

**BEFORE THE ARKANSAS STATE BOARD OF EDUCATION**

**IN RE: BEVERLY GARNER-HARRIS**

**PLSB CASE NO.: 13-047**

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**FINAL ORDER**

On July 9, 2015, during a regular meeting of the Arkansas State Board of Education (“State Board”), the State Board heard and considered Educator Beverly Garner-Harris’ (“Educator Garner-Harris”) objections to the Professional Licensure Standards Board (“PLSB”) Ethics Subcommittee’s (“Ethics Subcommittee”) November 5, 2014, Evidentiary Hearing Determination and Recommendation (“Final Determination and Recommendation”). The PLSB was present by and through its attorney, Jennifer N. Liwo. Educator Garner-Harris appeared, by and through her attorney, Clayton Blackstock.

Upon consideration of Educator Garner-Harris’ Brief, the PLSB’s Response to Educator’s Brief, the arguments of counsel, Educator Garner-Harris’ statements to the State Board, and all other matters properly before it, the State Board hereby finds and orders as follows:

**I. Substantial Evidence Standard**

Arkansas appellate courts recognize that administrative agencies, by virtue of their “specialization, insight through experience, and more flexible procedures than courts”, are well suited to make determinations on the evidence before them. *Lamar Co., LLC v. Ark. State Hwy. & Transp. Dept.*, 2011 Ark. App. 695, 5-6, 386 S.W.3d 670, 674 (2011). Administrative decisions are upheld “if they are supported by substantial evidence and are not arbitrary, capricious, or characterized by an abuse of discretion.” *Collie v. Ark. State Med. Bd.*, 370 Ark. 180, 258 S.W.3d 367, 370 (2007). If there is substantial evidence to support the decision, it follows that the decision cannot be arbitrary or capricious. *Id.* 258 S.W.3d at 372.

When determining if a decision is supported by substantial evidence, the record is reviewed to “ascertain if the decision is supported by relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Id.* 258 S.W.3d at 370. The evidence is given its “strongest most probative force in favor of the administrative agency.” *Id.* “The question is not whether the testimony would have supported a contrary finding, but whether it supports the finding that was made.” *Id.* Even though the evidence would support another conclusion, or even if the preponderance of the evidence would indicate a different result, the agency decision is still affirmed if reasonable minds could reach the conclusion reached by the agency. *Super. Improvement Co. v. Hignight*, 254 Ark. 328, 493 S.W.2d 424, 426-427 (1973).

## **II. Evidentiary Hearing Determination and Recommendation**

Following an evidentiary hearing, the Ethics Subcommittee is tasked with determining whether an educator violated the Code of Ethics. Ark. Dept. Ed.-Rules Governing the Code of Ethics for Arkansas Educators, § 7.01.2. The determination must be made by a preponderance of the evidence. *Id.* As defined in Ark. Dept. Ed.-Rules Governing the Code of Ethics for Arkansas Educators, § 5.15:

**Preponderance of the Evidence** is the greater weight of the relevant evidence; superior evidentiary weight that, though sufficient to free the mind wholly from all reasonable doubt, is still sufficient to [induce] a fair and impartial mind to one side of the issue rather than the other. It is determined by considering all of the relevant evidence and deciding which evidence is more credible. A preponderance of the evidence is not necessarily determined by the greater number of witnesses or documents presented. If, on any allegation against an educator, it cannot be determined whether the allegation is more likely true than not true, the allegation cannot be considered to have been proved.

On November 7, 2012, the Ethics Subcommittee authorized an investigation into allegations that Educator Garner-Harris violated: (a) Standard 1 of the Code of Ethics by engaging in both physical and abusive conduct with students on numerous occasions, to include name calling and embarrassing students in front of their peers; and (b) Standard 6<sup>1</sup> of the Code of Ethics when she, during a verbal conflict with a

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<sup>1</sup> Educator Garner-Harris was alleged to have violated the pre-July 1, 2014 version of Standard 6, which was in effect at the time the ethics complaint was filed. The prior Standard 6 is now Standard 7.

student and while in the presence of other students, called a student and her family irrelevant and used a classroom telephone to call DHS in order to discuss the student's truancy.

Subsequent to the October 24, 2014 evidentiary hearing, the Ethics Subcommittee entered its Final Determination and Recommendation in which it found that Educator Garner-Harris violated Standards 1 and 6 of the Code of Ethics.

The Ethics Subcommittee recommended that the State Board suspend Educator Garner-Harris' license for three (3) years, assess a one-hundred dollar (\$100.00) fine, and require Educator Garner-Harris to complete the following professional development by the end of her licensure suspension period:

- (i) ArkansasIDEAS, Number CID 1001366(11)-ASCD: Classroom Management: Building Effective Relationships;
- (ii) ArkansasIDEAS, Number CID 1000265(1b)-Annenberg Media: The Learning Classroom: Feelings Count;
- (iii) ArkansasIDEAS, Number CID 1001186(2d)-ASCD: Classroom Management: Managing Challenging Behavior; and
- (iv) Reading *A Framework for Understanding Poverty* by Ruby K. Payne, Ph.D. and providing the PLSB office with a written reflection on the book and its impact on her teaching practices.

### III. The Code of Ethics for Arkansas Educators

An ethical violation is "an act or omission on the part of an educator when the educator knew or reasonably should have known that the act or omission was in violation of the code of ethics." Ark. Code Ann. § 6-17-428(a)(3)(A).

Ethical violations do not include: (1) reasonable mistakes made in good faith; (2) acts or omissions undertaken in accordance with the reasonable instructions of a supervisor; or (3) acts or omissions under circumstances in which the educator had a reasonable belief that failure to follow the instructions of a supervisor would result in an adverse job action against the educator. Ark. Code Ann. § 16-17-428(a)(3)(B).

The Code of Ethics for Arkansas Educators ("Code of Ethics") provides:

**Standard 1:** An educator maintains a professional relationship with each student, both in and outside the classroom.

**Standard 6:** An educator keeps in confidence information about students and colleagues obtained in the course of professional service, including secure standardized test

materials and results, unless disclosure serves a professional purpose or is allowed by law.

Standard 1 goes to the “core of a professional educator’s expected conduct and relationship with all students and transcends criminal behavior or other actions which violate law. The professional relationship with students is such behavior and action which promotes at all times the mental, emotional, and physical health and safety of students.” Ark. Dept. Ed.-Rules Governing the Code of Ethics for Arkansas Educators, Appendix C-Explanations and Guidelines to Clarify the Intent of The Code of Ethics.

Confidential information under Standard 6 may only be disclosed when permitted by law or when a legitimate educational purpose is served. *Id.* “Confidential student information may include student academic disciplinary records, health and medical information, family status and/or income, assessment/testing results, and Social Security information.” *Id.* “Educators shall not knowingly or maliciously disclose confidential information about a student [...]” *Id.*

#### **IV. Findings**

Educator Garner-Harris requested State Board review of the Ethics Subcommittee’s Final Determination and Recommendation based on the following arguments: (1) the Ethics Subcommittee’s finding were based solely on hearsay; (2) the PLSB’s witnesses were biased, lacked credibility, or failed to support the allegations; (3) the Ethics Subcommittee failed to consider a post-hearing motion; and (4) the evidence did not support a finding that Educator Garner-Harris violated Standard 6. As discussed below, the State Board finds Educator Garner-Harris’ objections and arguments without merit.

##### **A. Hearsay**

For her first objection, Educator Garner-Harris argues that the Ethics Subcommittee’s findings were based solely on hearsay. While hearsay is admissible in administrative proceedings, hearsay alone does not constitute substantial evidence. *Woods v. Daniels*, 269 Ark.App. 613, 599 S.W.2d 435, 437 (1980) (“We recognize hearsay to be admissible in hearings before administrative tribunals, but we find

hearsay alone not to be substantial evidence”). However, corroborated and competent hearsay may constitute substantial evidence. *See e.g. Richardson v. Perales*, 402 U.S. 389, 407-408, (1971); *Consol. Edison Co. v. Nat. Lab. Rel. Bd.*, 305 U.S. 197, 230 (1938); *Smith v. Everett*, 637 S.W.2d 537, 538 (Ark. 1982).

At the evidentiary hearing, the Ethics Subcommittee heard testimony from a total of sixteen witnesses. The PLSB witnesses included PLSB Investigator Tara Amuimuia (“Investigator Amuimuia”), Principal Scott Morgan (“Principal Morgan”), Pavia Ewing (“Ewing”), Principal Katherine Snyder (“Principal Snyder”), and Michael Green (“Green”).

Educator Garner-Harris argues that as Investigator Amuimuia, Principal Morgan, Principal Snyder, and Green provided only hearsay testimony, the Ethics Subcommittee’s findings are based solely on hearsay.

While the testimony of Investigator Amuimuia, Principal Morgan, Principal Snyder, and Green did contain hearsay references, their testimony, when considered in conjunction with all the other evidence presented at the evidentiary hearing, was competent, probative, reliable, and corroborated.

As Investigator Amuimuia investigated the ethics complaint, her testimony would naturally primarily consist of hearsay statements. However, Investigator Amuimuia interviewed Educator Garner-Harris with regard to the ethics complaint. Any interview statements attributed to Educator Garner-Harris would not be hearsay.

Principal Morgan, Principal Snyder, and Green each had direct involvement with, or personal knowledge of, the relevant facts and circumstances surrounding Educator Garner-Harris’ case. Principal Morgan and Principal Snyder personally received complaints concerning Educator Garner-Harris from employees, parents, and students. Principal Morgan, Principal Snyder, and Green individually investigated the complaints. Finally, the hearsay testimony provided by these witnesses was corroborated by interview transcripts, letters from concerned parents, written student statements, and the testimony of other witnesses, including Educator Garner-Harris’ own testimony. As such, the nature of the testimony

provided by these witness is distinguishable from the type of testimony received in *Woods v. Daniels*, 269 Ark. App. 613, 599 S.W.2d 435 (1980).

Educator Garner-Harris' argument is without merit as the Ethics Subcommittee's findings were not solely based on hearsay testimony and, furthermore, the hearsay testimony presented at the evidentiary hearing was corroborated, reliable, probative, and competent.

### **B. Credibility**

Outside of hearsay, Educator Garner-Harris argues that the Ethics Subcommittee relied on the testimony of witness who were biased, lacked credibility, or failed to support the allegations. “[C]redibility and the weight of the evidence [are] within the administrative agency’s discretion, and it is the prerogative of the agency to believe or disbelieve any witness and to decide what weight to accord that evidence.” *Ark. Dept. of Human Servs. v. Bixler*, 364 Ark. 292, 219 S.W.3d 125, 132 (2005).

Educator Garner-Harris contends that Principal Morgan, Principal Snyder, Green were either biased or lacked credibility. Educator Garner-Harris also points out that Ewing’s testimony did not support the allegations against her.

A review of the evidentiary hearing testimony and evidence does not indicate that Principal Morgan and Principal Snyder provided testimony that was solely or primarily based on a personal bias against Educator Garner-Harris; nor did the review indicate that Principal Snyder, Principal Morgan, and Green lacked credibility or that the Ethics Subcommittee abused its discretion in finding their testimony credible.

With regard to Ewing’s testimony, the Ethics Subcommittee noted that Ewing’s testimony did not support the allegations against Educator Garner-Harris. However, Ewing’s testimony alone does not outweigh the evidence that did support a finding that Educator Garner-Harris committed the alleged unethical acts.

### **C. Post Evidentiary Hearing Motion**

In her third objection, Educator Garner-Harris asserts that the Ethics Subcommittee improperly failed to consider her post-evidentiary hearing Motion to Receive Statement of Subpoenaed Witness and Other Evidence (“Motion”). The Motion addressed issues concerning a witness, Jonathan Whipps (“Whipps”), whom Educator Garner-Harris had requested to be subpoenaed for the evidentiary hearing and allegations of improper witness conduct by Green.

The State Board finds no irregularities surrounding Educator Garner-Harris’ request for the issuance of a subpoena requiring Whipps to attend the evidentiary hearing. Educator Garner-Harris supplied the address used on the subpoena sent to Whipps by regular and certified mail. Both the regular and certified mail were returned to the PLSB office after the evidentiary hearing. Additionally, according to Educator Garner-Harris’ Brief, Whipps’ testimony would have been that, when he spent time in Educator Garner-Harris’ Western Hills Elementary classroom, he did not witness her abuse students verbally or physically. There is no indication that Whipps had any direct or personal knowledge of the alleged events that occurred at Western Hills Elementary or Washington Elementary School. In other words, Whipps’ would have provided favorable testimony about Educator Garner-Harris’ character; Educator Garner-Harris had at least four favorable character witnesses testify at the evidentiary.

Next, Educator Garner-Harris alleges that Green improperly coached the evidentiary hearing witnesses, including Ewing. A review of the post-hearing Motion and its attachments does not reflect that Green coached witnesses, rather, Green provided witnesses with their respective prior written statements. Furthermore, Green clearly did not coach Ewing as the testimony she provided did not support the allegations against Educator Garner-Harris.

Ultimately, the Ethics Subcommittee is not required to consider evidence proffered after an evidentiary hearing. The Ethics Subcommittee properly considered and denied the post-hearing Motion.

#### **D. Standard 6 Findings**

Finally, Educator Garner-Harris argues that the Ethics Subcommittee erred in finding that she violated Standard 6 of the Code of Ethics. Educator Garner-Harris' argument is based on her contention that she did not reveal confidential information, and even if she did, she could not have reasonably known that the information would be considered confidential.

As correctly noted by the Ethics Subcommittee, a determination on whether unethical conduct occurred was made solely with regard to the allegation that Educator Garner-Harris disclosed confidential information in contravention of Standard 6; whether Educator Garner-Harris appropriately utilized class time was not at issue.

When testifying at the evidentiary hearing, Educator Garner-Harris stated that she placed the call to DHS. She inadvertently ended up calling the ADE. Educator Garner-Harris testified that the student's classmates learned of the student's tardiness as a result of her truancy call to DHS. According to Educator Garner-Harris, she placed the call in an attempt to diffuse a power struggle between herself and a student, teach the student that people are not irrelevant, and deal with the student's disrespectful behavior. These proffered reasons, which indicate some maliciousness on Educator Garner-Harris' part, do not justify disclosing a student's truancy record in the presence of the student's classmates.

Under the Family Educational Rights and Privacy Act (FERPA), a student's attendance records are confidential unless appropriately designated as directory information. 20 U.S.C. § 1232g. The evidentiary hearing record is devoid of any evidence suggesting that the Little Rock School District designated attendance records as directory information. Rather, the Little Rock School District had policies and procedures concerning student attendance and limiting the method by which information pertaining to a student's absenteeism or tardiness could be disclosed. As pointed out by the Ethics Subcommittee, placing a truancy call to DHS in the presence of a student's peers did not fall within the parameters of the Little Rock School District's policies and procedures. As a teacher employed with the Little Rock School District, Educator Garner-Harris could and should have reasonably known that a student's attendance records, concerning truancy and absenteeism, were confidential.



The State Board finds that the preponderance of the evidence supports a finding that Educator Garner-Harris violated Standards 1 and 6 of the Code of Ethics.

**V. Conclusion and Sanctions**

During the regular session, the State Board moved, seconded, and unanimously voted in favor of upholding the Ethics Subcommittee's evidentiary hearing findings and recommended sanction. The State Board hereby orders the suspension of Educator Garner-Harris' license for three (3) years, assesses a one-hundred dollar (\$100.00) fine, and requires Educator Garner-Harris to complete the following professional development by the end of her licensure suspension period:

- a. ArkansasIDEAS, Number CID 1001366(11)-ASCD: Classroom Management: Building Effective Relationships;
- b. ArkansasIDEAS, Number CID 1000265(1b)-Annenberg Media: The Learning Classroom: Feelings Count;
- c. ArkansasIDEAS, Number CID 1001186(2d)-ASCD: Classroom Management: Managing Challenging Behavior; and
- d. Reading *A Framework for Understanding Poverty* by Ruby K. Payne, Ph.D. and providing the PLSB office with a written reflection on the book and its impact on her teaching practices.

Educator Garner-Harris shall bear the responsibility for paying all costs associated with the ordered professional development.

IT IS SO ORDERED.



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Toyce Newton, Chair  
Arkansas State Board of Education

8/13/15  
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Date