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*Virginia Ramsey*  
Virginia Ramsey, Legal Assistant

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

DIONNE V. COWAN,

Petitioner,

v.

PROFESSIONAL STANDARDS  
COMMISSION,

Respondent.

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Docket Number: OSAH-PSC-SAN-1311693-  
60-Schroer

**FINAL DECISION**

**I. INTRODUCTION**

Respondent Georgia Professional Standards Commission (hereinafter “Commission” or “PSC”) asserts that Petitioner Dionne V. Cowan violated Standard 10 (Professional Conduct) of the Georgia Educator’s Code of Ethics when she resigned her post as principal of the Ivy Preparatory Academy at Kirkwood for Boys (“Ivy Prep for Boys”) with only five days’ notice. The PSC seeks to suspend Cowan’s teaching certificate for 90 contract days. Cowan appealed the Commission’s determination to the Office of State Administrative Hearings (“OSAH”), and a hearing was held on October 31, 2012 pursuant O.C.G.A. §§ 20-2-984.5 and 50-13-13. Cowan was represented by Vickie Y. Wiggins, Esq., and the Commission was represented by Assistant Attorney General Jennifer Colangelo. The Calendar Clerk received the hearing transcript on or about November 21, 2012, at which time the record closed.

After careful consideration of all the evidence of record in this case, and based upon a preponderance of evidence, the Court makes the following findings of fact, legal conclusions, and decision.

## II. FINDINGS OF FACTS

### A. Background

1.

Cowan holds an educator's certificate in the State of Georgia and held such certificate at all times relevant to this matter. (Statement of Matters Asserted, ¶ 1; Answer ¶ 1)

2.

Cowan has been an educator for thirteen years, including experience as a classroom teacher, an educator of educators, and an administrator. From January 2010 to the start of her tenure as principal at Ivy Prep for Boys in the summer of 2011, Cowan was a math teacher at the Gwinnet Ivy Preparatory Charter School ("Ivy Prep Gwinnett"). (Tr. 163, 166-167, 193.)

3.

Ivy Prep Gwinnet is a charter school formed in 2008. After its formation, Ivy Prep Gwinnet was the subject of litigation regarding the constitutionality of the 2008 Georgia Charter Schools Commission Act, O.C.G.A. § 20-2-2081 *et seq.* The Supreme Court's May 2011 ruling in that case<sup>1</sup> caused Peachtree Hope Charter School, a school in DeKalb County, to close "almost overnight." Ivy Prep Gwinnett, which had been interested in opening an additional campus in DeKalb County, saw an opportunity in the now vacant Peachtree Hope Charter School building, and submitted a petition to open a girls' academy and a boys' academy in that location. In a somewhat whirlwind process during the summer of 2011, Ivy Prep Gwinnett received approval from the State to open

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<sup>1</sup> Gwinnett County Sch. Dist. v. Cox, 289 Ga. 265 (2011).

two new charter schools in DeKalb County – Ivy Prep Academy at Kirkwood for Girls (“Ivy Prep for Girls”) and Ivy Prep for Boys. (Tr. 59-62.)

4.

Ivy Prep Gwinnett is considered the “flagship” of the three Ivy Prep schools. Nina Gilbert is the Executive Director of Ivy Prep Gwinnett, and is also the Executive Director of Ivy Prep for Boys and Ivy Prep for Girls. As Executive Director, Gilbert oversees the three Ivy Prep charter schools and reports to the Ivy Prep Governing Board. Although the Board has ultimate responsibility for the three schools, the evidence in the record shows that Gilbert exercised control over almost every facet of the schools’ operations and management, including hiring of personnel and finances.<sup>2</sup> In August 2011, Gilbert hired Cowan as principal of Ivy Prep for Boys and Dr. Latasha Jones as principal for Ivy Prep for Girls. (Tr. 30-31, 59-62, 92-93.)

**B. Start-Up of Ivy Prep for Boys**

5.

Because Ivy Prep for Boys had been granted its charter on short notice, the start-up of the school was understandably rushed. Much of the organizational structure of the school, including the responsibilities and authority of the principal vis-à-vis the Executive Director, was ill-defined. In addition, Ivy Prep for Boys did not have a finalized budget for at least the first half of the school year. Rather, Ivy Prep for Boys operated under a

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<sup>2</sup> During the administrative hearing, Gilbert referred to Ivy Prep for Boys as “my boys’ school” and Ivy Prep for Girls as “my girls’ school.” (Tr. 19, 26)

draft budget that was dependent on the school obtaining a federal implementation grant to help cover some of its start-up costs.<sup>3</sup> (Tr. 30, 63-65, 87-88.)

6.

One of the budget items that remained in flux was the salaries for teachers and administrators. Cowan agreed to accept the job as principal of Ivy Prep for Boys with the understanding that her salary, which was low for a principal, would be raised if the implementation grant was approved.<sup>4</sup> Conversely, if the implementation grant was not approved, Cowan understood that her salary and the salaries of her teachers might be cut. Although Gilbert denied telling Cowan and Jones that their salaries would be raised after the approval of the implementation grant – admitting only that she “believed that their salaries should be adjusted at some point” – the Court does not find her testimony on this issue to be credible. Rather, the Court credits the testimony of both Cowan and Jones that Gilbert specifically told them that their salaries would increase after the implementation grants were approved. (Tr. 45-46, 101-05, 172-73, 181.)

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<sup>3</sup> Gilbert took the lead in drafting the implementation grant applications for both Ivy Prep for Girls and Ivy Prep for Boys. Although she solicited input from Cowan and Jones regarding what they wanted to include in the applications, the evidence shows that neither principal was meaningfully involved in preparing the grant applications or the proposed budgets for their schools. (Tr. 23-24, 37-38, 96-97; Exs. P-2, P-6.)

<sup>4</sup> Cowan’s starting salary as principal of Ivy Prep for Boys, which is a twelve-month position, was \$65,000.00 per year. Her salary as a teacher at Ivy Prep Gwinnett, a ten-month position, was \$55,000.00 per year. Cowan calculated that she was making less on a per month basis as principal than she did as a teacher. In addition, when Gilbert served as principal for Ivy Prep Gwinnett, her salary was \$85,000.00 per year. (Tr. 20-21, 90, 175.)

7.

All the employees of the Ivy Prep schools, including Cowan, were at-will employees. In fact, the educators at the Ivy Prep schools were required to sign an Educator's Code of Ethics that explicitly stated that they were "exempt" from PSC Standard 8 on Abandonment of Contract<sup>5</sup> because they were "not under contract." Cowan, who had worked pursuant to an employment contract in all her previous jobs as an educator prior to joining the Ivy Prep schools, was keenly aware of her status as an at-will employee. In fact, she attended a roundtable discussion on December 7, 2011 at the Georgia State Capitol, during which Gilbert stated that the decision to make all Ivy Prep employees at-will was an asset of their charter school model because it permitted her to fire any employee who was not "performing appropriately." (Tr. 58, 95, 142, 166, 185-186, 193; Ex. P-8.)

**C. Implementation Grant**

8.

The State Board of Education awarded Ivy Prep for Boys and Ivy Prep for Girls federal implementation grants on November 9, 2011. Shortly thereafter, on November 14, 2011, Gilbert sent an email to both principals alerting them that "[b]oth [their] schools were approved for a whopping \$575,000 in Implementation Grant Funds." She cautioned that she wanted to speak with them before they made any purchases because

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<sup>5</sup> Standard 8 of the Code of Ethics for Educators provides that an educator "shall fulfill all of the terms and obligations detailed in the contract with the local board of education or education agency for the duration of the contract." Ga. Comp. R. & Regs. r. 505-6-.01(3)(h). Standard 8 defines unethical conduct to include "abandoning the contract for professional services without prior release from the contract by the employer." Id.

any expenditures would have to be in alignment with those set out in the budget she had submitted to the State, especially as “[t]hey are meticulous about ensuring the grant is spent as we proposed.” She also stated that the schools’ budgets would be revised to reflect the grant.<sup>6</sup> (Exs. P-1, P-3.)

9.

Contrary to Gilbert’s statements to Jones and Cowan when they accepted their jobs as principals, Gilbert now told Cowan and Jones that they would not be receiving raises despite the approval of grant funding. She explained that the grant money would not free up enough funds to increase their salaries and that the grant money could not be used directly for their salaries. Both principals understood this to be a result of Gilbert’s unilateral decision not to include salaries as a line item in the proposed implementation grant budgets. When they approached Gilbert regarding their salaries on or about November 14, 2011, her reaction was hostile. In fact, Cowan was taken aback by Gilbert’s tone and manner and felt that the discussion permanently damaged their professional relationship. (Ex. P-1; Tr. 21, 101-105, 172-173.)

**D. Gilbert’s Control of School Finances**

10.

Even though the application Gilbert submitted for the implementation grant indicated that the principal of Ivy Prep for Boys was responsible for preparing a school budget and for managing the “day-to-day operations and site-based finances, including

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<sup>6</sup> Cowan also received a letter from the Department of Education (“DOE”), establishing the parameters of the grant and listing various requirements, such as the alignment of final budgets with the budget submitted as part of the application. Deviations from the budget would have to be approved by DOE and could not change the goals or objectives established in the application materials. (Ex. P-3.)

expenditures and receivables,” the evidence at the hearing showed that Gilbert claimed and exerted considerable control over the budget and expenditures for Ivy Prep for Boys. Gilbert testified that she had the authority to “negotiate or secure” expenditures on behalf of the school because it was her job to make sure the school was functional. She also explained that she shared responsibility for finances with the principals because she was the executive director. However, Gilbert contradicted herself when she later testified that “[t]he board does not spend money. I don’t spend money.” Rather, she testified that her role was to make recommendations to the principals about what is needed. (Tr. 34-37, 48-50, 66.)

11.

The Court finds that Gilbert did, in fact, spend money on behalf of Ivy Prep for Boys and did so without consulting Cowan. Specifically, prior to receiving the implementation grant and without getting Cowan’s approval, Gilbert ordered signs for the two new schools to replace the old Peachtree Hope Charter School signs. At the hearing, Gilbert admitted that she authorized the purchase of the signs, stating that she “doesn’t have to get permission from the principals to make sure we have signage for the building.”<sup>7</sup> The total cost of the signs was \$12,000.00. Cowan testified at the hearing that although the new signs were “pretty,” she believed that \$12,000.00 was an exorbitant amount to spend on signage when the school was struggling to afford the basics, such as instructional materials and teacher salaries. When Cowan and Jones were presented with the invoices for the signs, they refused to sign off on the purchases. (Tr. 66-67, 181-82, 191-92, 194, 209-10.)

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<sup>7</sup> The Ivy Prep Governing Board president, Monica Teasley, also testified that Gilbert had the authority to spend money on signs. (Tr. 147)

12.

Notwithstanding that the decision to purchase the signs was Gilbert's alone, the evidence in the record shows that Gilbert intended to hold the principals responsible for the imbalance in the budget due to the excessive cost of the signs. Kimberly Filer (née Parker), an employee of Academica, an independent school support management organization, testified at the hearing that she discussed the issue of the signs with Gilbert. According to Filer, whom the Court found to be a very credible witness, Gilbert expressed that "as the executive director over the Ivy Prep network ... she didn't have to discuss budget issues with [the principals]; that she had the authorization to go into purchases if she decided to." Nevertheless, "in the end [Gilbert] still held the principals responsible for the budget." (Tr. 199-200, 209-10.)

**E. December 6th Meeting**

13.

On December 6, 2011, Gilbert held a meeting on the use of the implementation grant funds. In attendance were Cowan and Jones, as well as Angelia Howell, the Ivy Prep controller, and Filer, who had already received training for the State on the appropriate use of grant funds. At the meeting, Gilbert discussed the possibility of using the award to benefit the Ivy Prep Gwinnett campus, which was struggling financially. She ran through several scenarios for enabling Ivy Prep Gwinnett to benefit from the grant, but each was struck down by Filer. Filer made clear at the meeting that using the funds for any organization other than the schools to which they were directly awarded would be illegal. The others present shared this understanding and were noticeably taken aback by Gilbert's proposals. At the hearing, Cowan testified that she did not "trust Ms.



Gilbert to not try something underhanded” with the grant money.<sup>8</sup> (Tr. 99-100, 110-14, 140-41, 182-184, 186, 198, 201, 204-208.)

14.

The above discussion alarmed Cowan and Jones. Cowan considered Gilbert’s proposals to be unethical, and she was concerned because there was “not a clear system of accountability in place that provides for checks and balances.” She testified that she was afraid of the damage to her professional reputation if she were associated with any illegal use of grant funds, especially in light of the recent Atlanta Public School scandal, which, in Ms. Cowan’s words, “[highlighted] the accountability of educators.” (Tr. 115-118, 186-187; Ex. P-4.)

**F. Resignation**

15.

Based on her concerns regarding the possible improper use of the grant funds, as well as other concerns, Cowan decided that she could no longer continue as principal of Ivy Prep for Boys. On Friday, December 30, 2011, both Cowan and Jones resigned their posts. In doing so, they provided almost identical letters to the Board. Cowan’s letter listed two overarching reasons for her resignation. The first reason for resigning was due to “[i]nadequate and inappropriate discussions, conversations and communications concerning Principal (or administrative) salary.” The second reason for Cowan’s resignation involved the “[u]nethical discussion of how to utilize Implementation Grant money (\$575,000) awarded to Ivy Preparatory Academy at Kirkwood for Boys,”

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<sup>8</sup> Gilbert was concerned for the financial viability of the Gwinnett flagship campus, of which she was the founder and former principal. In fact, Gilbert frequently raised the issue of financial concerns at the Gwinnett campus at Ivy Prep Governing Board meetings, which Cowan and Jones attended. (Tr. 100, 158)

especially given the confusion surrounding responsibility for making financial decisions.<sup>9</sup> Further, her letter stated that “[i]n the absence of a clear-cut system and in light of the school being awarded the Implementation Grant, I am not comfortable with the system that is in practice.” (Tr. 26, 31-33; Ex. P-4.)

16.

Based on a preponderance of the evidence, the Court finds that Cowan’s decision to resign was triggered primarily by her concerns about being held responsible for financial decisions that she believed to be unwise or unethical. Her dissatisfaction over her low salary was only a secondary concern. Cowan credibly testified that by the December 6 meeting, she knew that her salary was not going to increase as promised and, despite that knowledge, she had made the decision to stay at Ivy Prep for Boys. It was not until after the discussions of how the grant money might be used to benefit Ivy Prep Gwinnett that Cowan decided that she should resign. (Tr. 198; Ex.P-4.)

17.

Cowan and Jones coordinated their resignations, informing both the Board and Gilbert of their decisions by email on Friday, December 30, 2011. December 30 was one of the last days of the school winter vacation, which began approximately two weeks earlier. The Monday following their resignations was January 2, a school holiday; the

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<sup>9</sup> In her letter, Cowan elaborated on her concerns over the lack of defined responsibility for the school’s finances. She pointed out that the implementation grant stated that “the Principal will manage the day-to-day operations and site-based finances, including expenditures and receivables. This is stated but this is not the normal practice. For example, Mrs. Gilbert authorized signage purchases for the school, *totaling \$12,000*. As the building Principal I was unaware of the amount until I was shown the invoices later. My question still remains, ‘Who is responsible for this purchase?’” (Ex. R-3.)

Tuesday was a teacher workday; and the Wednesday was the first day of school for the students. Thus, there was approximately five calendar days for Gilbert to arrange for replacements. (Tr. 188-189.)

18.

Cowan decided to notify the Board of her resignation on December 30 for a variety of reasons. First, Cowan “didn’t want to start the new school year because [she] knew that’s when the money would start to be spent linked to the grant.” Second, it appears that due to the increasingly hostile relationship between both principals and Gilbert and, in consideration of Gilbert’s management style, neither wished to give too much advance notice of their plans to resign. Nevertheless, Cowan testified that had she known of Gilbert’s unwritten (and unstated) expectation that two weeks’ notice be given prior to leaving, she would have given that much notice. But, as it was, there was never a stated expectation that any advance notice need be given. Rather, Cowan was guided by the repeated reminders that Ivy Prep employees were all at-will employees and, thus, not protected or bound by an employment contract. (Tr. 135, 139, 146, 186-87, 191, 198.)

**G. Absence of School Disruption**

19.

Prior to resigning, Cowan and Jones spent a considerable amount of time preparing their offices for their successors. Cowan testified that she spent the two weeks of vacation to “make sure files were left in order, organizing things, left a very detailed notebook for the principal, whoever was going to be coming after me.” In addition, there was a Dean of Students, Sherry Miller, who occupied a role similar to that of an assistant principal, to assist in the transition. (Tr. 121-122, 187-190.)

20.

As discussed above, the schools had five days to prepare for the return of the students following the dual resignations. Gilbert testified that the resignations were very disruptive. Yet when asked for details, she could not identify how any disruption went beyond what would have occurred had Cowan provided two weeks' notice, except perhaps that she might have been able to do a more thorough search for principal candidates. As it was, she hired Donnie Davis to replace Cowan and Katie Ladore to replace Jones. Both new principals had occupied other positions at the school and were familiar with its operations, personnel and students. (Tr. 74, 122, 187-89.)

21.

At most, the resignation may have left some teachers "in the lurch" because they no longer had guidance on projects they had been working on in conjunction with the principals. Again, this type of disruption was one that would likely have occurred even if Cowan had given two weeks' notice. Moreover, Gilbert admitted there was little concrete disruption to the students, whom she cannot recall seeing upset. According to Gilbert, "I think it caused more of an adult disruption and issues with my staff than maybe our students. They're a little more resilient." In fact, the only disruption Gilbert was able to pinpoint resulting from Cowan's abrupt departure was a vague sense of a "disruptive climate," that may have had more to do with "how I felt about my principals leaving and not having any real understanding why." (Tr. 25-29, 68, 73-74.)

22.

Finally, the evidence shows that Ivy Prep for Boys did not have a written or unwritten policy regarding the minimum amount of notice an educator had to provide before leaving employment. Gilbert acknowledged that as an at-will employee, Cowan could quit her job as principal for any reason. According to Gilbert, she considered “standard professional courtesy and conduct” to be about two weeks’ notice. However, she also testified that when she had to “release” an employee, she gave the employee notice of “a week or two weeks.” (Tr. 68-69.)

### **III. CONCLUSIONS OF LAW**

The Commission asserts that it is authorized to suspend Cowan’s educator’s certificate on the grounds that she engaged in unethical conduct by violating Standard 10 (Professional Conduct) of the Code of Ethics for Educators. (Statement of Matters Asserted, ¶¶ 2, 7, 8)

1.

Pursuant to OSAH Rule 7, the Commission bears the burden of proof. GA. COMP. R. & REGS. r. 616-1-2-.07(1)(c) (2008). OSAH Rule 21 provides that the standard of proof is preponderance of the evidence. GA. COMP. R. & REGS. r. 616-1-2-.21(4).

2.

The Commission has adopted the Code of Ethics for Educators that sets forth the ethical standards for educators in Georgia. See GA. COMP. R. & REGS. r. 505-6-.01(3). If an educator violates the Code of Ethics, disciplinary sanctions may include revocation or suspension of a certificate, reprimand, warning or monitoring. GA. COMP. R. & REGS. r. 505-6-.01 and O.C.G.A. 20-2-984.5.

3.

The Commission asserts that Cowan violated Standard 10 of the Code of Ethics for Educators, which states in relevant part:

(j) **Standard 10: Professional Conduct** - An educator should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that impairs the certificate holder's ability to function professionally in his or her employment position or a pattern of 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).

4.

First, in order to prove that an educator's conduct violates "generally recognized professional standard[s]," the Commission must bring forth some evidence regarding the professional standard that the educator is charged with violating and show that such standard is generally accepted by Georgia educators. Ga. Comp. R. & Regs. r. 505-6-.01(1). See Prof'l Standards Comm'n v. Alberson, 273 Ga. App. 1, 9 (2005) (regulation must give the individual "due notice that it prohibited the conduct" for which the professional sanction is imposed.) In this case, the Commission asserts that two weeks' notice is a mandatory professional standard for all educators, even those without written employment contracts. However, this assertion is unsupported by the probative evidence in the record. The Commission presented no evidence regarding what the general standard in the profession was regarding the amount of notice an educator must give before resigning. Moreover, the Commission presented no evidence regarding whether such professional standard changed depending on the educator's position, the reason for the resignation, or the contractual relationship between the educator and the school. Instead, the only evidence presented by the Commission on this issue was the testimony

of the aggrieved employer and PSC complainant, who offered her personal opinion that professional “courtesy” called for one to two weeks’ notice.

5.

On the other hand, Cowan presented evidence that she and all Ivy Prep for Boys employees signed an Educator’s Code of Ethics that specifically exempted them from Standard 8’s abandonment of contract provisions because they were at-will employees. Moreover, based on the findings of facts above, the Court concludes that Cowan, who had previously worked under a written employment contract as an educator in Georgia schools, was unaware of an unwritten minimum notice requirement for at-will employees in general or at Ivy Prep for Boys in particular. Rather, Cowan believed, correctly as it turns out, that she had no legal requirement as an at-will employee to give her employer advanced notice prior to resigning. O.C.G.A. § 34-7-1 (“An indefinite hiring may be terminated at will by either party.”). See generally Brathwaite v. Fulton-DeKalb Hosp. Auth., 317 Ga. App. 111, 118 n.1 (2012) (an employee handbook that stated that an employee is free to resign at any time for any reason and that the employer has the right to terminate the employee at any time with or without cause or notice “clearly sets forth an at-will employment relationship”) (citation omitted).

6.

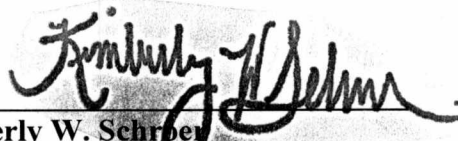
Although there may be circumstances under which an educator is held to a higher professional standard in timing a resignation than the baseline mandated by the law, there is no evidence in the record to support doing so in this case. The Commission may have been able to make a *prima face* showing of unprofessional conduct had it presented probative, unbiased evidence to prove (1) that there was consensus among professional

educators in Georgia that five days' notice of resignation by an at-will employee is unprofessional and (2) that Cowan knew or should have known about this professional standard. As the record is devoid of such evidence, the Court concludes that the Commission has failed to meet its burden that Cowan violated Standard 10 of the Code of Ethics for Educators by resigning her post at Ivy Prep for Boys with five days' notice. Even assuming *arguendo* that the Commission had presented sufficient evidence to prove such a consensus, the specific facts in this case – namely, Cowan's genuine concern that, had she remained, she would be held accountable for improper financial decisions, her careful preparation for her departure, and the lack of evidence of harm to students<sup>10</sup> from Cowan's five days' (versus two weeks') notice – would compel a conclusion that the timing of Cowan's resignation was not unprofessional and did not violate Standard 10.

#### **IV. DECISION**

In accordance with the foregoing findings of fact and conclusions of law, the Court concludes that Dionne Cowan did not violate Standard 10 of the Code of Ethics for Educators, and her educator's certificate is not subject to disciplinary sanction.

**SO ORDERED THIS 21<sup>st</sup> day of December, 2012.**



**Kimberly W. Schreiber**  
**Administrative Law Judge**

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<sup>10</sup> The Court notes that the Commission has not proven a single incidence of behavior or conduct that was detrimental to the health, welfare, discipline, or morals of students, much less a "pattern" as required in Standard 10. Ga. Comp. R. & Regs. R. 505-6-.01(3)(j); Prof'l Standards Comm'n v. Peterson, 284 Ga. App. 424, 428 (2007).