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Virginia Ramsey
Virginia Ramsey, Legal Assistant

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

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|------------------------|---|--------------------------|
| Petitioner, | : | |
| | : | Docket No.: OSAH-PSC-SAN |
| v. | : | 121-Howells |
| | : | |
| PROFESSIONAL STANDARDS | : | Agency Reference No.: |
| COMMISSION, | : | |
| Respondent. | : | |

FINAL DECISION

Petitioner ("Petitioner") appeals the decision of the Professional Standards Commission ("Commission" or "Respondent") to sanction her teaching certificate. The hearing in this matter was held on January 9, 2013. John Long, Esq. represented Petitioner at the hearing. The Commission was represented by Allen Lightcap, Assistant Attorney General. For the reasons stated below, the Commission's decision to sanction Petitioner's teaching certificate is **AFFIRMED**.

Findings of Fact

1.

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

2.

Petitioner has been a teacher for approximately nine years. Between 2003 and 2010, Petitioner taught within the _____ County School System.¹ In the spring of 2009, Petitioner was employed as a sixth grade math teacher at _____ County Middle School. (Tr. 15, 92; Statement of Matters Asserted at ¶ 2; Answer at ¶ 2.)

¹ Petitioner currently teaches in _____ (Tr. 92.)

3.

Petitioner administered the Criterion Referenced Competency Test ("CRCT") to her homeroom class in the spring of 2009. She attended the training session for administering the CRCT on April 14, 2009. (Tr. 51, 92; Ex. J-2.)

4.

In the CRCT training, the Test Examiner's Manual ("Manual") is reviewed. Among other things, the Manual states that the test administrator "may clarify directions; however, under no circumstances should [the administrator] reword test items, suggest answers, or evaluate student work during the test session." (Ex. J-1; Tr. 18-19.)

5.

During her administration of the test, when Petitioner noticed that a student had answered a particular question incorrectly, she would either tell the student to go back and review the question or check his or her work. Alternatively, she would tap the desk, make a facial expression and shake her head.² Petitioner did not; however, give any students the correct answers. (Tr. 44-45, 49, 52-53.)

6.

_____ was the principal of _____ County Middle School, in the spring of 2009. She did not learn of any testing irregularities concerning the 2009 CRCT until she attended a system level planning meeting, in 2010, at the school board office. It was at that meeting that she learned about a state-wide erasure audit that had been conducted. Two classrooms at her school were flagged for a high number of wrong-to-right erasures. Petitioner's classroom was one of the two that was flagged. (Tr. 15-17.)

² During the school year, while taking math tests, students in Petitioner's class observed Petitioner tap on the desk and sometimes make a noise such as "mmmmmm" to indicate that their answer to one of the questions was incorrect. (Tr. 56, 66.)

7.

is the in-house general counsel for the _____ County School System. Subsequent to the state-wide audit of the spring 2009 CRCT, the superintendent asked Mr. _____ to interview the teachers of the classes that received a statistically significant number of wrong-to-right erasures. During the interview, Petitioner admitted that when she noticed students with wrong answers, she would tell that particular student to go back and review the question. She specifically acknowledged that she coached students who she knew had wrong answers.³ (Tr. 40-45.)

8.

After the investigation, the superintendent provided Principal _____ with a template memo to issue to Petitioner. In the memo, Petitioner is reminded that testing violations are not to be taken lightly. Additionally, the memo states that a proctor would be assigned to Petitioner's class for the 2010 CRCT. Other than issuing the memo, the school district took no disciplinary action against Petitioner. (Tr. 26-27, 32-33, 48.)

9.

Principal _____ opined that violating CRCT guidelines harms the students. Specifically, it may alter a student's score in such a way that it gives a false indication of what the student has mastered. (Tr. 21.)

³ At the hearing, Petitioner denied tapping on any student's desk, making facial expressions, or telling any particular student to review a question or check his or her work. She further denied telling Mr. _____ that she assisted particular students. (Tr. 98-102.) Petitioner asserts that she told the class as a whole to "please check your work." However, Petitioner admitted that the school was on the "needs improvement list," and that it was a very important year for CRCT test results. (Tr. 100-101.) Given Petitioner's interest in protecting her teaching certificate, the admitted importance of the 2009 CRCT test results, and the lack of a clear motive for Mr. _____ or the students to fabricate facts, the undersigned found their accounts of Petitioner's actions and statements to be more credible than Petitioner's account.

Conclusions of Law

1.

Respondent seeks to sanction Petitioner's teaching certificate. Therefore, Respondent bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21.

2.

Respondent alleges that Petitioner violated two provisions of the Code of Ethics for Educators. Specifically, Respondent alleges that Petitioner's actions and statements during her administration of the spring 2009 CRCT violated Commission Rules 505-6-.01(3)(g) [Standard 7: Confidential Information] and 505-6-.01(3)(j) [Standard 10: Professional Conduct].

3.

"The Code of Ethics for Educators defines the professional behavior of educators in Georgia and serves as a guide to ethical conduct." Ga. Comp. R. & Regs. r. 505-6-.01. Furthermore, the Code of Ethics for Educators defines unethical conduct which justifies disciplinary action against educators. *Id.*

4.

Respondent argued that, when Petitioner indicated to certain students that their answers were incorrect, by tapping on desks, making facial expressions, or telling specific students to review their work, she was evaluating student work during the administration of the CRCT, in violation of CRCT testing procedures. Respondent further argued that by violating CRCT testing procedures, Petitioner violated Standard 7 of the Code of Ethics for Educators, which provided:

Confidential Information - An educator should comply with state and federal laws and local school board policies relating to the confidentiality of student and

personnel records[,] standardized test material and other information covered by confidentiality agreements. Unethical conduct includes but is not limited to:

1. sharing of confidential information concerning student academic and disciplinary records, personal confidences, health and medical information, family status and/or income, and assessment/testing results unless disclosure is required or permitted by law;
2. sharing of confidential information restricted by state or federal law;
3. violation of confidentiality agreements related to standardized testing including copying or teaching identified test items, publishing or distributing test items or answers, discussing test items, violating local school system or state directions for the use of tests or test items, etc.;
4. violation of other confidentiality agreements required by state or local policy.

Ga. Comp. R. & Regs. r. 505-6-.01(3)(g). Respondent relies on subpart 3 of Standard 7. However, Respondent's argument ignores, in part, the fact that the whole of Standard 7 relates to the disclosure of confidential information. The heading, the body, and every subpart of the rule reference confidential information or confidentiality agreements. Subpart 3 of Standard 7, begins with the qualifying clause: "violation of confidentiality agreements related to standardized testing." Thereafter, it lists examples of actions that would be considered a violation of confidentiality agreements related to standardized testing.

5.

Here, there is no evidence that Petitioner provided any students with the correct answers or disclosed any confidential information contained in the CRCT. Further, there is no evidence that she copied or taught test items, published or distributed test items or answers, or that she violated local school system or state directions for the *use* of tests or test items.

6.

Petitioner's actions during administration of CRCT were a violation of testing procedures. However, Respondent failed to prove that she disclosed any confidential information or violated any confidentiality agreements. Although this case involves the

interpretation of an agency rule, the following rules of statutory construction are apt: (1) courts must seek “to give meaning to each part of the [rule] and to avoid constructions which render a portion of the [rule] mere surplusage;” and (2) “a [rule] . . . should be construed to make all its parts harmonize and to give a sensible and intelligent effect to each part, as it is not presumed that the [agency] intended that any part would be without meaning.” *City of Buchanan v. Pope*, 222 Ga. App. 716, 717 (1996). To adopt Respondent’s construction of Standard 7 (i.e., that any violation of school system directions related to standardized testing is a violation of Standard 7) would make the initial clause in subpart 3 mere surplusage and without meaning.⁴ Accordingly, Respondent failed to establish a violation of Standard 7 of The Code of Ethics.⁵

7.

Respondent further argued that Petitioner’s actions were a violation of Standard 10 of the Code of Ethics for Educators. Standard 10, in place at the time of the alleged conduct, stated:

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).

8.

Petitioner’s actions during the spring 2009 CRCT did violate Standard 10 of the Code of Ethics for Educators. The teachers administering the CRCT at _____ County Middle School were trained that that they were not allowed to reword test items, suggest answers, or evaluate student work during the test. Petitioner violated the testing procedures when she indicated to

⁴ The undersigned notes that Respondent amended the Code of Ethics for Educators in 2009 to include a standard that directly addresses testing security and integrity. See Ga. Comp. R. & Regs. 505-6-.01(3)(k) (2012). The new standard was not in place at the time of the spring 2009 CRCT. See Ga. Comp. R. & Regs. 505-6-.01(3) (2005).

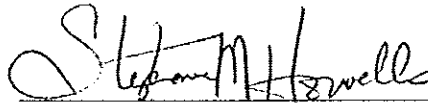
⁵ It should be noted that this Tribunal does not condone Petitioner’s behavior. Rather, it simply finds that such conduct did not amount to disclosure of confidential information in violation of Standard 7.

certain students that the answer the student chose for a particular question was incorrect. By doing so, she narrowed the choice of answers and increased the likelihood that the student would choose the correct answer. Petitioner's actions likely caused certain student's scores to be higher than what they would have achieved on their own and thereby gave a false indication of what the student had mastered. Such conduct is detrimental to the welfare of students.

Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Commission's decision to sanction Petitioner's teaching certificate is hereby **AFFIRMED**. Petitioner's teaching certificate is hereby suspended for one (1) year.

SO ORDERED, this 7th day of February, 2013.



STEPHANIE M. HOWELLS
Administrative Law Judge