

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

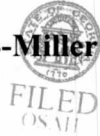
THOMAS WILLIS,
Educator/Petitioner,

v.

**PROFESSIONAL STANDARDS
COMMISSION,**
Respondent.

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Docket No.:
OSAH-PSC-SAN-1322137-114-Miller



FEB 20 2013

Virginia Ramsey
Virginia Ramsey, Legal Assistant

FINAL DECISION

I. Introduction

The hearing in this matter was held on January 28, 2013,¹ pursuant to O.C.G.A. §§ 20-2-984.5(d), 50-13-41, and 50-13-13, before the undersigned administrative law judge of the Office of State Administrative Hearings. The hearing's purpose was to determine whether the Petitioner's Georgia teaching certificate should be sanctioned on the grounds set forth in the Statement of Matters Asserted. The Petitioner, Thomas Willis, was represented by Charles E. Cox, Jr., Esq. The Respondent, the Professional Standards Commission ("Commission"), was represented by Allen Lightcap, Assistant Attorney General.

After consideration of the evidence and the arguments of the parties, the Commission's decision to sanction the Petitioner's Georgia teaching certificate is **REVERSED**.

II. Findings of Fact

1.

The Petitioner holds a certificate to teach in the State of Georgia, and he held a teaching certificate at all times relevant to this proceeding. (Statement of Matters Asserted ("Matters Asserted"), ¶ 1; Response to Statement of Matters Asserted ("Answer"), ¶ 1.)

¹ The record closed on February 13, 2013, following receipt of the hearing transcript.

2.

During the 2009-10 school year, the Petitioner was employed as a teacher at New Directions Alternative School (“New Directions”), part of the Meriwether County Public Schools. New Directions served both middle and high school students who had been removed from their regular classroom environment due to disciplinary infractions.² Because students were assigned to New Directions for varying periods of time, overall enrollment ranged from fifteen to seventy-five students. (Matters Asserted, ¶ 2; Answer, ¶ 2; T. 32, 78-80.)

3.

New Directions employed four staff members, in addition to the Petitioner, for the 2009-10 school year: Sherman Bonds, the school’s administrative director and social studies teacher; Carolyn Denson, the language arts teacher; Jeannette Dunham, a paraprofessional; and Vanessa Clemmons, the school secretary. The Petitioner, who taught math and science, also served as the school testing coordinator. (Matters Asserted, ¶ 2; Answer, ¶ 2; T. 33, 78.)

4.

As the testing coordinator for New Directions, the Petitioner was responsible for overseeing the administration of standardized tests, including the Criterion-Referenced Competency Tests (“CRCT”), the End of Course Tests (“EOCT”), and the Georgia High School Graduation Tests (“GHS GT”). The Georgia Department of Education (“GaDOE”) has established security measures to safeguard the contents of these tests and ensure the validity of the test results. (T. 31-32, 75-77; Exhibits J-1, J-2.)

² The school closed at the conclusion of the 2009-10 school year. (T. 81.)

5.

John Stevens was the testing coordinator for the Meriwether County Public Schools during the 2009-10 school year. In that capacity, Mr. Stevens was responsible for distributing secure test materials to each school in the district, collecting the materials after the test, and returning the materials to GaDOE. He also provided training to the testing coordinators at the district's individual schools. Mr. Stevens received his own training regarding test security and administration from GaDOE personnel. The school testing coordinators received their training from Mr. Stevens. (T. 37-39, 48-49; Exhibit J-2 at 14-18.)

6.

The Petitioner attended one training session with Mr. Stevens during the 2009-10 school year. The Petitioner took notes during the training session, but he received no written materials regarding test security. (T. 73, 75.)

7.

In his capacity as New Directions' testing coordinator, the Petitioner was responsible for the administration of the spring 2010 GHSGT retest. He received a copy of the "School/System Coordinator's Manual for 2010 Retest Administrations" ("Coordinator's Manual"), a GaDOE publication governing the administration of GHSGT retests. (T. 72-73, 75-77; Exhibit J-2.)

8.

Regarding storage of testing materials, the Coordinator's Manual stated that "[t]ests should be kept under lock and key except during actual administration." The Petitioner complied with this requirement by storing the test materials in a locked file cabinet within a locked closet in Mr. Bonds' office. Only the Petitioner, Mr. Bonds, and Ms. Clemmons had a key to the closet and file cabinet. (Matters Asserted, ¶ 8; Answer, ¶ 8; T. 56-57, 69, 74, 76-77; Exhibit J-2 at 9.)

9.

Another GaDOE publication, entitled “Georgia Student Assessment Program Student Assessment Handbook 2009-2010” (“Assessment Handbook”), established policies and procedures for the administration of all standardized tests, including retests of the GHSGT. According to the Assessment Handbook, a school testing coordinator “[a]ccounts for the security of all test materials during the time the materials are in the building.” The Assessment Handbook also includes a “must do” list, which instructs school testing coordinators to “[k]eep all testing materials stored in a secure place accessible only to the principal and the test coordinator.” (T. 40-44; Exhibit J-1 at 31, 39.)

10.

The Petitioner did not receive a copy of the Assessment Handbook, and he was not aware that its strict security provision prohibited Ms. Clemmons, the school secretary, from having a key to the test storage location.³ This requirement was not mentioned either in the Coordinator’s Manual or during the training conducted by Mr. Stevens. (T. 53-56, 74, 76; Exhibit J-2.)

11.

Following the spring 2010 GHSGT retest, Carol Lane, the superintendent of the Meriwether County Public Schools, reviewed the score reports for students in the district. During her review, Ms. Lane noted that a number of New Directions students had received scores that were unexpectedly high. When she compared these students’ scores on the spring 2010 GHSGT retest to their scores on previously administered standardized tests, she became concerned about the validity of the test results. Consequently, she requested an erasure analysis

³ Mr. Bonds was authorized to hold a key because his position as the school’s director was akin to that of a principal. (T. 20, 57-58.)

from GaDOE. The district also conducted an investigation into possible testing irregularities, and Ms. Lane reported her concerns to the Commission. (T. 33-37.)

12.

The Petitioner's employment with the Meriwether County Public Schools ended when New Directions closed its doors at the end of the 2009-10 school year. Currently, the Petitioner is the pastor of Shoal Creek Baptist Church in Hollonville, Georgia. (T. 80-81.)

13.

The Commission found probable cause to suspend the Petitioner's teaching certificate for a period of ninety days. The Petitioner timely appealed. (OSAH Form 1 and attachments; Matters Asserted, ¶¶ 10-11; Answer, ¶¶ 10-11.)

III. Conclusions of Law

1.

The Commission bears the burden of proof in this matter. Ga. Comp. R. & Regs. r. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

The Commission is authorized to sanction an educator who has violated the statutes and rules governing the teaching profession, including the standards of performance contained in the Code of Ethics for Educators. O.C.G.A. § 20-2-984.1; see Ga. Comp. R. & Regs. r. 505-6-.01.

Pursuant to O.C.G.A § 20-2-984.5(c):

If the commission finds that there is probable cause for imposing a sanction against the educator, it may recommend any combination of the following:

- (1) That the educator be warned, reprimanded, monitored, or any combination thereof; or

- (2) That the certificate of the educator be suspended, revoked, or denied.

See also Ga. Comp. R. & Regs. r. 505-6-.01(5).

3.

GaDOE has promulgated rules regarding the administration of standardized tests to students in Georgia. GaDOE Rule 160-3-1-.07 provides, in relevant part:

Local school systems shall adhere to all written regulations and procedures relating to testing and test administration, including the distribution and collection of test materials, test security, use of test results and official testing dates established in the *Student Assessment Handbook*, test administration manuals such as *System Coordinator's Manual*, *School Test Coordinator's Manual*, and *Examiner's Manual*, and assessment supplements and correspondence.

Ga. Comp. R. & Regs. r. 160-3-1-.07(4). The rules further states, "Local systems shall train and orient any persons involved directly or indirectly in the assessment process and procedures required for appropriate and secure administration of all state-mandated assessments." Ga. Comp. R. & Regs. r. 160-3-1-.07(4)(g).

4.

The Commission failed to prove, by a preponderance of the evidence, that the Petitioner violated Ga. Comp. R. & Regs. r. 160-3-1-.07. As set forth in the Findings of Fact, above, the record contains no evidence that the Petitioner's local school system provided appropriate training or otherwise notified him that only he and Mr. Bonds were permitted to hold a key to the test materials, as mandated by the Assessment Handbook. Without such training, and in the absence of evidence that the Petitioner received a copy of the Assessment Handbook, the Petitioner cannot be held accountable for his failure to ensure compliance with its requirements.⁴

⁴ The Court notes that because Ms. Clemmons was the school secretary and Mr. Bonds' assistant, it would not be unusual for her to have access to his office, closet, and file cabinet.

5.

Standard 7 of the Code of Ethics for Educators, entitled "Confidential Information," states as follows:

An educator shall comply with state and federal laws and state school board policies relating to . . . standardized test material and other information. Unethical conduct includes but is not limited to:

...

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. . . .

Ga. Comp. R. & Regs. r. 505-6-.01(3)(g).

6.

The Commission failed to prove, by a preponderance of the evidence, that the Petitioner violated Standard 7, as set forth in the Findings of Fact, above. Id. In this case, there is no evidence that the Petitioner breached a confidentiality agreement. Further, there is no evidence that he provided students with test answers, discussed test items with them, or violated any directions for test use.

7.

Standard 10 of the Code of Ethics for Educators, entitled "Professional Conduct," provides:

An educator shall demonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the teaching profession. Unethical 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.

Ga. Comp. R. & Regs. r. 505-6-.01(3)(j).

8.

The Commission failed to prove, by a preponderance of the evidence, that the Petitioner violated Standard 10. Id. The record contains no evidence that the Petitioner committed any act in violation of generally recognized professional standards. Additionally, there is no evidence that the Petitioner's inadvertent failure to comply with the Assessment Handbook's strict limitation on key distribution impaired his ability to function professionally as a teacher or was detrimental to the health, welfare, discipline, or morals of New Directions students.

9.

Pursuant to Standard 11 of the Code of Ethics for Educators, entitled "Testing," educators are required to "administer state-mandated assessments fairly and ethically." Ga. Comp. R. & Regs. r. 505-6-.01(3)(k). An educator who "commit[s] any act that breaches Test Security" has engaged in unethical conduct.

10.

The Commission failed to prove, by a preponderance of the evidence, that the Petitioner violated Standard 11. Id. As noted in the Findings of Fact, above, the Petitioner was unaware that according to the Assessment Handbook, only he and Mr. Bonds were authorized to hold a key to the testing materials. Instead, the Petitioner reasonably believed that he had complied with test security requirements by keeping the materials "under lock and key," as required by the Coordinator's Manual. Given his compliance with the test security provisions of the Coordinator's Manual and his lack of training regarding the Assessment Handbook, the Court declines to conclude that the Petitioner committed a breach of test security.

11.

Under Ga. Comp. R. & Regs. r. 505-6-.01(5)(a)(7), the Commission is authorized to sanction a certificate holder for “any other good and sufficient cause that renders an educator unfit for employment as an educator.”

12.

The Commission failed to prove, by a preponderance of the evidence, that the Petitioner is unfit for employment as an educator pursuant to Ga. Comp. R. & Regs. r. 505-6-.01(5)(a)(7).

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Commission’s decision to sanction the Petitioner’s Georgia teaching certificate is hereby **REVERSED**.

SO ORDERED, this 20th **day of February, 2013.**



KRISTIN L. MILLER
Administrative Law Judge