

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

████████████████████
Petitioner,

v.

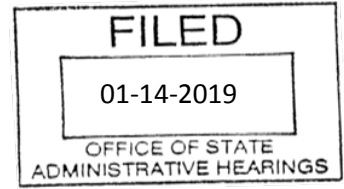
**DHS, DIVISION OF FAMILY AND CHILDREN
SERVICES,**
Respondent.

Docket No.: ██████████
██

Agency Reference No.: ██████████

FINAL DECISION

Appearances: For Petitioner: Julie Oinonen, Esq.
For Respondent: Andre Johnson, SAAG



Petitioner requested a hearing, pursuant to O.C.G.A. § 49-5-183(c), after Respondent included Petitioner’s name, a classification of an alleged act of child abuse, and a copy of an abuse investigator’s report on the Central Child Abuse Registry. The hearing took place before the undersigned Administrative Law Judge on January 8, 2019. After considering all of the admissible evidence, arguments of the parties, and for the reasons stated below, Respondent’s action is **REVERSED**.

I. FINDINGS OF FACT:

1.

Respondent notified Petitioner of its decision to place Petitioner’s name on the Central Child Abuse Registry in a “Notice of Inclusion.” The Notice of Inclusion informed Petitioner that his name would be placed on the child abuse registry based on a finding that Petitioner committed “neglect” against ██████ (age ██████). Specifically, DFCS substantiated the allegation of child abuse against Petitioner as follows:

Neglect	“On or about September 20, 2018, ██████ ██████ neglected ██████ (█████) by failing to provide adequate supervision by pushing ██████ multiple times and grabbing her arms, leaving scratches.”
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(Testimony of ██████ ██████ Case Manager; Notice of Inclusion, OSAH Form 1).

2.

Respondent commenced an investigation after it received a report alleging that, on or about September 20, 2018, Petitioner, 6th grade teacher at ██████ engaged in a physical altercation with ██████ in the school hallway. ██████ ██████ Case Manager conducted the investigation, which consisted of reviewing the school file, obtaining statements from ██████ ██████ officials, and taking photographs of ██████ on October 24, 2018, thirty four (34) days after the incident. ██████ does not recall interviewing Petitioner during her investigation. However, ██████ reviewed Petitioner’s written statement indicating that one of his students identified ██████ as the student who was trying to fight her the previous day. Petitioner asked ██████ to come to him to discuss the problem or issue between her and the other student, but ██████ turned and walked away. When Petitioner caught up with ██████ she became rude, disrespectful,

and began cursing at Petitioner. Petitioner tried to take [REDACTED] to an administrator, but [REDACTED] tried to turn and walk away. Petitioner blocked [REDACTED] with his body and “ushered” her towards the main office, but [REDACTED] was cursing and calling Petitioner a “bitch.” Another teacher intervened and Petitioner went back to his class. After the school conducted an investigation, Petitioner was given a suspension of five (5) days. Based upon her investigation, Respondent substantiated the “neglect” allegation against Petitioner. (Testimony of [REDACTED] Case Manager; Respondent’s Exhibits R-1 and R-2; Petitioner’s Exhibit P-1).

3.

[REDACTED], educator at [REDACTED] witnessed the incident between Petitioner and [REDACTED] on September 20, 2018. [REDACTED] observed [REDACTED] come through a door, wearing a back pack, and Petitioner following behind her. Petitioner then pushed [REDACTED] a couple of times, attempting to get [REDACTED] to the Principal’s office. [REDACTED] told Petitioner to “get the fuck off me,” and pushed Petitioner off of her. Petitioner then pushed [REDACTED] once or twice further up the hallway. [REDACTED] did not see Petitioner grab or scratch [REDACTED] arm. [REDACTED]

4.

[REDACTED], educator at [REDACTED] witnessed the incident between Petitioner and [REDACTED] on September 20, 2018. [REDACTED] was on “hall duty” and observed [REDACTED] come through a door, wearing a back pack, and Petitioner following behind her. [REDACTED] was cursing and screaming at Petitioner, who tried to stop [REDACTED] Petitioner was trying to take [REDACTED] to the front office. Petitioner’s hands were behind his back and used his body to pin [REDACTED] against the wall. [REDACTED] wore a book bag between her and Petitioner. [REDACTED] does not think that Petitioner wanted to harm [REDACTED] and did not see Petitioner grab or scratch [REDACTED] arm. [REDACTED] opines that Petitioner wanted to stop [REDACTED] (Testimony of [REDACTED], [REDACTED])

5.

[REDACTED], educator at [REDACTED] witnessed the incident between Petitioner and [REDACTED] on September 20, 2018. [REDACTED] heard [REDACTED] calling Petitioner a “mother fucker” and stepped into the “T” hallway. [REDACTED] was screaming, cursing, using derogatory language, and sliding her shoulder across the wall. [REDACTED] told Petitioner “my dad is going to kick your ass.” [REDACTED] told [REDACTED] to calm down and did not observe Petitioner strike [REDACTED] with his hands, or commit physical harm to [REDACTED] [REDACTED] opines that Petitioner is a good teacher and has never observed Petitioner cause physical harm against a child. (Testimony of [REDACTED], [REDACTED])

6.

[REDACTED], Principal of [REDACTED] received a call or email regarding the incident between Petitioner and [REDACTED] on September 20, 2018. The Assistant Principal completed the investigation. [REDACTED] received the information from the Assistant Principal, reviewed the video footage of the incident, and referred the matter to the Office of Legal Affairs. Principal [REDACTED] did not speak with anyone regarding the incident, including Petitioner. Upon completion of the school’s investigation, Petitioner received a suspension of five (5) days, because he was in close proximity to [REDACTED] with his body as he moved her along the hallway. Principal [REDACTED] did not see Petitioner strike [REDACTED] and does not believe that Petitioner harmed [REDACTED] Petitioner is a good teacher and Principal [REDACTED] has never observed him abuse a child. However, [REDACTED] has a history of behavioral issues and has been expelled from [REDACTED] for assaulting and threatening students, teachers, and staff members.

7.

Petitioner timely filed his appeal, alleges that the Child Abuse Registry is unconstitutional, and denies that he committed neglect against [REDACTED].¹ Petitioner gave credible evidence at the hearing that he has been employed as a teacher for eleven years, works as a Case Worker with DFCS, and is a counselor with [REDACTED]. Petitioner is also a youth leader at his church. On September 20, 2018, Petitioner was an 8th Grade Science teacher at [REDACTED]. A day prior to the incident, Petitioner received a report of [REDACTED] intent to cause bodily harm to a student and told that student to identify [REDACTED] which the student did the following day. On September 20, 2018, [REDACTED] was in an unauthorized building in the hallway. Petitioner intervened and engaged with [REDACTED] to prevent an altercation between [REDACTED] and the other student. Petitioner wanted to get [REDACTED] name and send the students to the counselor's office before it became an altercation of violence. Petitioner stepped into the hallway and called [REDACTED] to come to him to ask what was going on with the other student. [REDACTED] looked at Petitioner, then turned and walked away. [REDACTED] became belligerent, began cursing, screaming, called Petitioner a "mother fucker," "bitch ass," and told Petitioner that her father was going to beat his ass. After the incident, Petitioner asked to meet with the Principal or Assistant Principal of [REDACTED] to discuss the matter, but was not allowed. Prior to the substantiation, DFCS did not contact Petitioner before putting his name on the child abuse registry. Petitioner did not receive a call, text, email, or any evidence to support the abuse allegation, other than the Notice of Inclusion letter. Petitioner opines that the state has violated his constitutional rights by putting his name on the child abuse registry before a hearing. (Testimony of Petitioner Petitioner's Exhibits P-1 and P-2). Upon careful consideration, I find Petitioner's evidence to be credible and persuasive).

8.

[REDACTED] ([REDACTED]) did not appear and testify at the hearing.

II. CONCLUSIONS OF LAW:

1.

Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4); see also O.C.G.A. § 49-5-183(e).

2.

DFCS is required under Georgia law to establish and maintain a Central Child Abuse Registry. O.C.G.A. § 49-5-181(a). Upon receipt of an investigator's report of a substantiated case of child abuse, DFCS must include the name of the alleged child abuser, the classification of abuse, and a copy of the abuse investigator's report on the child abuse registry. O.C.G.A. § 49-5-183(a). Individuals alleged to have committed child abuse are entitled to a hearing for the purpose of determining whether, based on a preponderance of evidence, he or she committed child abuse "to justify the investigator's determination of a substantiated case." O.C.G.A. § 49-5-183(d). Upon finding that there is not a preponderance of evidence to conclude that the individual committed an act of child abuse, the Administrative Law Judge must order that the individual's name be removed from the child abuse registry. O.C.G.A. § 49-5-183(d).

¹ It is well settled in Georgia law that the Office of State Administrative Hearings is without authority to rule on constitutional challenges to statutes or rules, and the undersigned judge declines to do so. Ga. Comp. R & Regs 616-1-2-.22 (3); OSAH Rule 616-1-2-.22 (3).

3.

The Central Child Abuse Registry statute defines “child abuse” to include: (A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child; (B) Neglect or exploitation of a child by a parent or caretaker thereof; (C) Endangering a child; (D) Sexual abuse of a child; or (E) Sexual exploitation of a child. However, no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be an abused child. O.C.G.A. §§ 19-7-5, 49-5-180.

4.

Black’s Law Dictionary defines “neglect” as, “[t]he omission of proper attention to a person or thing whether inadvertent, negligent, or willful.” Neglect, Black’s Law Dictionary (7th ed. 1999). Georgia’s juvenile code defines “neglect” as (A) The failure to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for a child’s physical, mental, or emotional health or morals; or (B) The failure to provide a child with adequate supervision necessary for such child’s well-being. O.C.G.A. § 15-11-2(48).

5.

In this matter, the credible and undisputed evidence is that Petitioner intervened and engaged with [REDACTED] to prevent an altercation between [REDACTED] ([REDACTED]) and another student. The evidence is uncontroverted that Petitioner used his body to “usher” [REDACTED] down the hall when she became belligerent and began cursing and screaming at Petitioner. However, there is insufficient evidence in the record to establish that Petitioner grabbed [REDACTED] arms, leaving scratches, or that Petitioner’s conduct caused [REDACTED] any harm. Therefore, there is insufficient evidence to establish, by a preponderance of evidence, that Petitioner committed neglect. Accordingly, Respondent must remove Petitioner’s from the child abuse registry. O.C.G.A. § 49-5-183(d).

III. DECISION:

Based upon the foregoing, **IT IS HEREBY ORDERED** that Respondent’s action is **REVERSED**. Petitioner’s name shall be removed from the Central Child Abuse Registry.

SO ORDERED, January 11, 2019

Carol W. Russell
CAROL WALKER-RUSSELL
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. 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 Porcia Lockett - 404-463-1034; Email: plockett@osah.ga.gov; Fax: 404-818-3772; 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 10 days after the Final Decision. O.C.G.A. §§ 49-5-183(f), 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.

Docket No.: [REDACTED]

[REDACTED]

[REDACTED]

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