

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

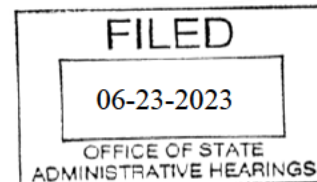
LAMAR CULPEPPER,
Petitioner,

v.

**PROFESSIONAL STANDARDS
COMMISSION,**
Respondent.

**Docket No.: 2320831
2320831-OSAH-PSC-SAN-31-Howells**

Agency Reference No.: 19-1-850



FINAL DECISION

I. Introduction

Petitioner Lamar Culpepper (“Petitioner”) appeals the decision of the Professional Standards Commission (“Commission”) to sanction his teaching certificate. The hearing in this matter was conducted on May 30, 2023.¹ Petitioner appeared and represented himself. The Commission was represented by Steven L. Walters, 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 **AFFIRMED in part and REVERSED in part.**

II. Findings of Fact

1.

During the relevant times at issue, Petitioner held a paraprofessional certificate issued by the Commission or was an applicant to renew an expired certificate. Over the past twenty to thirty years, Petitioner has, at different times, lived in Florida and Georgia. (Testimony of Petitioner.)

¹ Prior to the hearing, Respondent moved for a default due to Petitioner’s failure to file an Answer. Petitioner opposed the motion. Petitioner was not represented by counsel and was not a savvy litigant. For those reasons, the Respondent’s motion has been denied.

2.

Prior to the incidents at issue, Petitioner's paraprofessional certificate was valid from August 6, 2004, through June 30, 2009. Petitioner left the state of Georgia in or around 2008, moved to Florida, and returned to Georgia in 2016. Upon his return he attempted to start his own business. When that venture did not pan out, he applied to renew his expired paraprofessional certificate on December 6, 2018. (Testimony of Petitioner; Ex. R-1.)

3.

Section 2 of the application stated as follows:

Personal Affirmation: The applicant should enter a truthful "Yes" or "No" response to each of the following questions. All questions must have a response in order for the application process to continue. "YES" responses automatically open an investigation and require an attached explanation along with any additional supporting documentation. **DO NOT include matters that the GaPSC has investigated or is currently investigating.**"

(Ex. R-1.)

4.

In completing the December 6, 2018 application to renew his certificate, Petitioner answered "No" to Question 7, which read as follows:

For any felony or crime of moral turpitude have you ever:

- ◆ Pled guilty;
- ◆ Entered a plea of nolo-contendere;
- ◆ Been found guilty;
- ◆ Pled guilty to a lesser offense;
- ◆ Been granted first offender treatment without adjudication of guilt;
- ◆ Participated in a pre-trial diversion program;
- ◆ Been found not guilty by reason of insanity; or

- ◆ Been placed under a court order whereby an adjudication or sentence was withheld?

(Ex. R-1.)

5.

Petitioner answered “Yes” to the Question 8, which read as follows: “Have you ever been convicted, or pled to a lesser offense for any sexual offense? (Id.)²

6.

As a result of Petitioner’s “Yes” answer to Question 8, the Commission initiated an investigation. Paul Phillips is an investigator with the Commission. He conducted the investigation regarding Petitioner’s “Yes” answer to Question 8. (Testimony of Paul Phillips.)

7.

On January 9, 2019, Mr. Phillips sent Petitioner a letter via an email attachment. The letter was also uploaded to Petitioner’s “MyPSC” account. In the email, Petitioner was notified that the letter was attached, his immediate attention was needed, and that he had not yet registered his MyPSC account, where he would receive important information from the Commission. The letter notified Petitioner that an investigation had been opened as a result of his “Yes” answer to Question 8. It further informed Petitioner that he failed to provide the following information, and that he must do so within fifteen days:³

- Detailed written explanation for your “yes” answer to question(s) **8**.
- Documents relevant to your response to question(s) **8**.
- Court documents that confirm first offender status, deferred adjudication, dead docket, etc.⁴

² Petitioner testified that he answered “yes” to Question 8 based on the original Sexual Battery charge stemming from the 1993 arrest. (Petitioner’s Testimony.)

³ The application notified Petitioner that “Yes” answers to any of the “Personal Affirmation” questions “require an attached explanation along with any additional supporting documentation.” (Ex. R-1.) The application did not specify “court documents,” nor did it require Petitioner to submit an FBI criminal history report. (Id.)

⁴ In his January 9, 2019 letter, Mr. Phillips requested “court documents.” (Ex. R-3.) He did not request “certified”

- FBI criminal history report – **Georgia residents** should follow the instructions on the attached page regarding Georgia Applicant Processing Service.

(Ex. R-3.) The letter also informed Petitioner that providing the requested information to a school system did not satisfy the requirement to provide it to the Commission. (Id.)

8,

On February 26, 2019, Mr. Phillips sent Petitioner a letter via email attachment. The letter was also mailed and uploaded to Petitioner’s MyPSC account. (Exs. R-4, R-5.) The letter and the email notified Petitioner that the Ethics Division intended to revoke his certification because he failed to comply with the investigator’s request. (Id.)

9.

By reviewing Petitioner’s MyPSC account, Mr. Phillips could see that Petitioner had accessed the January 9, 2019 letter on February 28, 2019. Thereafter, Mr. Phillips and Petitioner had several phone conversations regarding the Commission’s request for documents. (Testimony of Paul Phillips.)

10.

On March 8, 2019, Petitioner sent an email to Mr. Phillips stating that a Mr. Jarvis Brown, from the DeKalb County Department of Public Service forwarded some documents and information to Mr. Phillips. From the DeKalb County Department of Public Service, Mr. Phillips received some statements prepared by Petitioner, a 2018 fingerprint report, some printouts from an online search regarding the 1993-94 incident in which he was charged with Sexual Battery and/or Kidnapping, and a portion of an online search document regarding a 2008 arrest for Lewd or Lascivious Molestation. Petitioner and Mr. Phillips had a conversation that same day.

court documents. (Id.)

(Testimony of Paul Phillips; Exs. R-6, P-2, P-3, P-4) Mr. Phillips followed up that conversation with an email, in which he stated as follows:

Specific documents required – list follow-up to our phone call:

Certified court documents – sexual battery/kidnapping – nolo 1994
Molestation 12 yoa and under child 2008
Warrant – fugitive 2015

You should type an explanation in “word” and attach a .docx to an email. This explanation should have an account of your criminal activity from initial contact with law enforcement through the completion of any sentence etc.

(Ex. R-6.)

11.

Petitioner faxed some documents to the Commission on June 24, 2019. According to Mr. Phillips, the Commission received five pages which consisted of a two page statement, two pages of an Order of Probation regarding the 1993-94 charge, and a one page Circuit Court Disposition Order in and for Broward County Florida regarding Petitioner’s 2008 arrest which indicated that the prosecuting authority decided not to prosecute the sole charge of Lewd and Lascivious Molestation. These documents did not satisfy the request made by Mr. Phillips because they were not certified court documents and were not complete. (Testimony of Paul Phillips; Exs. R-7, R-10; see also Ex. P-1.)

12.

In response to a voicemail, Mr. Phillips sent Petitioner an email on October 3, 2019. In the email, Mr. Phillips reiterated that Petitioner should send a written explanation of his criminal activity, attain, scan, email, and mail certified copies of court documents for his criminal cases, and follow the attached directions to obtain a fingerprint report. Mr. Phillips also stated that if the court system no longer had records that Petitioner should obtain a copy of the record

destruction/retention policy generated by the court and send a scanned copy to him. (Ex. R-9.)

13.

At the hearing, Petitioner testified that he tried to do what Mr. Phillips asked him to do. He claimed that he last heard from Mr. Philips in 2019. He obtained documents from his criminal attorney in Florida and he went to Daytona to try to obtain documents. Petitioner believed that the Commission accepted the documentation he supplied, until he received notice from the Commission that it was proceeding with seeking revocation of his certificate. (Testimony of Petitioner.)

Petitioner's Criminal History

14.

In 1993, Petitioner was arrested and charged with Sexual Battery while he was attending Bethune-Cookman University in Daytona, Florida. On June 14, 1994, Petitioner pleaded nolo contendere to False Imprisonment, which is a Third Degree Felony.⁵ (Exs. P-1, P-4, P-5, R-7.) Adjudication was withheld and Petitioner was sentenced to 2 ½ years' probation. (Ex. P-5, R-7.)⁶

15.

Petitioner was arrested on a charge of Lewd or Lascivious Molestation in or around July 2008. Ultimately, the prosecuting authority decided not to prosecute that charge. (Exs. P-2, P-3, R-10.)

⁵ Several documents refer to the False Imprisonment charge as a "lesser included offense." It appears that the original charge of Sexual Battery may have been changed to Kidnapping, as False Imprisonment is a lesser included offense for Kidnapping, but not for Sexual Battery. See Fla. Stat. §§ 787.01-.02, 794.011.

⁶ At the hearing, Petitioner tendered a certified copy of the Circuit Court Action Form which is equivalent to a court disposition form for the 1993-94 charge. (Ex. P-5.) Petitioner could not recall when or where he obtained the document. He testified that he went to Daytona twice to try to obtain documents. On one occasion, he was given something from the clerk's office, but he cannot recall what it was. He also recalled someone telling him that they did not have any other documents, as the case was too old. (Testimony of Petitioner.) It appears that Petitioner failed to provide the certified court document to the Commission. He could not explain why he did not. It is clear that Petitioner's memory of the events has suffered from the lapse in time between the requests for the documents and the hearing in this matter.

Inappropriate Comments to Students Serving In-School Suspension

16.

On or about February 11, 2020, Petitioner was in the in-school suspension classroom with some students and another coach, Mr. Griffin. A student recorded a conversation between Petitioner, Mr. Griffin, and the students.⁷ Early in the recording, Mr. Griffin can be heard complaining and stating, “I can’t deal with this shit.” It is unclear what he was talking about. Then, Petitioner can be heard stating that he would “send yo ass home.” Based on the context, it appears that he is referring to a punishment he would impart for a particular offense committed by a student if he had the authority to do so. At one point, Mr. Griffin is ridiculing a male student for being beaten up by a female student. Later in the recording, Petitioner and Mr. Griffin discussed a student’s decision to wear two different shoes to school. Mr. Griffin stated, “He gay.” Petitioner then stated, “that’s a gay move.” Subsequently, it sounds as though Petitioner left the classroom for a period of time, as he can no longer be heard on the recording. During his absence, Mr. Griffin continued to ridicule the student about being beaten up by a girl. When Petitioner returned to the classroom, a student asked him to tell Mr. Griffin to leave him alone. However, Mr. Griffin continued ridiculing the student. He used the “N” word when referring to his young nephews who were smaller than the student, but who, in his opinion, “would whip [the student’s}ass.” (Ex. R-11.)⁸ There is no evidence that Petitioner used the “N” word. (Ex. R-11; Testimony of Gina Ahlberg.) Throughout the recording, several students are laughing and giggling.⁹

⁷ The recording is in five parts and is difficult to hear at times. (Ex. R-11.)

⁸ At the hearing, Petitioner testified that he told Mr. Griffin to “calm down” with the language; however, this is not clearly heard on the recording. As noted above, some of the audio is difficult to hear.

⁹ The comments by Petitioner and Mr. Griffin, do not appear to be malicious or intended to harm a student. Rather, it appears that they are inappropriately and insensitively teasing a student. (Ex. R-11.)

17.

Based on the facts and circumstances set forth above, the Commission 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)(a) [Legal Compliance], Rule 505-6-.01(3)(d) [Honesty], Rule 505-6-.01 (3)(h) [Required Reports], Rule 505-6-.01(3)(i) [Professional Conduct], and Rule 505-6-.01(5)(a)(7) [Unfit] of the Rules of the Professional Standards Commission in place at the time of the alleged conduct. For these alleged violations, the Commission determined that Petitioner's paraprofessional's certificate should be revoked. Petitioner requested a hearing to contest the proposed sanction. (Statement of Matters Asserted at ¶8; see also, Petitioner's Request for a Hearing.)

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(f), (g), -984.5(c); Ga. Comp. R. & Regs. 505-6-.01(5)(a)1. The available sanctions include: a warning, a reprimand, a suspension of the educator’s certificate, a revocation of the educator’s certificate, and the denial of a certificate. O.C.G.A. § 20-2-984.5(c); Ga. Comp. R. & Regs. 505-6-.01(5)(a).

3.

In this case, the Commission asserts that Petitioner has 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: Ga. Comp. R. & Regs. 505-6-.01(3)(a), Standard 1: Legal Compliance; Ga. Comp. R. & Regs. 505-6-.01(3)(d), *Standard 4: Honesty*; Ga. Comp. R. & Regs. 505-6-.01(3)(h); Standard 8: Required Reports; Ga. Comp. R. & Regs. 505-6-.01(3)(i), Standard 9, Professional Conduct; and Ga. Comp. R. & Regs. 505-6-.01(5)(a)(7), “any other good and sufficient cause that renders and educator unfit for employment as an educator.”

Alleged Violations

4.

Standard 1 of the Code of Ethics for Educators, entitled “Legal Compliance,” provides, in pertinent part:

An educator shall abide by federal, state, and local laws and statutes. Unethical conduct includes but is not limited to the commission or conviction of a felony or of *any crime involving moral turpitude*; of any other criminal offense involving the manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana as provided for in Chapter 13 of Title 16

Ga. Comp. R. & Regs. 505-6-.01(3)(a) (emphasis added); *see also* O.C.G.A. § 20-2-984.3(a)(5) (granting Commission authority to investigate). A “conviction” for purposes of Standard 1 is specifically defined to include:

a finding or verdict of guilty, or a plea of *nolo contendere*, regardless of whether an appeal of the conviction has been sought; a situation where first offender treatment without adjudication of guilt pursuant to the charge was granted; and a situation where an adjudication of guilt or sentence was otherwise withheld or not entered on the charge or the charge was otherwise disposed of in a similar manner in any jurisdiction.

Ga. Comp. R. & Regs. 505-6-.01(3)(a). Petitioner pleaded *nolo contendere* to False Imprisonment, a Third Degree Felony. Therefore, the Commission has established a violation of Standard 1: Legal Compliance. Ga. Comp. R. & Regs. 505-6-.01(3)(a).

5.

The Commission further asserted that Petitioner’s actions were a violation of Standard 4 of the Code of Ethics for Educators. Standard 4 states:

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*:

1. professional qualifications, *criminal history*, college or staff development credit and/or degrees, academic award, and employment history;
2. information submitted to federal, state, local school districts and other governmental agencies;
3. information regarding the evaluation of students and/or personnel;
4. reasons for absences or leaves;
5. information submitted in the course of an official inquiry/investigation; and
6. information submitted in the course of professional practice.

Ga. Comp. R. & Regs. 505-6-.01(3)(d) (emphasis added). Ethical standards regarding dishonesty and misrepresentation contain an implicit element of intent to mislead or deceive. See In the

Matter of Davis, 303 Ga. 564, 565 (2018) (interpreting a Georgia Rule of Professional Conduct for lawyers regarding dishonesty); *see also* Ga. Real Estate Comm. v. Syfan, 192 Ga. App. 3, 4 (1989) (interpreting a statute regarding false statements on an application for a real estate license). “The intention to deceive and the immoral element are supplied by knowledge of the falsity of the representations when they were made.” Syfan, 192 Ga. at 4 (quoting Bill Spreen Toyota v. Jenquin, 163 Ga. App. 855, 859 (1983)). Here, there is insufficient evidence that Petitioner intended to deceive the Commission. He answered “Yes” to Question 8, based on the original charge of Sexual Battery for the 1993-94 incident. Given the nature of the charge to which he pleaded nolo contendere (i.e., False Imprisonment, a Third Degree Felony), Petitioner should have answered “Yes” to Question 7. Nevertheless, he did not falsify or fail to disclose a criminal history. Rather, he simply answered “Yes” to the wrong question. Accordingly, the Commission has failed to prove that Petitioner violated Standard 4 Honesty. *Id.* at 505-6-.01(3)(d).

6.

The Commission asserts that Petitioner violated Standard 8 of the Code of Ethics, entitled “Required Reports,” which provides, in part:

An educator shall file reports of a breach of one or more of the standards in the Code of Ethics for Educators Unethical conduct includes but is not limited to:

1. *failure to report all requested information* on documents required by the Commission *when applying for or renewing any certificate* with the Commission;
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 . . . any offense involving a controlled substance.

Ga. Comp. R. & Regs. 505-6-.01(3)(h) (emphasis added). It is unclear what conduct the Commission contends is a violation of Standard 8. To the extent, it contends that Petitioner's failure to provide certified court documents is a violation of subsection 1, the undersigned notes that the application does not request "certified court documents." It does, however, request "an attached explanation along with any additional supporting documentation." Mr. Phillips did, during the course of his investigation, request certified court documents on at least two occasions, March 8, 2019 and October 3, 2019. Either Petitioner did not understand Mr. Phillips request or, more likely than not, Petitioner made some attempts to comply and hoped that his attempts would be sufficient.

7.

In the Statement of Matters Asserted, the Commission notes that Petitioner's failure to report Mr. Griffin's use of profanity and inappropriate language with students. The Statement of Matters Asserted does not clearly indicate that the Commission is alleging that this conduct was a violation of Standard 8. Nonetheless, Mr. Griffin's conduct was unprofessional and Petitioner's failure to report this conduct can be construed as a failure to report the unprofessional conduct of another educator in violation of Standard 8, subsection 2. For these reasons, the undersigned concludes that the Commission established that Petitioner's initial failure to include an explanation related to his "yes" answer to Question 8 on the application, his ultimate failure to provide certified court documents related to his criminal history, and his failure to report Mr. Griffin's unprofessional conduct were violations of Standard 8.

8.

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). Petitioner's comments during the February 11, 2020 in-school suspension and his failure to make a concerted effort to stop Mr. Griffin's inappropriate and vulgar language amount to unprofessional conduct. Accordingly, the Commission proved a violation of Standard 9.

9.

Finally, in the Statement of Matters Asserted, the Commission cited the provision at Ga. Comp. R. & Regs. 505-6-.01(5)(a)(7) and asserted that Petitioner's conduct rendered him unfit for employment as an educator. Counsel for the Commission made no reference to, or argument about, this section at the hearing. For this reason, the Commission has failed to prove that Petitioner's conduct rendered him unfit for employment as an educator. *Id.* at 505-6-.01(5)(a)(7).

Appropriate Sanction

10.

As noted above, the Commission has the authority to sanction an educator's certificate when an educator has engaged in unethical conduct or has violated any of the rules of the profession. Sanctions are not mandatory. Stated differently, the Commission has discretion in deciding whether to sanction an educator's certificate and to what extent.

11.


Here, the Commission established violations of Standards 1, 8, and 9. The Commission seeks revocation of Petitioner's certificate. Revocation is an extreme sanction. Given the nature


of these violations, the undersigned concludes that revocation is an inappropriate sanction. Petitioner's Standard 1 Legal Compliance violation occurred thirty years ago. There is no evidence of any other convictions or pleas to any other crimes. While Petitioner did fail to completely comply with the request for documents, he did make attempts, albeit belatedly and less than diligently. Finally, Petitioner's conduct during the in-school suspension was inappropriate, but there is no indication that it was malicious or intended to harm a student.¹⁰ For these reasons, the undersigned concludes that revocation is too harsh a sanction.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Commission's decision to sanction Petitioner's paraprofessional's certificate **AFFIRMED**. However, its decision to revoke Petitioner's certificate is **REVERSED**. Petitioner's paraprofessional's certificate is hereby **SUSPENDED** for 5 contract days, and Petitioner is **WARNED** regarding his violations and that future unethical conduct will likely result in a more severe sanction.

SO ORDERED, this 23rd day of June, 2023.


Stephanie M. Howells
Administrative Law Judge



¹⁰ Furthermore, it appears that Mr. Griffin, whose behavior was more egregious than Petitioner's, did not have his certificate revoked as a result. The Statement of Matters Asserted states that he entered into a consent order with the Commission.