

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

VIOLET MARCHMAN
Educator/Petitioner,

v.

**PROFESSIONAL STANDARDS
COMMISSION,**
Respondent.

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Docket No.:
OSAH-PSC-SAN-1718869-1-Woodard

PSC No.: 15-9-330



MAY 31 2017

FINAL DECISION

I. Introduction



Kevin Westray, Legal Assistant

Petitioner, Violet Marchman, requested a hearing in response to notification from Respondent, the Professional Standards Commission (hereinafter “the Commission” or “Respondent”) that it proposed to suspend her teaching certificate for alleged violations of the Code of Ethics for Educators. An evidentiary hearing was held on March 28, 2017 before the undersigned Administrative Law Judge of the Office of State Administrative Hearings.¹ Chad VanOrman, 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 a one-year suspension is **AFFIRMED**.

II. Findings of Fact

1. Ms. Marchman 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. She has been a licensed educator for twenty-two years. During the relevant period, Ms. Marchman was employed as a teacher at Appling County High School. *Testimony of Violet Marchman; Statement of Matters Asserted.*

¹ Following the evidentiary hearing, the record remained open to allow the parties to file written closing arguments. The record closed upon receipt of Petitioners closing argument on April 28, 2017.

2. During the 2014-2015 school year, "J.P.", then a senior at Appling County High School, reported to Ms. Marchman that another student, "J.S.", whom he identified by name, told him that he had been molested by Michael Waters, a teacher at Appling County High School. According to J.P., J.S. said that Mr. Waters had "masturbated" him and another student during a field trip. *Testimony of J.P.*

3. Ms. Marchman did not communicate J.P.'s report to the school's designated reporter, or indeed to anyone, until August 25, 2015. *Testimony of Violet Marchman; Exhibits PSC-2, -3.*

4. On or about August 24, 2015, Mr. Waters was arrested and charged with multiple counts of child molestation, sexual assault, and sexual exploitation of children. *Exhibit PSC-1.* The allegations underlying Mr. Waters' arrest concerned students of Appling County High School and illicit acts occurring between 2010 and August 2015. *Id.*

5. On August 25, 2015, Lisa Williams, another teacher at Appling County High School, arrived at the school and was immediately informed of Mr. Waters' arrest. Later, Ms. Marchman entered Ms. Williams' classroom, closed the door, and told her "This is what I was trying to get y'all to see last year." When Ms. Williams asked Ms. Marchman what she meant, Ms. Marchman disclosed that J.P. had told her that he had heard that Mr. Waters had masturbated two male students simultaneously during a field trip.² During this conversation, Ms. Marchman named the reporting student and the alleged victims. When Ms. Williams asked Ms. Marchman why she did not report the allegations, Ms. Marchman said that she did not want to potentially cost a teacher his job based on the hearsay of a student. *Exhibit PSC-2; Testimony of Lisa Williams.*

² At the hearing, J.P. testified that he told Ms. Marchman about one student: J.S. Ms. Marchman, however, testified that J.P.'s report concerned Mr. Waters allegedly masturbating two children simultaneously.

6. The following day, Ms. Williams relayed Ms. Marchman's report to Dr. Gene Starr, principal of Appling County High School. Dr. Starr instructed Ms. Williams to put her report in writing. He thereafter met with Ms. Marchman, who acknowledged that the allegations in Ms. Williams' statement were true. *Exhibit PSC-2; Testimony of Gene Starr.*

7. Dr. Starr also obtained a written statement from Ms. Marchman. In her written statement, Ms. Marchman averred that she had heard only "rumors" concerning Mr. Waters. She denied ever witnessing Mr. Waters engage in misconduct, or that any student had ever told her that Mr. Waters had done anything inappropriate "to them or with them." She did not mention the report from J.P. in her written statement. *Exhibit PSC-3; Testimony of Gene Starr.*

8. Based on the facts and circumstances set forth above, the Commission found probable cause that Ms. Marchman violated its laws, rules, and regulations, and recommended that her educator's certificate be suspended for one (1) year. Specifically, the Commission determined that Ms. Marchman's conduct violated Rule 505-6-.01(3)(d) [Honesty], Rule 505-6-.01(3)(i) [Required Reports], and Rule 505-6-.01(3)(j) [Professional Conduct]. *Statement of Matters Asserted.*

9. At the hearing, Ms. Marchman testified that she did not feel that she was required to report the allegations of sexual abuse reported by J.P. because the student had no firsthand knowledge of the alleged abuse, she did not find J.P. credible due to his alleged reputation for dishonesty, and she found the allegation itself to be implausible. *Testimony of Violet Marchman.*

10. Ms. Marchman testified that J.P. had graduated at the time he made the above-described report. *Testimony of Violet Marchman.* At the hearing and in a post-hearing filing, counsel for Ms. Marchman contended that, pursuant to the Georgia Supreme Court case of *May v. State*,³

³ *May v. State*, 295 Ga. 388 (2014).

Ms. Marchman was under no obligation to report allegations of sexual abuse made by a former student.

III. Conclusions of Law

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

1. The Commission seeks to suspend Ms. Marchman'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). In the present case, the Commission proposes to suspend Ms. Marchman's certificate for violating Standards Four, Nine, and Ten of the Code of Ethics.

3. Standard Four of the Code of Ethics requires educators to "exemplify honesty and integrity in the course of professional practice." GA. COMP. R. & REGS. 505-6-.01(3)(d). Pursuant to Standard Four, "[u]nethical conduct includes, but is not limited to, falsifying, misrepresenting or omitting . . . information submitted in the course of an official inquiry/investigation; and . . . information submitted in the course of professional practice." *Id.* In this case, Ms. Marchman violated Standard Four by omitting information from the written

statement she submitted to Dr. Starr. Specifically, Ms. Marchman failed to admit that she had received a report from a student concerning a specific allegation of abuse. Instead, she provided Dr. Starr with a vague statement to the effect that she had heard only “rumors” concerning Mr. Waters. Ms. Marchman’s failure to be forthright concerning the allegations leveled by J.P. constituted a violation of Standard Four.

4. 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 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.

As applied, the Commission asserts that Ms. Marchman violated Standard Nine by failing to report to the Commission after she allegedly received information indicating that a student, or students, had been sexually abused by Mr. Waters.

5. The duty to report described in Standard Nine appears to be similar to that imposed by O.C.G.A. § 19-7-5. *Compare* GA. COMP. R. & REGS. 505-6-.01(3)(i) (“if an educator has reasonable cause to believe that a child has been abused.”), *with* O.C.G.A. § 19-7-5(c)(1) (“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 . . .”). Therefore, in determining whether Ms. Marchman was under a duty to report the allegations of sexual abuse, the Court will apply caselaw interpreting O.C.G.A. § 19-7-5. 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). In the present case, a student approached Ms. Marchman and told her of allegations of sexual misconduct committed by Mr. Waters. The student described the allegations with specificity, named the student who reported the alleged abuse, and provided the name of the student who was allegedly victimized by the conduct. This was sufficient to lead a reasonable person in Ms. Marchman’s position to suspect abuse. While it is true that the allegations were hearsay, reasonable cause may be, and indeed often is, based upon hearsay. *See, e.g., Banks v. State*, 277 Ga. 543, 544 (2004). Moreover, neither Standard Four, nor O.C.G.A. § 19-7-5 grant the individual to whom the report is made the discretion to independently investigate specific allegations of child abuse.

6. Ms. Marchman argues that J.P. was not a student at the time he provided the report of child abuse, and that she was therefore under no obligation to report the allegations. She cited the Georgia Supreme Court case of *May v. State* in support of this argument. 295 Ga. 388. The Court need not explore whether the Supreme Court’s holding in *May* absolves Ms. Marchman of her duty to report under Standard Nine because her testimony that J.P. was not a student at the time of the report is not credible. J.P. credibly testified that he made the report during his senior year at Appling County High School.

7. 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. Ms. Marchman did not relate J.P.'s report to anyone else at Appling County High School due to her mistaken belief that firsthand knowledge of the abuse was required. This constituted a failure to abide by generally recognized professional standards and endangered the health and welfare of students. Accordingly, the Commission demonstrated that Ms. Marchman violated Standard Ten.

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 a one-year suspension is **AFFIRMED**.

SO ORDERED this 31st day of May, 2017.



M. PATRICK WOODARD
Administrative Law Judge



NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41(e)(3). A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(3). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Kevin Westray - 404-656-3508; Email: kwestray@osah.ga.gov; Fax: 404-818-3769; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.