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JUN 4 2015

OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

K. Westray

Kevin Westray, Legal Assistant

YATTA COLLINS,
Petitioner,

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Docket No.: OSAH-PSC-SAN- [REDACTED]
Walker

v.

Agency Reference: [REDACTED]

**PROFESSIONAL STANDARDS
COMMISSION,**
Respondent.

FINAL DECISION

I. Introduction

Petitioner, Yatta Collins, appeals a decision by Respondent, Professional Standards Commission (also the "Commission"), sanctioning her for alleged violations of the Code of Ethics for Educators. The Commission seeks suspension of Petitioner's educator's certificate for two years. An administrative hearing was held on May 5, 2015, and the record closed on May 29, 2015. Borquaye A. Thomas, Esq. represented Petitioner, and Assistant Attorney General Kelly Campanella represented the Commission. For the following reasons the Commission's action is **AFFIRMED.**¹

II. Findings of Fact

1.

Petitioner holds a certificate to teach in the State of Georgia and held such certificate at all times relevant to the matter before the Administrative Law Judge. (Statement of Matters Asserted ¶ 1; Answer ¶ 1).

¹ This case had been consolidated with the matter of *Jerry W. Dority v. Professional Standards Commission*. On May 4, 2015, the undersigned severed Dr. Dority's case because the parties in that case informed her that they had reached a provisional consent agreement. In the event that Dr. Dority's consent order is not finalized or accepted, her hearing will proceed at a later date.

2.

Respondent filed a Statement of Matters Asserted alleging that Petitioner violated the laws, rule and regulations of the Commission. See O.C.G.A. § 20-2-984.5 and Ga. Comp. R. & Regs. r. 505-6-.01. Specifically, Respondent found probable cause that Petitioner violated the laws, rules and regulations regarding Required Reports, Standard Nine, and Professional Conduct, Standard Ten. (Statement of Matters Asserted ¶ 7).

3.

On January 30, 2012, Petitioner was employed as a counselor at Tapp Middle School in the Cobb County School District. She had held this position for approximately six weeks. (Statement of Matters Asserted ¶ 2; Transcript at p. 103 (hereinafter "T-")).

4.

T.S.² was a student at Tapp Middle School. On January 30, 2012, T.S. came to Petitioner's office. She told Petitioner that her friend, A.B., had tried to commit suicide the previous evening because A.B.'s stepfather was sexually molesting her. (T-15, 40).

5.

After the discussion with T.S., Petitioner met with student A.B. (T-119). A.B. admitted to Petitioner that she had tried to hang herself the previous evening. (T-15). Petitioner observed marks on A.B.'s neck consistent with the description of the attempted suicide. (T-15, 120).

6.

A.B. told Petitioner that she did not want to disclose her reasons for the suicide attempt, but did indicate to Petitioner that she would discuss these reasons with her mother. (T-15, 120). When specifically asked about the allegation of sexual abuse, A.B. neither confirmed nor denied the allegation that her stepfather was abusing her. (T-15).

7.

The Cobb County School District distributes a document to school employees entitled Protocol for Addressing Suicidal/Homicidal Ideations or Attempts (hereinafter the "Suicide Protocol"). Pursuant to the Suicide Protocol, "[i]f a school employee has reason to believe that a student is at risk for suicide or will harm himself or herself, that person should take action in accordance with [the Protocol]." (Exhibit P-1).

8.

After A.B. affirmed that she had attempted suicide, Petitioner began to follow the Suicide Protocol's directives, which included contacting A.B.'s mother and asking her to come and pick up her daughter from school. (T-121). A.B.'s mother stated that she would come to the school but that it would take her awhile. (T-121). Petitioner also told the school's principal, Dr. Jerry Dority, about the incident. (T-121).

9.

Petitioner stayed with A.B. until A.B.'s mother arrived at about 6:20 p.m. (T-123). When she arrived, Petitioner provided her with a list of clinicians who could assess A.B.'s mental health. (T-124). A.B.'s mother indicated that she would take her daughter to be assessed. (T-124).

10.

Petitioner also told A.B.'s mother about the allegation that A.B.'s stepfather was molesting her. In response, A.B.'s mother asked A.B. "if he touches you why do you be up under him?" A.B. responded "well, you know, you love him and you act like you [can't] live without him." (T-124). Petitioner did not report the alleged sexual abuse to the Department of Family and Children Services (hereinafter "DFCS"). (T-125).

11.

On January 31, 2015, Petitioner checked the attendance report and noted that A.B. was not in school. She assumed that A.B. was absent because her mother was taking her to be assessed.

² Although T.S. was referred to as Student A during the hearing, the Statement of Matters Asserted describes her as T.S. Similarly, A.B. was referred to as Student B during the hearing but is called A.B. in the Statement of Matters

(T-126). On the following day, February 1, 2012, Petitioner again checked the attendance report and found that A.B. still was not in school. (T-126).

12.

Petitioner called A.B.'s mother, who told Petitioner that she was taking A.B. to a mental health practitioner that evening. (T-126). After this conversation, Petitioner became concerned that A.B.'s mother was not acting in her daughter's best interests. She then contacted DFCS about the incident, roughly 48 hours after she became aware of the suspected sexual abuse. (T-127; Exhibit R-8). Petitioner had not referred the matter to DFCS earlier because A.B. had not confirmed the sexual abuse. Based on A.B.'s failure to confirm the abuse, Petitioner felt she did not have a reasonable basis to believe that A.B. was being molested by her stepfather. (T-137, 143). Although Petitioner maintained that she was primarily concerned about the attempted suicide, in her written referral to DFCS she noted, "I told the mother that she really needed to take her [for an assessment] as soon as possible because suicide is serious and so is the allegations that her stepfather is touching her." (T-136; Exhibit R-8). Petitioner also relayed this information to Dr. Dority. (T-78).

13.

Cobb County School District's DFCS Protocol in effect on the date of the incident directs that "if the student is expressing suicidal ideations in connection with an abuse situation, the school should notify DFCS as outlined below and also follow the [Suicide Protocol]." (Exhibit R-7). At the hearing, the parties agreed that Petitioner had followed the Suicide Protocol as required regarding suicidal ideation. (T-76). Typically, the Suicide Protocol does not require that DFCS be contacted if there is suicidal ideation. (T-133). However, the Cobb County School District's DFCS Protocol states that, if an employee has reasonable cause to believe that a student has been abused, she or he must report this information to DFCS as soon as possible, or at least within twenty four hours. (T-48, 69; Exhibit R-6).³ In this case, the undersigned finds that Petitioner

Asserted. Statement of Matters Asserted ¶¶ 4, 5.

³ The DFCS Protocol in effect on January 30, 2012, states "The District adheres to the requirements found in O.C.G.A. §§ 20-2-1184, 19-7-5 and 20-2-751.7, as well as the Professional Standards Commission's state mandated process for students and employees to follow when reporting instances of abuse . . . child abuse includes, but is not limited to, physical injury; death; neglect; exploitation; sexual abuse and sexual exploitation." Moreover, *DFCS must always be immediately notified but, as stated by Georgia law, but in no case later than 24 hours from the time*

should have found reasonable cause to believe that A.B. had been abused on January 31, 2012, and should have reported the suspected abuse to DFCS as soon as possible.

14.

Mary Finlayson is the former Director of Professional Standards and Ethics for the Cobb County School District. (T-12). On February 6, 2012, Officer Marni Herman, who is employed by the Cobb County School District as a police officer, informed her that Petitioner had not made a mandated report as required. (T-12; 17). Every one of the school district's employees is a mandatory reporter, meaning they have a duty to contact DFCS if they have a reasonable suspicion that a student is being abused. (T-25, 27) At the time of this incident, Respondent's policy was that each school also had designated reporters that could make the report to DFCS on an employee's behalf. Not only was Petitioner a mandatory reporter, as a school counselor she was a designated reporter. (T-70).

15.

Ms. Finlayson worked as Cobb County's Director of Professional Standards and Ethics for seven years. In her view "[t]his is one of the most serious cases" that she reviewed. (T-38). Prior to this incident, Petitioner had completed multiple trainings regarding the duty to report suspected child abuse and she also knew that she was considered a designated reporter. (T-22, 25, 58). After Ms. Finlayson completed her investigation of the incident, Petitioner was terminated. (T-35).

16.

Petitioner has a bachelor's degree in psychology and a master's degree in counselor education. She has been employed as a school counselor in the State of Georgia since 1997. (T-144). Generally, Petitioner has received positive reviews and, prior to this incident, and has never faced disciplinary action. (T-145).

there is reasonable cause to believe a child has been abused. All District Employees are mandated reporters."
(emphasis in original).

17.

At the hearing Petitioner testified that she now realizes that she has a duty to report suspected sexual abuse, even if the victim fails to confirm the abuse and it is based on "second-hand information." (T-141-142). Following this incident, she again completed further training regarding mandated reporting. (T-154).

18.

Based on Petitioner's conduct, Respondent asks that her educator's license be suspended for two years. However, Respondent did not object to the recommendation that the two-year suspension be imposed retroactively, beginning on August 7, 2013.

III. Conclusions of Law

1.

The Commission bears the burden of proof in this matter. Ga. Comp. R. & Regs. r. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

The Professional Standards Commission is the Georgia agency responsible for the certification of educators in Georgia. See O.C.G.A. § 20-2-982. The Commission has adopted the Code of Ethics for Educators that guides the professional behavior of educators in Georgia, and is authorized to sanction an educator who has violated the standards of performance contained therein. O.C.G.A. § 20-2-984.1; see Ga. Comp. R. & Regs. r. 505-6-.01. Pursuant to O.C.G.A § 20-2-984.5(c):

If the commission finds that there is probable cause for imposing a sanction against the 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.

See also Ga. Comp. R. & Regs. r. 505-6-.01(5). In this case, Respondent recommends Petitioner's educator's certificate be suspended for two years.

3.

Standard 9 of the Code of Ethics for Educators states in relevant part:

Standard 9: Required Reports- 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:

...

5. Failure to make a required report of any violation of state or federal law [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. These reports include but are not limited to . . . any abuse of a child if an educator has reasonable cause to believe that a child has been abused.

GA. COMP. R. & REGS. r. 505-6-.01 (3)(i) (2009).

4.

In turn, O.C.G.A. § 19-7-5 provides that a school employee who "has reasonable cause to believe that a child" is being abused must make an oral report immediately, "but in no case later than 24 hours from the time there is reasonable cause to believe a child has been abused, by telephone or otherwise and followed by a report in writing, if requested, to a child welfare agency providing protective services, as designated by the Department of Human Services"

5.

Respondent proved by a preponderance of evidence that Petitioner violated Standard 9 of the Code of Ethics for Educators. Considering that T.S. had reported A.B.'s statement regarding sexual abuse to Petitioner, that A.B. had admitted to Petitioner that she had attempted suicide the previous evening, and that Petitioner had heard the conversation between A.B. and her mother during which A.B.'s mother asked her "if he touches you why do you be up under him,"

Petitioner had ample reasonable cause to believe that a child was being abused. Frankly, her failure to make a report as mandated under either O.C.G.A. § 19-7-5 or Respondent's DFCS Protocol, especially given her employment as a school counselor, is both puzzling and disturbing.

6.

Standard 10 of the Code of Ethics for Educators states in relevant part:

Standard 10: Professional Conduct - An educator shall demonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the teaching profession. Unethical conduct is 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. r. 505-6-.01(3)(j).

7.

The undersigned concludes that there is sufficient evidence to support Respondent's allegation that Petitioner violated Standard 10, Professional Conduct. Not only was she generally mandated to report abuse, she was one of the school's designated reporters. Her failure to fulfill her job obligations did not meet generally recognized professional standards. Most significantly, it was her duty to protect students and her failure to act was detrimental to the health and welfare of A.B.

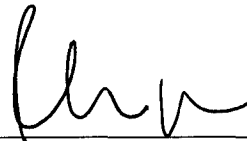
IV. Decision

The Code of Ethics for Educators has been designed to protect the health, safety and general welfare of students in Georgia. Indisputably, Petitioner should have reported the suspected sexual abuse to DFCS as soon as possible, and at a minimum, within 24 hours. She made this report at least a day too late.

While the foregoing findings of fact and conclusions of law demonstrate that Petitioner's conduct violated the Code of Ethics for Educators, there are several mitigating circumstances to be considered. In this case Petitioner contacted A.B. as soon as T.S. told her about their conversation. She diligently followed the Suicide Protocol, and informed the school's principal, on more than one occasion, about the action she had taken. Petitioner demonstrated that she was taking her duties seriously in that she did not abandon A.B., instead monitoring A.B.'s attendance to ensure that she was being taken for mental health treatment. When A.B. did not come to school for two days in a row, Petitioner contacted A.B.'s mother and filed a report, albeit an untimely one, with DFCS.

At the hearing, the Commission conceded that these facts would indicate both that Petitioner cared about A.B. and did not act intentionally to harm her; however, it also maintained that Petitioner made a serious mistake that could have had grave consequences and seeks disciplinary action. The undersigned agrees with the Commission's recommendation and the Commission's decision is **AFFIRMED**. However, the undersigned recommends, without objection from the Commission, that the two year suspension be administered retroactively, beginning on August 7, 2013, and thus expiring this August 2015.

SO ORDERED, this 3 day of June, 2015.



RONIT WALKER

Administrative Law Judge