

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

LORI ANN SCIFERS,

EDUCATOR/PETITIONER,

v.

PROFESSIONAL STANDARDS
COMMISSION,

RESPONDENT.

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OSAH-PSC-SAN-1642834-8-TEATE

PSC NO.: 15-3-818



FILED
OSAH

AUG 26 2016

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Kevin Westray, Legal Assistant

FINAL DECISION

I. Introduction

The Petitioner, Lori Ann Scifers, (“Ms. Scifers”) appeals a decision by the Professional Standards Commission (“Commission”) to suspend her Georgia teaching certificate based on alleged violations of the Code of Ethics for Educators. A *de novo* evidentiary hearing was held on June 20, 2016, pursuant to O.C.G.A. §§ 20-2-984.5(d), 50-13-41, and 50-13-13.¹ Petitioner was represented by Julie J. Oinonen, Esq. The Commission was represented by Brittanie Browning, Assistant Attorney General. After consideration of the evidence and the arguments of the parties, and for the reasons stated below, the Commission’s decision to sanction Petitioner’s Georgia teaching certificate is **REVERSED** and no sanction is imposed.

¹ Inasmuch as transcripts were not available by July 19, 2016 as anticipated, Petitioner filed a motion for extension that was granted on July 7, 2016, thereby extending the date of the closure of the record to August 1, 2016.

II. Findings of Fact

Educator's licensure and employment position

1. Petitioner holds a teaching certificate in the State of Georgia, and held such certificate at all times relevant to the events at issue. (Statement of Matters Asserted ¶ 1; Response to Statement of Matters Asserted ¶ 1).
2. Petitioner was an assistant principal at Woodland High School during the 2014-2015 school year. (Statement of Matters Asserted ¶ 2; Response to Statement of Matters Asserted ¶ 2).

Incident requiring investigation

3. On January 30, 2015, a student reported to Guidance Counselor Mary Beth Tumlin that a nude photograph of fifteen year old student, T.W., was taken on a cell phone using the "SnapChat" app and students saw the picture at school. (Phone Tr. p. 8).² That student reported that two female students, P.J. and T.M., were involved in taking the photograph during a swim tournament in the locker room while T.W. was changing. Ms. Tumlin then reported the incident to K.K. Smith, the lead Guidance Counselor, while Wes Dickey, the Associate Principal, was in Ms. Smith's office. (Phone Tr. pp. 8-9). Dr. Dickey and Ms. Tumlin then walked across the hall to report the incident to Melissa Williams, Ph.d, the Principal. (Phone Tr. p. 9).

Assignment of Investigation to Ms. Scifers

4. Inasmuch as Ms. Scifers was the assistant principal assigned to students with last names beginning with "G" through "M," and the students involved were female, Dr. Williams directed Ms. Tumlin to ask Ms. Scifers to handle the investigation of P.J. and T.M., and to get Officer

² Mary Beth Tumlin testified telephonically on June 15, 2016. Her testimony is cited as "Phone Tr."

Corbin, if needed.³ (Phone Tr. p. 9; Testimony of Dr. Williams, Tr. pp. 92–93). Ms. Tumlin communicated Dr. Williams’ directive to Ms. Scifers. Neither Ms. Tumlin nor Dr. Williams ever informed Ms. Scifers that contacting Officer Corbin was mandatory.⁴ (Phone Tr. p.10; Testimony of Dr. Williams, Tr. pp. 92–93, 100–02; Testimony of Ms. Scifers, Tr. pp. 160, 185).

Ms. Scifers’ investigation

5. Ms. Scifers first questioned T.M., who admitted taking the nude photograph of T.W. while at swim meet at the Darlington School in Rome, Georgia. Although T.M. claimed the photo was inadvertent, T.M. had used Snapchat’s “draw tool” to highlight the nude picture of T.W. T.M. then sent the picture to P.J., who saved the image and showed it to other students at school. (Respondent Exhibit 3; Tr. pp. 161–64).

6. At the initiation of her investigation, Ms. Scifers asked T.M. to hand over her phone. T.M. complied and then entered her password at Ms. Scifers’ request. In T.M.’s presence, Ms. Scifer scrolled through all T.M.’s text messages, her pictures, her deleted pictures, and all other social media applications such as Facebook, Instagram, Twitter and Snapchat. After searching through the cell phone, Petitioner concluded the picture was no longer on the phone because the Snapchat application had deleted the picture. Ms. Scifers acknowledges that she has no police investigative or other expert investigative training regarding image retrieval on cell phones. (Respondent Exhibit 3, Tr. pp.161–64, 185, 187).

7. Having received T.M.’s admissions, Ms. Scifers confiscated T.M.’s cell phone and took it to the receptionist in the front office for safekeeping. She placed T.M. on in-school suspension pending further directive from Dr. Williams. (Tr. p. 164).

³ At that time, Officer Corbin, a male officer, had been employed by the school for approximately 10 days. (Tr. p. 89).

⁴ Even though Dr. Williams later signed a letter of reprimand on March 13, 2015, stating that she had expressly directed Ms. Scifers to have Officer Corbin present during the investigation, her testimony clearly indicates that no such directive was ever given. (Testimony of Dr. Williams, Tr. 100–02).

8. Due to illness, P.J., the other student under investigation, was not at school on January 30. Ms. Scifers called her father, who said he would get the phone from P.J., search it, and call Ms. Scifers back. He later called Ms. Scifers back, reported that he did not find the picture she described on P.J.'s phone, and disavowed any wrongdoing by P.J. Ms. Scifers requested that he provide the phone to her, but he was unwilling to do so. (Tr. pp. 164–65; 188).

9. Ms. Scifers then reported her findings to Dr. Williams and sought further guidance. Dr. Williams convened an administrative team meeting to discuss appropriate discipline for T.M. and P.J. The team consisted of Dr. Williams and any other associate or assistant principals that were present at that time. Dr. Williams was present as principal, as well as Ms. Scifers, Dr. Bob Butler, and Mr. John McNair, the three assistant principals at the time.⁵ (Tr. pp. 86, 151–56, 169–70).

10. Later that day, Ms. Scifers contacted Shawn Williams, P.W.'s father and the swim coach. She informed him first of the issues with T.M. and P.J., members of his swim team, and then informed him that the picture was of T.W., his daughter. Ms. Scifers disclosed the details of her investigation that included her telephone conversation with P.J.'s father as well T.M.'s mother, whom Ms. Scifers described as so upset, devastated, and embarrassed that she was coming to the school to speak with Ms. Scifers. Ms. Scifers informed Mr. Williams that T.M. and P.J. were to be suspended. Mr. Williams felt confident with the investigation until Ms. Scifers' phone rang, at which point he observed that Ms. Scifers' phone displayed the name of T.M.'s mother, and what he mistakenly determined to be a photo of T.M.'s mother, prompting him to incorrectly assume that T.M.'s mother was a personal friend of Ms. Scifers'.⁶ Although Mr. Williams felt

⁵ The record does not indicate whether Mr. Dickey, the associate principal was present.

⁶ Though uncorroborated, Ms. Scifers' testimony regarding pictures of contacts on her cell phone and her relationship to T.M.'s mother is credible and rebuts Mr. Williams' assumptions of a picture of T.M.'s mother and

shock based on that assumption, he did not discuss his observations with Ms. Scifers. (Tr. pp. 25–29, 170–72, 176–78).

11. T.M.'s mother's arrived at the school shortly after the call that Mr. Williams witnessed. Ms. Scifers explained the situation to T.M.'s mother, informing her of her daughter's confession and punishment. Per Dr. Williams' instruction to Ms. Scifers at or following the administrative team meeting, Ms. Scifers returned T.M.'s cell phone to T.M.'s mother at the conclusion of their conference. (Tr. pp. 30–31, 160–63; 190; Respondent's Exhibit 3).

12. When P.J. returned to school on Monday, February 2, she confessed to receiving the picture from T.M. on Snapchat, saving the photo, and showing the photo to other students. Petitioner was unable to search P.J.'s phone for the photo at that time because P.J.'s parents did not allow her to bring it to school anymore. (Tr. p. 187–88; Respondent's Exhibit 3).

Parental Complaint

13. On Saturday, January 31, 2015, P.J.'s mother called 911 contacted Officer Corbin and inquired about the incident involving nude photos. Officer Corbin followed up on the matter on Monday morning, February 2, 2016. He gathered information and reported to the matter to the Rome Police Department, which had police jurisdiction over the matter. (Matters Asserted ¶ 29, Respondent Exhibit 2; Tr. pp. 65, 77, 85).

14. P.J.'s mother met with Dr. Williams on Tuesday, February 3, 2016. P.J.'s mother alleged favoritism in Ms. Scifers' actions; however, Dr. Williams responded that Ms. Scifers was not so inclined and that the disciplinary actions taken were an administrative decision following an administrative team meeting. She further told P.J.'s mother that Ms. Scifers had worked for her for five years and had never shown favoritism. Officer Corbin later joined their conversation

that T. M.'s mother was a personal friend. Mr. Williams' assumptions were formulated during a highly stressful discussion and were never communicated to Ms. Scifers. (Tr. pp. 26–29; 170–72, 176–78).

and instructed P.J.'s mother on filing a police report with the Rome Police Department. P.J.'s mother then filed the report. (Tr. p. 83–85; Petitioner Exhibit 2).

15. Approximately five days after the incident, P.J.'s mother wrote a letter to the Bartow Board of Education and Superintendent John Harper accusing Ms. Scifers of showing favoritism in dispensing punishment and accusing Ms. Scifers of having a personal relationship with T.M.'s mother, D.M. P.J.'s mother also filed a complaint with the Professional Standards Commission. (Tr. 36–37).

16. Superintendent Harper acknowledged the formal complaint and enlisted the help of others in its investigation including Dan Knowles, the Chief of Police for the Bartow County Campus Police and Mary Defnall, the Chief Human Resources and Operations Officer for the Bartow County School System. (Petitioner's Exhibit 2, Tr. pp. 42–43, 59).

Disciplinary Actions

17. Although Dr. Williams assured Superintendent Harper that Ms. Scifers "was most professional in the handling of the situation," and that Ms. Scifers "had been unjustly blamed," she later felt implied pressure to reprimand Ms. Scifers. Per Dr. Williams' instructions, Mary Defnall drafted a letter of reprimand, which Dr. Williams issued to Ms. Scifers on March 13, 2015. Contrary to her testimony that taking Officer Corbin was discretionary, Dr. Williams indicated in the letter that she was reprimanding Ms. Scifers "because I directed you to have Officer Corbin present . . . I believe my exact words were 'Take Officer Corbin with you.'" Ms. Scifers responded to the reprimand on April 2, 2015. Although she did not dispute Dr. Williams' statements regarding Officer Corbin in her response, she denied any bias or unfairness in her investigation. (Petitioner Exhibit 2; Respondent Exhibits 3 and 4; Tr. pp. 98–105).

18. Upon the Commission's approval, P.J.'s mother's complaint was assigned to David Pumphrey, one of the Commission's investigators. As part of this investigation, Mr. Pumphrey conducted an interview with Dr. Williams. Dr. Williams' statements during the interview regarding the directives to have Officer Corbin involved were consistent with her letter of reprimand. Although not under oath, Dr. Williams' statements to Mr. Pumphrey were made during the course of an official investigation and subject to the Code of Ethics. (Respondent Exhibit 4, Tr. pp. 120–31).

19. Based upon its review of the investigative record, as stated in its Matters Asserted, the Commission found probable cause that Ms. Scifers violated the laws, rules and regulations of the Commission relating to required reports and professional conduct. The Commission recommended a ninety (90) contract day suspension that it determined to be consistent with similar disciplinary actions taken by the Commission.

Reporting Requirements

20. As a Teacher or as an Administrator, Ms. Scifers is required to make mandatory reports as part of investigations into unlawful activity and suspected child abuse.⁷ (Tr. p. 72). She was aware of the mandatory reporting requirements and previously reported allegations in compliance with the mandatory requirements.⁸ (Tr. p. 183–84). Ms. Scifers was aware that an 18-year old taking a nude photo of a minor student and showing it to others would likely constitute a crime and that mandatory reporting requires that all crimes be reported to the police. (Tr. p. 72, pp. 183–84).

⁷ There are two statutes in Georgia concerning the mandatory reporting requirements for educators. They are O.C.G.A. § 20-2-1184 and O.C.G.A. §19-7-5. Both Georgia statutes refer to a "principal" and a "designated delegate" or "principal's designee" who are responsible for reporting such unlawful acts to the authorities such as the District Attorney. O.C.G.A. § 20-2-1184 and O.C.G.A. § 19-7-5. (Tr. pp. 54–56)

⁸ On January 30th 2015, the Bartow County policies or procedures in place at the time duplicated the language of the mandatory reporting statutes under Georgia law (O.C.G.A. § 20-2-1184 and O.C.G.A. § 19-7-5). (Tr. p. 53: 20-25).

21. The Commission alleges that Ms. Scifers violated the reporting requirement expressed under O.C.G.A. § 20-1-1184. (Matters Asserted ¶ 34).

22. Whereas Ms. Scifers asserts that she was not the principal's designee under O.C.G.A. § 20-2-1184, the Commission asserts that she was such a designee.

23. Upon reporting her investigative findings to Dr. Williams as instructed, Ms. Scifers was under the impression that she had fulfilled her reporting requirement by doing so. (Testimony of Ms. Scifers; Tr. p. 184).

24. Ms. Scifers' conclusion that she was not the principal's designee under O.C.G.A. §20-2-1184 is corroborated by the testimony of Dr. Williams herself. (Tr. pp. 90-91, 103, 153).

25. Ms. Scifers' conclusion that she was not the principal's designee under O.C.G.A. §20-2-1184 is further corroborated by Dr. Bob Butler, another assistant principal and a member of the administrative team that Dr. Williams convened. He opined that Ms. Scifers's duty was to report to Dr. Williams as principal. (Tr. 152-55).

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 standards of the Code of Ethics for Educators. O.C.G.A. § 20-2-984.1; *see* Ga. Comp. R. & Regs. 505-6-.01. If the Commission finds that there is probable cause for imposing a sanction against an 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.

O.C.G.A. § 20-2-984.5(c); *see also* Ga. Comp. R. & Regs. 505-6-.01(5). Here, the Commission asserted that the Petitioner violated the Code of Ethics in Standards 9 [Required Reports] and 10 [Professional Conduct].

Standard 9: Required Reports

3. At the time of the conduct giving rise to the Commission's proposed sanction, Standard 9 of the Code of Ethics for Educators entitled "Required Reports" provided as follows:

An educator shall 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:

...

2. 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* 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*; and

3. failure to make a required report of any violation of state or federal law 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 offense*, any sexual 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.

Ga. Comp. R. & Regs. 505-6-.01(3)(i) (emphasis added). The report required by O.C.G.A. § 20-2-1184 is such a report.

4. Bartow County School System incorporates O.C.G.A. § 20-2-1184 into their Administrator's Handbook as one of the policies for mandatory reporting. O.C.G.A. § 20-2-1184 states, in pertinent part, as follows:

(a) Any teacher or other person employed at any public or private elementary or secondary school . . . who has *reasonable cause to believe* that a student at that school has *committed any act upon school property or at any school function*, which act is prohibited by Code Section 16-5-21 or 16-5-24, Chapter 6 of Title

16, and Code Section 16-11-127, 16-11-127.1, 16-11-132, or 16-13-30, shall *immediately report the act and the name of the student to the principal or president of that school or the principal's or president's designee. . . .*

(b) The *principal or designee who receives a report* made pursuant to subsection (a) of this Code section who has reasonable cause to believe that the report is valid shall make an oral report thereof *immediately* by telephone or otherwise to the appropriate school system superintendent and to the appropriate police authority and district attorney.

(c) Any person participating in the making of a report or causing a report to be made as authorized or required pursuant to this Code section or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this Code section is made in good faith.

O.C.G.A. § 20-2-1184 (emphasis added). (Respondent's Exhibit 5). A preponderance of the evidence supports a conclusion that Ms. Scifers was not the principal's designee within the meaning of O.C.G.A. § 20-2-1184. She complied with her duty as a teacher to immediately report back to her principal. The principal then failed to immediately report the matter to the school system superintendent and to the appropriate police authority and district attorney. Accordingly, Ms. Scifers did not violate the Commission's reporting requirements. Ga. Comp. R. & Regs. 505-6-.01(3)(i)

Standard 10: Professional Conduct

5. At the time of the conduct giving rise to the Commission's proposed sanction, Standard 10 of the Code of Ethics for Educators entitled "Professional Conduct" provided as follows:


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 her of 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). Inasmuch as the evidence supports a conclusion that Ms. Scifers followed her principal's instructions and made her report to the principal as required, Ms. Scifers did not violate the Commission's professional conduct requirements. Ga. Comp. R. & Regs. 505-6-.01(3)(j).

IV. Decision

The Commission's decision to sanction Petitioner's Georgia teaching certificate for violations of Standard 9 and Standard 10 is hereby **REVERSED** with no sanction imposed.

SO ORDERED, this 26th day of August 2016.


Steven W. Teate
Administrative Law Judge