

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

JILLIAN KATRI WHATLEY,
Petitioner,

v.

PROFESSIONAL STANDARDS
COMMISSION,
Respondent.

Docket No.: 2309377
2119102-OSAH-PSC-SAN-67-Howells

Agency Reference No.: 21-7-25



01/04/2023

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Devin Hamilton, Legal Assistant

FINAL DECISION

I. Introduction

Petitioner Jillian Katri Whatley (“Petitioner”) appealed the decision of the Professional Standards Commission (“Commission”) to sanction her teaching certificate. The hearing in this matter was conducted on December 6, 2022. Allen Lightcap, Esq. represented Petitioner at the hearing. The Commission was represented by Wylencia Hood Monroe, Senior Assistant Attorney General. After consideration of the evidence and the parties’ legal arguments, and for the reasons set forth below, the Commission’s decision to sanction Petitioner’s teaching certificate is **REVERSED**.

II. Findings of Fact

1.

Petitioner currently holds a teaching certificate in the State of Georgia and held a certificate at all times relevant to the matters asserted herein. (Statement of Matters Asserted at ¶ 1; Answer at ¶ 1.)

2.

During the summer of 2021, Petitioner was employed as the Executive Director of Student Support Services for the Clarke County School District. She reported to the Superintendent of the Clarke County School District. She did not work in a particular school but rather was employed

by the school district in the “central office.” (Testimony of Petitioner; Ex. P-2.)

On June 22, 2021, at Clarke Middle School (“CMS”), special education teacher Bri Moon observed a student exhibiting some disturbing behavior which raised some concerns about potential sexual abuse. The student, while talking about going to his father’s house on the weekend, began to talk about his father “checking his booty.” Ms. Moon observed that the student had an erection. She instructed the student to go to the restroom. The student asked Ms. Moon to touch his “booty,” and subsequently pulled his shorts and undergarments down, leaned with his hands against the wall. Ms. Moon walked away looking for another staff member to assist. When Ms. Moon turned around, she observed the student exiting the restroom, still with an erection. She again told the student to go to the restroom. Once he complied, Ms. Moon went to the main hallway where she found the school counselor, Jhamarcus Pharoah, who waited with her until the student exited the restroom. Later that day, Ms. Moon “debriefed” with the principal, Mr. Pendley. (Ex. P-4; Testimony of Petitioner.)

Heidi Hill is the Executive Director of Special Education and Behavior Supports for Clarke County School District. On June 24, 2021, Ms. Hill received a telephone call from special education coordinator Shelby Anderson. Ms. Anderson relayed information she received from Ms. Moon via telephone about possible child abuse. Ms. Hill then asked the teacher to send her an email documenting what occurred on the date in question. Ms. Hill then attempted to contact Principal Pendley. He was not available. She also attempted to speak to a school counselor, but no counselors were available.³ (Testimony of Heidi Hill.)

5.

³ Ms. Hill did not report suspected child abuse to the Department of Family and Children Services (“DFCS”). In fact, Ms. Hill acknowledged that school board level employees are not usually the ones to make reports to DFCS. Rather it is usually the school-based employees. She was not reprimanded or sanctioned for not making a report of child abuse to DFCS. (Testimony of Heidi Hill; Testimony of Meridyth Padgett.)

Thereafter, on June 24, 2021, Ms. Hill forwarded Ms. Moon's email to Petitioner. Ms. Hill's message in forwarding the email read as follows:

Below is a report I received in reference to a situation that occurred at CMS yesterday. It appears the counselor was involved (yesterday) (sic) but not at school today. Mr. Pendley is on vacation today as well. The teacher reported this (cc on this email) to Ms. Anderson. Due to concerns regarding inappropriate sexual contact I am forwarding to you for assistance in handling this matter. I believe Chrystal and Tessa are off contract at this point.

Please let me know if there is anything I can do specific to special ed. This student is served in our ABA classroom at CMS. While his teacher has addressed issues specific to arousal, concerns have never expanded into this nature.

(Ex. P-4.) In addition to the email, Ms. Hill sent to Petitioner a text message asking her to review the email. Petitioner responded to the text message saying she would look at the email. Additionally, Petitioner responded to the email stating: "I will follow up with the school team today. I will let you know next steps as soon as possible." No one ever told Petitioner that Principal Pendley did not make a report to DFCS. Nor did anyone tell her that they expected her to make the report to DFCS.⁴ (Id.; Testimony of Heidi Hill; Testimony of Petitioner.)

6.

Meridyth Padgett is the Director of Employee Relations with Clarke County School District. In July 2021, her title was Human Resources Investigations Coordinator. At or around that time, she was transitioning from being a 220-day employee to a 240-day employee. As a result, she was off contract from June 17, 2021 to July 5, 2021. When she returned to work on July 6, 2021, the Clarke County School District Superintendent asked her to initiate an investigation into what role Petitioner had in the failure to report suspected child abuse. (Testimony of Meridyth Padgett.)

7.

⁴ Petitioner was on vacation from June 28, 2021 through July 5, 2021. (Testimony of Petitioner.)

That same day, Ms. Padgett had a conversation with Petitioner regarding the reporting of potential child abuse. She asked Petitioner if she remembered the event. Petitioner then forwarded some emails to Ms. Padgett. According to Ms. Padgett, Petitioner stated that she had delegated the reporting of the incident to the Director of School Social Work, Chrystal Gillis, who was also Petitioner's subordinate. (Testimony of Meridyth Padgett.)

8.

During the time at issue, Ms. Gillis was a 220-day employee. She was off contract between June 16, 2021 and approximately July 12, 2021. Ms. Gillis received a missed call from Petitioner on the morning of July 6, 2021. She subsequently spoke with Petitioner, who asked whether they had discussed any incident regarding a student. Ms. Gillis told Petitioner they had not. Ms. Gillis told Petitioner that she would check her email and call her back. Ms. Gillis informed Petitioner that she did find an email thread, but she was not sure what was going on with it. She reiterated that she and Petitioner had not discussed the incident. She also reported to Petitioner that an internal report form had been completed⁵. Ms. Gillis spoke to Ms. Padgett later that same day and relayed what she knew.⁶ (Testimony of Chrystal Gillis.)

9.

Ms. Padgett testified that Petitioner knew that she was supposed to have made the report to DFCS. Petitioner disputed Ms. Padgett's testimony. She believed that a report had already been made. When Petitioner said she would follow up with the school team, that was to see if any additional services or support were needed. In an email on July 6, 2021, Ms. Padgett asked Petitioner the following question: "Did you follow up with the school team on 6/24, and if so,

⁵ Internal report forms are completed when a report to DFCS has been made.

⁶ On July 6, 2021, Ms. Padgett learned from Ms. Gillis that Tessa Barbazon, Director of School Counseling made a report of suspected child abuse to DFCS, no later than June 30, 2021. (Testimony of Meridyth Padgett.)

what happened.?” Petitioner responded to Ms. Padgett’s email as follows: “I forwarded the email to Chrystal Gillis. Though she and Tessa are on vacation, they continue to take calls. I am considered back up. I will admit that due to this situation we need to clarify the process going forward.” (Testimony of Meridyth Padgett; Testimony of Petitioner; Ex. P-6.)

10.

Ms. Padgett completed her investigation and filed a complaint with the Commission on July 8, 2021, which included the summary of her investigation and her conclusion that Petitioner did not follow the mandated reporter requirements and that she was not honest about having a conversation with her subordinate Chrystal Gillis regarding the incident.⁷ (Ex. P-3.)

11.

Based on the Commission’s investigation, it found probable cause that Petitioner violated the laws, rules, and regulations of the Commission. In particular, the Commission found that Petitioner violated Rule 505-6-.01(3)(d) [Honesty], Rule 505-6-.01(3)(b) [Required Reports], and Rule 505-6-.01(3)(i) [Professional Conduct]. For these alleged violations, the Commission determined that Petitioner should receive a reprimand. (Testimony of William Van Hoose; Statement of Matters Asserted at ¶¶ 4, 5; Answer at ¶¶ 4, 5.)

⁷ Ms. Padgett testified, on direct, that Petitioner said, “she sent it to a Miss Gillis.” On cross, when reviewing her complaint to the PSC, Ms. Padgett read a portion of her complaint to the PSC into the record. Specifically, she read the following: “SHE FURTHER STATED THAT SHE CALLED ONE OF HER SUBORDINATES, GILLIS (WHO WAS OFF CONTRACT), AND THAT GILLIS ‘DOESN’T REMEMBER THE CONVERSATION.’ GILLIS STATED THAT SHE WAS NEVER TOLD ABOUT THE INCIDENT AND ONLY LEARNED OF IT ONCE THE INVESTIGATION INTO THE FAILURE TO REPORT WAS UNDERWAY.” (Ex. P-3; Testimony of Meridyth Padgett.)

III. Conclusions of Law

1.

Because the Commission seeks to sanction Petitioner's teaching certificate, the Commission bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. *Id.* at 616-1-2-.21(4).

Code of Ethics

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.* When an educator has engaged in unethical conduct as outlined in the Code of Ethics for Educators or violated any of the rules of the profession, the Commission is authorized to sanction the educator. O.C.G.A. §§ 20-2-984(g), -984.5(c)(2); Ga. Comp. R. & Regs. 505-6-.01(5)(a)1. The available sanctions include, *inter alia*, a reprimand of the educator's certificate.

3.

In this case, the Commission alleged that Petitioner violated the Rules of the Professional Standards Commission and the Code of Ethics for Educators. Specifically, the Commission alleged that Petitioner violated the following provisions: *Standard 4: Honesty* (Ga. Comp. R. & Regs. 505-6-.01(3)(d)), *Standard 8: Required Reports* (Ga. Comp. R. & Regs. 505-6-.01(3)(h)), and *Standard 9: Professional Conduct* (Ga. Comp. R. & Regs. 505-6-.01(3)(i)). As noted above, the Commission wants to reprimand Petitioner for these alleged violations.

Alleged Violations

4.

The Commission alleged that Petitioner failed to make a required report of suspected child abuse and then was dishonest during the investigation, in violation of Standards 4, 8, and 9 of the Code of Ethics. The primary allegation is that Petitioner violated Standard 8 which requires educators to make a required report pursuant to the mandated reporter statute, O.C.G.A. § 19-7-5, if the educator has reasonable grounds to believe child abuse has occurred.⁸ Ga. Comp. R. & Regs. 505-6-.01(3)(h).

Georgia Code Section 19-7-5, often referred to as the Mandatory Reporter Statute, requires certain specified professionals to report suspected child abuse. O.C.G.A. § 19-7-5(c)(1). Included within the list of mandatory reporters are physicians, nurses, and school teachers, among others. Id. As it pertains to this case, “[t]he following persons having reason to believe that suspected child abuse has occurred shall report or cause reports of such child abuse to be made as provided in this Code section: . . . (H) School teachers; (I) School administrators; (J) School counselors, visiting teachers, school social workers, or school psychologists[.]”¹¹ Id.

6.

⁸ The Commission’s attorney, in her opening statement, asserted that Petitioner should have filed a report of possible child abuse within 24 hours under the “Mandatory Reporter Statute.” In the Commission’s written closing argument, counsel for the Commission appears to pivot from the assertion that the required report is pursuant to the Mandatory Reporter Statute, but rather argues that Petitioner had some independent obligation under Standard 8 to file a report. It is clear that this matter originated because there was a belief that Petitioner failed to comply with the Mandatory Reporter Statute. See Exhibit P-3. Additionally, as late as opening statement on the day of the hearing, this is the theory under which the Commission was proceeding. Any attempt to move the goal post after the hearing is unavailing. Furthermore, as noted infra, Standard 8 specifically references the Mandatory Reporter Statute. If the Commission wanted to create an independent duty to report suspected child abuse, it would not need to reference the Mandatory Reporter Statute and could have used clear language to do so. This it did not do. For these reasons, the undersigned finds the Commission’s closing argument without merit.

¹¹ The statute defines “school” as “any public or private pre-kindergarten, elementary school, secondary school, technical school, vocational school, college, university, or institution of post-secondary education.” O.C.G.A. § 19-7-5(b)(16).

The statute further states, as follows:

If a person is required to report child abuse pursuant to this subsection because such person attends to a child pursuant to such person's duties as an employee of or volunteer at a [] school . . . such person shall notify the person in charge of such [] school . . . , or the designated delegate thereof, and the person so notified shall report or cause a report to be made in accordance with this Code section.

O.C.G.A. § 19-7-5(c)(2).

7.

Under the Commission's interpretation, the Mandatory Reporter Statute would require any educator, working in any capacity, to report suspected child abuse. The Commission's interpretation fails for three reasons. First, Standard 8 requires educators to make "required reports" and specifically references the Mandatory Reporter Statute, O.C.G.A. § 19-7-5. Second, the Mandatory Reporter Statute requires "school" teachers, "school" administrators, "school" social workers, "school" psychologists, and visiting teachers to make reports of suspected child abuse. This together with the definition of "school" in the statute makes it clear that the duty to report suspected child abuse is upon the specified individuals employed at, or present in, the school. The Commission's interpretation makes the references to "school" in the statute mere surplusage. It is a fundamental rule of statutory construction that courts must avoid an interpretation that makes some language mere surplusage. *See Couch v. Red Roof Inns, Inc.*, 291 Ga. 359, 362 (2012); *see also New Cingular Wireless PCS, LLC v. Ga. Dep't of Revenue*, 303 Ga. 468, 471-72 (2018) (applying the rules of statutory construction to construe an agency regulation).

8.

Third, the Commission's interpretation ignores the portion of the statute that further clarifies who is required to report. Specifically, in the subsection describing the reporting procedure, the statute makes it clear that those who are required to report are those who "attend[]"

to a child pursuant to such person's duties as an employee or volunteer at a [] school." O.C.G.A. § 19-7-5(c)(2). In fact, the Georgia Supreme Court held that this particular language limits the obligation to report "to [the] children to whom the reporter attends." May v. State, 295 Ga. 388, 394 (2014). In May, a teacher, while speaking with a former student, learned that the former student had a sexual relationship with a paraprofessional when she attended River Ridge High School (i.e., the school where the teacher formerly taught her). Id. at 388. At the time of the disclosure, the teacher was employed at River Ridge High School; however, the student no longer attended River Ridge High School. Rather, she had transferred to school within Fulton County School District. Id. The teacher was charged with a criminal violation of Code Section 19-7-5(h). Id. In reversing the trial court's denial of the teacher's demurrer and plea at bar, the court concluded that, at the time of the disclosure, the teacher had no obligation to report the abuse because she was not attending to the student pursuant to her duties as a school teacher at River Ridge High School. Id. at 399.

9.

Here, Petitioner is not a "school teacher," "school psychologist," "school social worker," a "school administrator," or a "visiting teacher" at Clarke Middle School. Nor does she attend to students at Clarke Middle School. Accordingly, she had no legal obligation to report suspected child abuse. Bri Moon, the teacher who observed the behavior potentially implicating sexual abuse of the student, was obligated to report to Principal Pendley or his designee. O.C.G.A. § 19-7-5(c) (1), (2). Ms. Moon fulfilled her obligation by reporting her observations to Principal Pendley. Id. It was then incumbent upon Principal Pendley, or his designee, to make the report to DFCS, as he was the person in charge of CMS. Id. at (c)(2), (e)(2). Principal Pendley failed to fulfill his obligation.

10.

Even if Standard 8 required Petitioner to make a report of suspected child abuse, which it does not, the circumstances presented in this case did not reasonably put Petitioner on notice that the incident had not been reported. Specifically, the forwarded emails did not state that a report had not been made. Rather, a fair reading of Ms. Moon's email indicates that she followed the proper procedure by reporting the incident to Principal Pendley. Nowhere in Ms. Moon's email or in Ms. Hill's email does it state that Principal Pendley did not comply with his obligation to make a report to DFCS. Under these circumstances, the undersigned concludes that it would be improper to sanction Petitioner for failing to make a report, when no one told her a report had not been made and the person obligated to make the report to DFCS had been informed about the incident. Accordingly, the Commission failed to prove a violation of Standard 8: Required Reports.

11.

The Commission also alleged that Petitioner was dishonest during the investigation of this matter. Specifically, the Commission alleged that when Petitioner was questioned about reporting, she falsely stated to the investigator that she directed a subordinate employee to make the report. The Commission asserts that this is a violation of Standard 4, which states, in pertinent part, as follows:

Honesty - An educator shall exemplify honesty and integrity in the course of professional practice. Unethical conduct includes but is not limited to, falsifying, misrepresenting, or omitting: . . . Information submitted in the course of an official inquiry/investigation.

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

12.

There was conflicting evidence as to what Petitioner told the investigator about her discussion or communication with her subordinate, Ms. Giles. For this reason, the undersigned concludes that the Commission failed to prove by a preponderance of evidence that Petitioner committed a violation of Standard 4.

13.

The Commission further asserted that Petitioner's actions were a violation of Standard 9 of the Code of Ethics for Educators. Standard 9 states:

Professional Conduct - An educator shall demonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the education profession. Unethical conduct includes but is not limited to a resignation that would equate to a breach of contract; 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.

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

14.

Because the undersigned concluded that Petitioner's conduct did not violate Standard 8 and the Commission failed to prove a violation of Standard 4, and because the Commission failed to present any evidence of an independent violation of Standard 9, the Commission failed to establish a violation of Standard 9.

15.

The Commission failed to prove that Petitioner violated any of the Standards in the Code of Ethics for Educators. Therefore, a sanction of Petitioner's certificate is not allowed.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the

Commission's decision to suspend Petitioner's teaching certificate is **REVERSED**.

SO ORDERED, this 4th day of January, 2023.

Stephanie M. Howells

Stephanie Howells
Administrative Law Judge

