan Test.; Maulden Test.*

III. Conclusions of Law

Based on the above findings of fact, the undersigned makes the following conclusions of law:

1.

The Commission seeks to revoke Dr. Kirby's teaching certificate. Therefore, 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.

2.

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). 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). 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).²

3.

In the present case, the Commission proposes to revoke Dr. Kirby’s certificate for violating Standards One, Nine, and Ten of the Code of Ethics. Standard One requires educators to “abide by federal, state, and local laws and statutes.” GA. COMP. R. & REGS. 505-6-.01(3)(a). Pursuant to Standard One, “[u]nethical conduct includes but is not limited to the commission or conviction of a felony or of any crime involving moral turpitude . . . or any other laws applicable to the profession.” *Id.* The Commission alleges that Dr. Kirby violated Standard One by failing to report child abuse in violation of O.C.G.A. § 19-7-5, which requires mandatory reporters, including educators, to report child abuse once there is “reasonable cause to believe that a child has been abused. . . .” O.C.G.A. § 19-7-5(c)(1).³ “Child abuse” that must be reported includes “Sexual abuse of a child,” which is defined at O.C.G.A. § 19-7-5(b)(10) as “a person’s employing, using, persuading, inducing, enticing, or coercing any minor who is not that person’s spouse to engage in any act which involves . . . [s]exual intercourse. . . .” The relevant inquiry in determining whether a mandatory reporter has failed to report child abuse in violation of § 19-7-5 is “whether the information available at the time would lead a reasonable person in the position of the reporter to suspect abuse.” *O’Heron v. Blaney*, 276 Ga. 871, 873 (2003). A mandatory reporter who “knowingly and willfully” fails to report suspected child abuse is guilty of a misdemeanor. O.C.G.A. § 19-7-5(h).

4.

The Commission introduced insufficient evidence to prove that Dr. Kirby knowingly and willfully failed to report suspected child abuse such that its finding of a violation of Standard One was warranted. The evidence on record does not support the Commission’s finding that Dr.

² Inasmuch as the violations are alleged to have occurred in or about 2013-2014, it is appropriate to apply the Code of Ethics for Educators as it existed prior to 2014 and 2015 amendments.

³ This language reflects that of O.C.G.A. § 19-7-5(c) before it was amended through passage of HB 268 in 2015. The current provision reads: “The following persons having reasonable cause to believe that suspected child abuse has occurred shall report or cause reports of such abuse to be made as provided in this Code section[.]” O.C.G.A. § 19-7-5(c)(1).

Kirby had reasonable cause to suspect child abuse. Rather, it appears that Dr. Kirby was aware of generalized rumors and allegations in the fall of 2013, and later became aware of more particularized allegations of misconduct—but none that would lead a reasonable person in Dr. Kirby’s position to suspect child abuse—in February 2014. Specifically, in the fall of 2013, Dr. Kirby was aware of vague allegations that an unidentified teacher was in a sexual relationship with an unidentified student. These allegations were reported by someone who had overheard two unidentified persons casually discussing rumors in a grocery store. This is insufficient to give rise to “reasonable cause to believe that a child has been abused.” *See* O.C.G.A. § 19-7-5(c)(1). In February 2014, Dr. Kirby became aware of more specific allegations that Ms. Quigley was engaging in misconduct. However, from the reports, Ms. Quigley’s misconduct consisted of extremely inappropriate language, and was not indicative of child abuse.

5.

Officer Lodise’s testimony to the effect that he informed Dr. Kirby in November 2013 that Missy Brigman reported allegations that Ms. Quigley was engaging in sexual relations with student K.F. is not credible. Officer Lodise’s claim first appeared in a report that he generated in May 2014, nearly two months after Ms. Quigley’s arrest. Moreover, Officer Lodise failed to satisfactorily explain why he, as a law enforcement officer, made no report, and conducted no investigation, after receiving Ms. Brigman’s report. The fact that Officer Lodise failed to mention any report by Ms. Brigman during his March 20, 2014 interview with GBI casts further doubt upon the accuracy of his testimony. Finally, Ms. Brigman denied in her affidavit that she ever reported to Officer Lodise that Ms. Quigley was in a sexual relationship with student K.F. Accordingly, the Commission’s finding that Dr. Kirby violated Standard One lacks sufficient evidentiary support.

6.

Standard Nine of the Code of Ethics requires educators to “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.” GA. COMP. R. & REGS. 505-6-.01(3)(i). According to Standard Nine, unethical conduct includes but is not limited to “failure to make a required report of a violation of one or more standards of the Code of Ethics for Educators of which they have personal knowledge . . . and 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. . . .” *Id.* As applied, the Commission asserts that Dr. Kirby violated Standard Nine by failing to report to the Commission after she allegedly received information indicating that Ms. Quigley was violating state law and/or the Code of Ethics.

7.

The Commission introduced insufficient evidence to prove that Dr. Kirby violated Standard Nine of the Code of Ethics. Dr. Kirby testified that a complaint was filed with the Commission “shortly after” Ms. Quigley was given a charge letter on February 28, 2014 and nothing in the evidentiary record contradicts her testimony.

8.

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). 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.*


9.

The Commission failed to carry its burden of proof as to its assertion that Dr. Kirby violated Standard Ten of the Code of Ethics. There is insufficient competent evidence for the undersigned to conclude that Dr. Kirby engaged in conduct that “impair[ed] and/or diminish[ed] . . . [her] ability to function professionally” in her position or that her behavior or conduct was in any way detrimental to the health, welfare, discipline, or morals of students.” GA. COMP. R. & REGS. 505-6-.01(3)(j).

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is the Final Decision of the undersigned that the Commission’s recommended sanction of revocation is **REVERSED**.

SO ORDERED this 3rd day of March, 2016.



M. PATRICK WOODARD, JR.
Administrative Law Judge