

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



FILED
OSAH

SEP 26 2014

PHILIP ADAM LYONS,

Educator/Petitioner,

v.

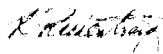
PROFESSIONAL STANDARDS
COMMISSION,

Respondent.

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Docket No.:
OSAH-PSC-SAN-1501143-142-Baxter

Agency Ref. No.: 13-3-867


Kevin Westray, Legal Assistant

INITIAL DECISION

The Professional Standards Commission (“Respondent” or “Commission”) found probable cause to revoke the Petitioner’s educator certificate. Petitioner appeals Respondent’s determination. An administrative hearing was held on August 25, 2014. For the reasons set forth below, the Commission’s decision to revoke Petitioner’s teaching certificate is **AFFIRMED**.

I. Findings of Fact

Petitioner admits the following facts as presented in the Respondent’s Statement of Matters Asserted:

1.

Philip Adam Lyons (“Educator”) holds a teaching certificate in the State of Georgia, and held such certificate at all times relevant to the matters asserted herein.

2.

At all times relevant to the events at issue, Educator was employed as an assistant principal at Turner County Elementary School, the band director at Turner County Middle and High School, and the varsity wrestling coach at Turner County High School in the Turner County Public School System in Georgia.

3.

The Educator had an inappropriate relationship with a student that included inappropriate verbal and electronic communications. The Educator attempted to have a romantic, sexual relationship with the student. The Respondent made inappropriate physical contact with the student and attempted to kiss the student.

4.

Student [REDACTED] will testify that she assisted with the Turner County High School wrestling team. On or about February 16, 2013, Educator invited her out to eat when they returned from a state wrestling tournament. The Educator, student [REDACTED] another coach, and another student went to a Waffle House to eat; the Educator took the check and paid for it.

5.

On February 17, 2013, Educator texted that he missed her and that she should be careful as it related to a male student that she liked. On February 18, Educator asked [REDACTED] to lift weights with him. After the first work out, Educator texted her several time, including thanking her for caring about him.

6.

The second time [REDACTED] and Educator met to work out, Educator massaged her back and legs and arms after she mentioned that she was sore. Educator then told [REDACTED] that she had nice legs and a “nice tail.” Educator then wanted to “wrestle” with [REDACTED] Educator grabbed her and pulled her to the ground. [REDACTED] said she was tired and wanted to go home.

7.

Educator called her the next day and told her that he could not stop thinking about her, and he stayed up at night thinking about her. Educator asked [REDACTED] if she would ever date a man his age and that he did not want her to think of him as a father figure. Educator told her he was very attracted to her and that he would leave his wife and kids to be with her. Educator asked her about her sex life and asked her if she liked having sex.

8.

On February 22, the Educator sent [REDACTED] a text at 6:18 a.m. The Educator said he could not sleep and could not stop thinking about her. After school the same Educator approached [REDACTED] and said he wanted to talk. After getting [REDACTED] alone, Educator said that he “wanted her bad.” The Educator said that it had been three years since he and his wife had had sex and he did not want her to be with other guys. [REDACTED] told the Educator that she did not want to be with him and that she had to go. The Educator tried to kiss [REDACTED] She told him “no,” pushed him back, and left the room.

9.

Educator continued to text and call [REDACTED] Educator walked by [REDACTED]s house more than once.

Educator indicated that he did not have anyone to talk to; he needed to know that she was okay, that he had not hurt her feelings or scared her, and he asked for her forgiveness. On February 25, student ■■■ made a report to a teacher about what had occurred.

10.

Based on the facts and circumstances set forth above, the Commission found probable cause that the Educator violated the laws, rules and regulations of the Commission. In particular, the alleged conduct of Educator violates Rule 505-6-.01(3)(b) [Conduct with Students] and Rule 505-6-.01(3)(j) [Professional Conduct], of the Rules of the Georgia Professional Standards Commission in place at the time of the alleged conduct.

The Parties stipulated to the following facts:

11.

The Professional Standards Commission is the Georgia agency responsible for certification of public school educators in Georgia. *See* O.C.G.A. § 20-2-982. The Commission is made up of 18 members appointed by the Governor and is authorized by law to adopt standards of professional performance and a code of professional ethics for educators, “both of which shall represent standards of performance and conduct which are generally accepted by educators of this state.” O.C.G.A. § 20-2-982(5). The majority of Commission members are professional Educators of outstanding achievement in their area of Education, but there are also currently three private sector members of the Commission. The Commission is authorized to impose the following sanctions against an applicant, teacher or other licensed professional: warning, reprimand, monitoring, suspension, revocation, or denial of application. O.C.G.A. § 20-2-984.5(c). An educator whose teaching certification is sanctioned by the Commission has a right to a full administrative hearing to contest that sanction which is provided by your office. O.C.G.A. § 20-2-984.5(d).

12.

The Commission reviews between 300-400 matters each month including extensions, clearance criteria, preliminary investigation determinations, probable cause determinations, negotiated consent orders, petitions for recertification, and final decisions of OSAH. All matters are first reviewed by the Educator Ethics Review Committee (EERC) which is made up of 9 members of the Commission. The staff of the Ethics Division of the Commission makes recommendations to the EERC on all

matters at the meeting. The staff members reviewing and making recommendations to the Commission are Paul Shaw, Director of the Ethics Division; John Grant, Chief Investigator; Kevin Shumake, Chief Case Administrator; and Tanis Miller, Legal Liaison. These recommendations are based on past sanctions for similar ethics violations as well as the individual circumstances of each case. The EERC reviews all probable cause cases and votes on what sanction is appropriate for each case.

13.

Contract Days are used to calculate suspensions less than one year. While these matters are evaluated on a case by case basis taking into account mitigating factors, the Commission wishes to be as consistent as possible when handing down sanctions. Thus, when implementing suspensions, the Commission counts only contract days for the suspensions. This does not include weekends, holidays, vacations or summers if the Educator is not employed year round. Only when the sanction is for a year or higher does the Commission use calendar days. The dates of suspension are entered on a national database system (National Association of State Directors of Teacher Education and Certification (NASDTEC)). The Commission uses contract days to make sure that all Educators are treated the same.

14.

As a practical matter, it should be noted that the Commission can find only one sanction per case. The current system has no method for entering two sanctions under a single case number. Also, the Commission no longer issues a sanction of “monitoring” as it has no mechanism or staff to monitor educators around the state. Also, employment status does not mitigate the sanction against an Educator’s certificate. Employers take anywhere from no action to termination for violations of the Code of Ethics. In order to maintain consistency, the Commission does not take employment status into account, but does give retroactive credit for time out of work as described in the next paragraph.

15.

The Commission routinely gives retroactive credit for anytime an educator has not worked in a school system. This does not include paid leave time, summers or vacation. An Educator must sign an affidavit stating that he or she has not been employed by a school system for the time that credit is granted. The Commission never makes a sanction ‘retroactive’ for a time period that the Educator has worked or been paid as a certified educator.

The undersigned considered the entire evidence in this case, and based upon a preponderance of the credible evidence makes the following specific findings of fact:

16.

Several witnesses testified on Petitioner's behalf. The witnesses included parents of children Petitioner has taught or coached, administrators for whom he worked, or other school employees. All the witnesses liked Petitioner very much and thought he was an excellent teacher. The witnesses also testified that they trusted Petitioner to teach their children and grandchildren. While the Court finds these witnesses credible, their testimony can be given little weight because none of the witnesses fully understood the conduct Petitioner engaged in. In fact, the witnesses seemed to believe Petitioner's conduct only involved "inappropriate" conversations and texts.

17.

Petitioner testified that his conduct was wrong, inappropriate, and unprofessional. In explaining his behavior, Petitioner pointed to a combination of factors, including stress, marital problems, depression, and erectile dysfunction. Because Petitioner loves teaching and would do things differently in the future, he believes a suspension is more appropriate than revocation of his certificate.

II. Conclusions of Law

1.

Pursuant to OSAH Rule 7, the Respondent, as the agency party, bears the burden of proof. The standard of proof is preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.07 & .21.

2.

The Professional Standards Commission has adopted a Code of Ethics for Educators that defines acceptable professional behavior of Georgia educators and serves as a guide to ethical conduct. Respondent charges that Petitioner violated Professional Standards Commission Rules Rule 505-6-.01(3)(b) and 505-6-.01(3)(j).

3.

Standard 2, Conduct with Students, provides that unethical conduct includes soliciting or consummating an inappropriate written, verbal, electronic, or physical relationship with a student. In this instance, Petitioner has admitted to conducting or attempting to conduct an inappropriate verbal,

electronic, and physical relationship with a student. To be clear, Petitioner harassed, stalked, groped, and assaulted a student. The Court finds that Petitioner clearly violated Standard 2.

4.

Standard 10, Professional Conduct, requires educators to “demonstrate conduct that follows generally recognized professional standards.” Further, Standard 10 defines unethical conduct as “any conduct that impairs the certificate holder's ability to function professionally in his or her employment position....” Based on Petitioner’s admitted behavior, Petitioner violated Standard 10 as well.

5.

Petitioner seeks to have his certificate suspended as opposed to revoked. Nothing he or his witnesses testified to could persuade this Court that Petitioner should have the opportunity in this State to hold a teaching certificate. Petitioner violated clear rules of conduct on multiple occasions.

III. Decision

The Code of Ethics for Educators has been designed to protect the health, safety, and general welfare of students in Georgia. In accordance with the foregoing findings of fact and conclusions of law, the undersigned concludes that Petitioner’s actions did violate the Code of Ethics. Accordingly, the Commission’s decision to revoke Petitioner’s teaching certificate is **AFFIRMED**.

SO ORDERED, this 25th day of September, 2014.



AMANDA C. BAXTER
Administrative Law Judge