

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

CINDY KING WILLIAMS,
Petitioner,

v.

PROFESSIONAL STANDARDS
COMMISSION,
Respondent.

Docket No.: 1840572
1840572-OSAH-PSC-SAN-65-Brown

Agency Reference No.: 16-11-717.



NOV 02 2018

Kevin Westray
Kevin Westray, Legal Assistant

FINAL DECISION

I. INTRODUCTION

Petitioner, Cindy King Williams, appeals the proposed decision of the Professional Standards Commission (“the Commission”) to suspend her educator certificate for two years. The hearing in this matter was held before the undersigned Administrative Law Judge on September 12, 2018,¹ at the Thomas County Courthouse in Thomasville, Georgia. Julie Oinonen, Esq., represented Petitioner in this matter, and Rebecca Mick, Senior Assistant Attorney General, represented the Commission.

After careful consideration of all the evidence of record in this case, and for the reasons stated below, the Court **REVERSES** the Commission’s decision to sanction Petitioner’s educator certificate.²

II. FINDINGS OF FACT

1. Petitioner holds an educator certificate issued by the Commission and held such certificate at all times relevant to this matter. (Statement of Matters Asserted).

2. During the 2015-2016 school year, Petitioner’s daughter, Lydia Williams (hereinafter “Lydia”), was a sophomore at Cairo High School, which is in the Grady County School System. (Tr. 258: 5-9).

¹ At the close of the hearing, the Court permitted the parties to file written closing arguments. The parties filed such closing arguments on October 4, 2018, whereupon the record closed.

² Petitioner moved to introduce the results of a polygraph examination administered to Petitioner after the events at issue. The Court indicated that it would rule on the admissibility of the polygraph results at a later date. Based on a review of Georgia caselaw, the Court concludes that results of the polygraph examination are inadmissible and Petitioner’s motion is therefore **DENIED**. See *Parfenuk v. State*, 338 Ga. App. 95, 98 (2016).

Julie York was assigned to be her guidance counselor that year. (Tr. 332: 7-12; Petitioner's Exhibit 14).

3. Cairo High School offered courses in a "block schedule." (Tr. 120: 7-11, 46: 3-14). In a block schedule, students completed four subjects, each with classes that were longer in duration than those in a typical schedule, per semester. (Id.) By taking a block schedule, students could complete traditionally year-long courses in one semester. (Id.)

4. Cairo High School also offered computer-based courses through its "virtual school" program, which used software called "Odysseyware." (Tr. 103: 9-11). Students taking virtual school courses completed classwork on computer stations in the school library. (Tr. 103: 3-8). Although the director of the program was the teacher of record for classes in the virtual school program, the students completed their work independently and without the assistance of an instructor. (Id.; Tr. 63). The only in-person contact students in the virtual school program had during their lessons was a media specialist. (Tr. 103: 3-8).

5. Odysseyware was not directly compatible with block scheduling; it did not contemplate completion of traditionally year-long courses in one semester. (Tr. 121: 11-23). Consequently, Odysseyware records sometimes reflected that students were expected to complete courses contemporaneously during a single school year, when in fact the courses would be split between semesters. (Tr. 122).

6. Lydia enrolled in French I and French II in the 2015-2016 school year. (Tr. 122; Petitioner's Exhibits 2, 3, 14). Both courses were offered through the virtual school program. (Id.) Traditionally, French I and French II are year-long courses. (Petitioner's Exhibits 2, 3). However, because Lydia was on a block schedule, she was expected to complete French I in the fall semester and French II in the spring semester. (Tr. 123: 1-3). At the time, Assistant Principal Michael Best was the director of

the virtual school program and the teacher of record for Lydia's French I and II virtual school classes. (Tr. 119: 16-17).

7. At the conclusion of the fall semester, Lydia had not yet completed French I. (Tr. 124: 10-12). However, she was permitted to complete French I the following semester (i.e., spring 2016). (Tr. 125–26; 263: 6-16; Petitioner's Exhibit 4).

8. In April 2016, Petitioner and her husband met with Mr. Best and Ms. York because Lydia still had not completed French I. (Tr. 125:12-25; Petitioner's Exhibit 14).³ At the hearing, Mr. Best and Petitioner offered differing accounts of the understanding they reached regarding how Lydia was to complete her French coursework. According to Mr. Best, he told Petitioner that Lydia should complete French I and begin French II assignments during the spring semester and then complete French II over the summer. (Tr. 125–26). However, based on her communications with Mr. Best and Ms. York, Petitioner understood that Lydia was to complete French I during spring semester and begin French II the following school year (2016-2017). (Tr. 287: 10-12, 319: 2-6; Petitioner's Exhibit 14).

9. Mr. Best testified that he spoke with Lydia personally regarding French I. Specifically, Mr. Best testified that, after it became apparent Lydia would not complete French I as scheduled, he directed her to complete the course over the holiday break. (Tr. 124: 22-25). However, in her testimony, Lydia denied that this conversation took place, or that she ever met with Mr. Best. (Tr. 274: 11-22). Rather, Lydia testified, she brought her concerns regarding French I to Jenny Harrison, the media specialist. (Tr. 262: 2-3). According to Lydia, Ms. Harrison instructed her to complete French I during the 2015-2016 school year and then complete French II the following school year. (Tr. 263: 6-16).

10. Lydia completed her final French I assignment on May 16, 2016. (Petitioner's Exhibit 2).

³ Petitioner was not an employee of Cairo High School or the Grady County School System at the time. (Tr. 131: 19-24).

11. At the end of the 2015-2016 school year, Mr. Best determined that Lydia had completed no classwork in French II, and assigned her a grade of “0.” (Tr. 126: 24-25). At the hearing, Mr. Best testified that he planned to assign Lydia the grade she earned in French II once she actually completed the course. (Tr. 127: 1-5).

12. After the 2015-2016 school year, Petitioner and Lydia received a report card for the preceding semester. (Tr. 317: 5-16). French II did not appear on the report card. (Id.; Tr. 267: 2-3). Consequently, Lydia and Petitioner were unaware that Mr. Best had assigned Lydia a failing grade in French II. (Tr. 317: 20-25).

13. Lydia did not take French II over the summer. Rather, she took two dual enrollment courses: U.S. History and English 1101. (Tr. 268: 12-13). She completed her first French II assignment on September 29, 2016, after the 2016-2017 school year had commenced. (Petitioner’s Exhibit 3).

14. Kermit Gilliard, superintendent of Grady County Schools, hired Petitioner to work as a guidance counselor at Cairo High School for the 2016-2017 school year based on the recommendation of Chris Lokey, principal of Cairo High School. (Tr. 156–57). Julie York, the head of Cairo High School’s guidance counselor department, was her supervisor. (Tr. 300: 11-14).

15. Principal Lokey assigned Petitioner to be Lydia’s guidance counselor. (Tr. 85–86, 322–23). In this proceeding, Petitioner denied, and the Commission did not allege, that Cairo High School’s assignment of Lydia to Petitioner was improper. (Tr. 323–24). Indeed, Petitioner formerly served as Lydia’s guidance counselor at Albany High School in the Dougherty County School System. (Tr. 269: 12-22).

16. When Petitioner worked for Cairo High School, it had no written procedural manual or guidelines for guidance counselors. (Tr. 235: 16-18). The school had no written policies regarding how to correct errors in transcripts. (Tr. 242: 3-8). Petitioner and her fellow counselor, Melinda Dean,

who was hired at approximately the same time as Petitioner, were not provided with training on any Cairo High School counseling policies. (Tr. 235: 4-15). Indeed, Cairo High School instructed Ms. Dean to write a policy manual for the guidance counselor department following the events at issue in this case. (Tr. 243-44).

17. Cairo High School used student recordkeeping software called "Power School." (Tr. 254: 11-14). Using a unique user identification and password, guidance counselors and other personnel at the school were able to log into Power School and, if necessary, make changes to student records. (Tr. 255: 7-10, 312: 4-7). Power School kept a record of what changes were made to records, who made them, and when. (Tr. 254: 15-25; Tr. 312: 5-16).

18. Lydia met with her mother on August 29, 2018 after she received her transcript of grades from the 2015-2016 school year and noticed that her GPA appeared low. (Tr. 271-72, 325). After reviewing Lydia's records, Petitioner discovered that the French II course remained on Lydia's transcript. (Tr. 325). She concluded that Mr. Best had allowed the course to remain on Lydia's transcript in error and, as a result, the grade had been reported as a "0" at the end of the school year. (Tr. 325: 12-24). After she confirmed with Jackie Powell, a fellow guidance counselor who also had students in the virtual school program, that Lydia had not started French II, Petitioner deleted the course from Lydia's transcript. (Tr. 330-31).

19. "Immediately" after her meeting with Lydia, Petitioner found Mr. Best and confronted him about the inclusion of French II on Lydia's transcript. (Tr. 333-34). Mr. Best informed Petitioner that the grade was not a mistake and that he had assigned Lydia a failing grade because she did not complete French II during the 2015-2016 school year. (Id.; Tr. 149: 14-23).

20. At 5:16 p.m. on August 29, 2016, after her conversation with Mr. Best, Petitioner sent Principal Lokey the following text message: "As a parent I am mad as Hell right now with Michael Best and I

need your intervention now.” (Petitioner’s Exhibit 8).

21. On the morning of August 30, 2016, Petitioner telephoned Susan Poole, the student information specialist for Grady County Schools. (Tr. 113). Petitioner informed Ms. Poole that she had discovered “what she thought was an error” in a student’s transcript “and that she deleted it from historical grades.” (Tr. 113: 21-24). Petitioner asked Ms. Poole how to restore the course to the transcript. (Tr. 113–14).

22. Also on August 30, 2016, Petitioner entered the office of Bobbie Ausburn, Cairo High School’s registrar, and asked about assigning “incompletes” for classes. (Tr. 91: 8-13). Petitioner told Ms. Ausburn that “she had found an error on her daughter’s transcript and . . . deleted it.” (Tr. 91: 15-16). Petitioner returned to Ms. Ausburn’s office later that day and asked how to restore the course to Lydia’s transcript. (Tr. 91-92).

23. Petitioner also met with Principal Lokey on August 30, 2016. (Tr. 343; Petitioner’s Exhibit 14). During the meeting, Petitioner indicated that she removed the course from Lydia’s transcript because she thought it had been left on her transcript in error. (Petitioner’s Exhibit 14). She explained to Principal Lokey that she did not feel it was improper for her to delete the course because she had deleted similar errors when she worked as a guidance counselor at Albany High School and Ms. York had previously instructed her to correct errors in similar fashion. (Id.)

24. At Principal Lokey’s direction, Petitioner submitted a written statement. (Respondent’s Exhibit 4). In this statement, she again indicated that she removed the course from Lydia’s transcript because she felt it had been left on her record due to an error. (Id.)

25. Based on the facts and circumstances set forth above, the Commission found probable cause that Petitioner had violated Georgia law and/or its Rules, including the Code of Ethics for Educators. Specifically, the Commission determined that Petitioner’s conduct amounted to violations of Rule 505-

6-.01(3)(a) [Legal Compliance], Rule 505-6-.01(3)(d) [Honesty], and Rule 505-6-.01(3)(j) [Professional Conduct].⁴ With regard to Rule 505-6-.01(3)(a), the Commission concluded that Petitioner's deletion of the course violated the Grade Integrity Act of 2007 (O.C.G.A. § 20-2-989.20(c)). (Statement of Matters Asserted).

26. At the hearing, Gina Ahlberg, the Commission's lead investigator, testified that the Commission proposed a two-year suspension for Petitioner's conduct because such a sanction was comparable to those imposed against other educators for similar conduct in the past. (Tr. 193: 2-5).

27. Melinda Dean, who has nineteen years of experience as a school counselor, testified that guidance counselors have the authority to correct errors in transcripts. (Tr. 241: 8-14). She further testified that the correct course of action is for the guidance counselor to correct errors of the kind Petitioner discovered on Lydia's transcript. (Tr. 241-42).

28. Robert McIntosh worked with Petitioner during the 2017-2018 school year, when he was the principal of Calhoun County High School and she was a guidance counselor at that school. (Tr. 251-52). Mr. McIntosh has been an educator for twenty-six years. (Tr. 253: 7-9). He testified that guidance counselors are authorized to make changes to students' transcripts. (Tr. 255: 14-17).

29. In her testimony, Petitioner again explained that she deleted the French II course from Lydia's transcript because, at the time, she believed it had been left there in error. (Tr. 325-27). Like Ms. Dean and Mr. McIntosh, she testified that guidance counselors were authorized to remove errors from transcripts. (Tr. 333: 6-9). She explained that she contacted Ms. Ausburn and Ms. Poole for instructions on how to restore the course to Lydia's transcript after she spoke with Mr. Best and

⁴ At the time of the alleged misconduct at issue, the "Professional Conduct" standard was listed under Standard 10 of the Code of Ethics for Educators. Under the amended rules, the "Professional Conduct" standard is Standard 9, not Standard 10. The substantive language of the current standard is identical to its predecessor in all relevant respects.

thereupon discovered that his assignment of the failing grade was intentional, and not due to an oversight. (Tr. 342–43).

IV. CONCLUSIONS OF LAW

1. Because this case concerns the Commission’s proposed suspension of Petitioner’s educator certificate, the Commission bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2. The Georgia Professional Standards Commission (“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. The Commission is authorized to impose a sanction against an educator where he or she has engaged in unethical conduct as outlined in the Code of Ethics for Educators or for “any other good and sufficient cause that renders [the applicant] unfit for employment as an educator.” O.C.G.A. §§ 20-2-984(f), -984.5; Ga. Comp. R. & Regs. 505-6-.01(5)(a)1., 7. In the present case, the Commission proposes to suspend Petitioner’s certificate for violating Standards One, Four, and Ten of the Code of Ethics as they existed at the time of the alleged misconduct.

3. Standard One of the Code of Ethics requires educators to “abide by federal, state, and local laws and statutes.” Ga. Comp. R. & Regs. 505-6-.01(3)(a) (2016). Pursuant to Standard One, “[u]nethical conduct includes, but is not limited to the commission or conviction of a felony or of any crime involving moral turpitude . . . or any other laws applicable to the profession..” Id. The Commission failed to meet its burden to demonstrate that Petitioner violated Standard One.

4. In this case, the Commission alleges that Petitioner violated the Grade Integrity Act of 2007 (hereinafter “the Grade Integrity Act”) by deleting the French II course from her daughter’s transcript. See O.C.G.A. § 20-2-989.20(c). The Grade Integrity Act provides: “Any grade change made by a person other than the classroom teacher must be clearly indicated in the student’s school records and must indicate the person responsible for making such grade change.” Id. Regardless of whether Petitioner’s deletion of the course amounted to a “grade change,” the deletion was clearly documented in the student’s records and readily attributable to Petitioner. Petitioner introduced credible testimony that Power School, the information software in place at the time of the deletion, documents changes to student records, as well as the identity of the individual who made the change.

5. The Commission did not allege in its Statement of Matters Asserted that Petitioner violated Standard One by coercing or intimidating Mr. Best to change Lydia’s grade in French II or delete the course in contravention of O.C.G.A. § 20-2-989.20(a). However, even if the Commission had done so, the allegation would lack merit. Petitioner credibly testified that she confronted Mr. Best on August 29, 2016 *after* she had already deleted the course and with the intention of chastising him for what she thought was his error.

6. Standard Four of the Code of Ethics requires educators to “exemplify honesty and integrity in the course of professional practice.” GA. COMP. R. & REGS. 505-6-.01(3)(d) (2016). Pursuant to Standard Four, “[u]nethical conduct includes, but is not limited to, falsifying, misrepresenting or omitting . . . information submitted to federal, state, local school districts and other governmental agencies; . . . and . . . information submitted in the course of professional practice.” Id. The Commission failed to demonstrate that Petitioner violated Standard Four. At all times since she deleted the course from Lydia’s transcript, Petitioner has consistently asserted—in her reports to Mr. Best, Principal Lokey, Ms. Ausburn, and Ms. Poole, in her written statement, and in her testimony—

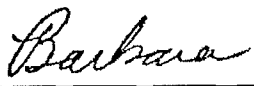
that she acted to correct what she thought was an error. Her actions were transparent. As discussed *supra*, Power School did not allow a guidance counselor to surreptitiously and anonymously delete a course. Further, Petitioner immediately disclosed her actions to Mr. Best, Principal Lokey, Ms. Ausburn, and Ms. Poole. In sum, the Court concludes that Petitioner did not act dishonestly, but out of a bona fide belief that (1) the French II course had erroneously been included on her daughter's transcript and (2) she had the authority to delete it.

7. Standard Nine of the Code of Ethics requires educators to “demonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the teaching profession.” Ga. Comp. R. & Regs. 505-6-.01(3)(j) (2016). According to Standard Ten “[u]nethical conduct includes but is not limited to 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.” *Id.* The Commission introduced no evidence that Petitioner's actions impaired and/or diminished her ability to function professionally or that her conduct was detrimental to the health, welfare, discipline, or morals of students.

IV. DECISION

In accordance with the foregoing, the Commission's decision to sanction Petitioner's educator certificate is **REVERSED**.

SO ORDERED, this 2nd day of November, 2018.


Barbara A. Brown
Administrative Law Judge

