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**OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

Virginia Ramsey
Virginia Ramsey, Legal Assistant

DONNA MILLER,
Petitioner,

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Docket No.: OSAH-PSC-SAN-1319204-33-
Walker

v.

Agency Reference: 11-6-1232

**PROFESSIONAL STANDARDS
COMMISSION,**
Respondent.

FINAL DECISION

I. Introduction

Respondent asserts Petitioner violated ethical standards regarding Professional Conduct and Testing and seeks to suspend her educator's certificate for a period of one year. Petitioner appeals Respondent's determination. An administrative hearing was held on January 9, 2013, and the record closed on January 28, 2013. Shalini Patel, Esq. represented Petitioner, and Assistant Attorney General Kevin Bradberry represented Respondent.

II. Findings of Fact

1.

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

2.

Respondent filed a Statement of Matters Asserted alleging that Petitioner violated the laws, rule and regulations of the Commission. See O.C.G.A. § 20-2-984.5 and PSC Rule 505-6-.01. Specifically, Respondent found probable cause that Petitioner violated the laws, rules and regulations regarding Professional Conduct and Testing. (Statement of Matters Asserted ¶ 8).

Respondent recommends a one-year suspension of Petitioner's teaching certificate. (Statement of Matters Asserted ¶ 9).

3.

Petitioner has been a teacher since 1976. She taught at Simpson Middle School, located in Cobb County, for seventeen years. On March 31, 2011, she received CRCT Test Training at Simpson Middle School. (Transcript at pp. 186-187 (hereinafter "T-"); Exhibit PSC-1).

4.

Lynn Odom, assistant principal at Simpson Middle School, was the CRCT testing coordinator in charge of training the teachers. (T-114-116). During the training, teachers are instructed that they must monitor the students and also that they may not assist them during the CRCT. (T-120).

5.

Teachers monitor students to prevent cheating and also "to make sure that students are in the right section." (T-121). In order to make sure the students are in the correct section, the monitor needs to be able to see the student's written materials. (T-138). Teachers may reread the written instructions as many times as necessary to the students, and/or may tell the student they cannot help the student but just to do the best that they can. (T-139). According to Ms. Odom, teachers should not have any other interaction with the students during testing. (T-123). She did not specifically remember the content of the written directions for the science CRCT. (T-139).

6.

On April 15, 2011, Petitioner administered the science portion of the CRCT to her homeroom class.¹ Petitioner also teaches her homeroom class honors level science. (T-190-192). After an announcement over the intercom indicated that teachers could begin the testing, Petitioner read the written directions to her class. (T-196). Teachers had been instructed that they could not sit down during the examination. (T-197). Accordingly, Petitioner walked around the classroom during the testing. (T-197).

¹ In 2011 a school's science CRCT scores were not used to evaluate the school's annual yearly progress. (T-192).

7.

While walking around the classroom, Petitioner looked at the students' answer sheets to make sure the students were filling in the correct section. (T-198). On occasion, she could not see an answer sheet and would move the test booklets over so she could make sure students were working in the appropriate section. (T-199). Petitioner acknowledged that during the testing she made comments to the students to "[g]o back and check your work" or "[y]ou're not perfect. Go back, check through your answers." (T-202; 203). At one point Petitioner told student B.U. not to bubble in his answer sheet so darkly. (T-199).

8.

The CRCT testing finished and Petitioner did not note any discrepancies in the testing procedure. (T-205).

9.

On the afternoon of April 15, 2011, N.R. came to speak with Ms. Odom. N.R. was a student in Petitioner's homeroom class and she thought Petitioner was a good teacher. (T-18). She alleged that Petitioner had given her assistance during the CRCT by erasing an incorrect answer and indicating the correct answer with her pencil. The student also alleged that Petitioner had stated to the students that they needed to pay closer attention because they were answering questions incorrectly. (T-123; 125). Ms. Odom informed her principal, Andrew Bristow, about the allegation. (T-124).

10.

Later that afternoon, Mr. Bristow summoned Petitioner to his office for a meeting. He showed Petitioner student N.R.'s statement. (T-208). Petitioner told Mr. Bristow that she had not done what N.R. alleged. (T-209). She later responded to the allegation via email stating that "I touched two or three booklets to move them to see that [the students] were answering on the correct place on the answer sheet. There (sic) answer sheet was under their booklet and not visible." In her email she acknowledged that she also told the students to "check and recheck..." because "you know how you get a test back and you missed one you knew?" (Exhibit PSC-2).

11.

Ms. Odom informed Leanne Wood at the Office of Accountability about the alleged incident. Ms. Wood told Ms. Odom to interview the other students in the class. (T-124).

12.

Mr. Bristow and Ms. Odom gathered and interviewed the students in Petitioner's homeroom. (T-126; 154). They asked the students if anything out of the ordinary had happened during the science CRCT. (T-127). If the student responded that nothing unusual had happened, Ms. Odom would excuse them. (T-127). She took written statements from the other students and sent the information to the Office of Accountability. (T-127-128).

13.

The Office of Accountability designated Mary Finlayson to investigate the incident. Ms. Finlayson was an investigations manager at the Cobb County School District. (T-162-163). After reviewing the written evidence and speaking with Petitioner, Ms. Finlayson recommended her contract not be renewed. (T-165; Exhibit PSC-3). She did not interview the students. (T-169). Following this recommendation, Petitioner resigned. (T-213). After Respondent filed a Statement of Matters Asserted seeking to suspend her educator's certificate for a year, Petitioner requested a hearing before the undersigned.

14.

At the hearing, multiple students testified regarding the 2011 science CRCT testing. N.R. testified that Petitioner flipped the pages in her test booklet and appeared to erase an answer and point with a pencil. (T-21). Although Petitioner did not say anything to N.R., N.R. believed Petitioner was trying to tell her the correct answer. (T-22). N.R. heard Petitioner state that she was seeing a lot of wrong answers. (T-18; 22).

15.

Student J.L. was a student in Petitioner's class during the administration of the 2011 CRCT. (T-39). Petitioner told J.L. to make sure that his answer "bubbles" were clear. (T-41). As she was

walking by, J.L. noticed Petitioner put down a finger on his test booklet. He interpreted her gesture as a "free" answer. (T-44).

16.

Student C.K. was a student in Petitioner's class during the administration of the 2011 CRCT. (T-54). She thinks Petitioner told the class to check answers and also that Petitioner was seeing a lot of wrong answers. (T-57).

17

Student E.B. was a student in Petitioner's class during the administration of the CRCT. (T-65). He remembers Petitioner stating that she was seeing some wrong answers. (T-66). He also thinks she might have mouthed words to J.L., and touched J.L.'s desk but "the whole thing is very vague." (T-67).

18.

Student C.C. was a student in Petitioner's class during the administration of the CRCT. (T-74). She saw Petitioner stop at N.R. and J.L.'s desks for a short time; it looked like she was touching their papers but it was difficult to see. (T-75). Petitioner stated that she had seen a lot of wrong answers and that students needed to be more careful. (T-76).

19.

T.M. was a student in Petitioner's class during the administration of the CRCT. (T-85). He heard Petitioner state that she was seeing wrong answers and to double check. (T-86).

20.

N.P. was a student in Petitioner's class during the administration of the CRCT. (T-103). He remembers Petitioner saying that she was seeing a lot of wrong answers on the test and that the students need to change their answers. (T-104).

21.

K.S. was a student in Petitioner's class during the administration of the CRCT. (T-107). She remembers Petitioner stating "to check your answers...." (T-108). She was very focused on the test. (T-108).

22.

G.R. was a student in Petitioner's class during the administration of the CRCT. (T-174). He remembers her telling the students to check their work during the CRCT. (T-175).

23.

M.D. was a student in Petitioner's class during the administration of the CRCT. (T-178). She observed Petitioner walk around the room and say "things like make sure you check your answers, I want you all to do really well, make sure you're taking your time, make sure you're thinking about everything carefully...." (T-178).

24.

C.S. was a student in Petitioner's class during the administration of the CRCT. (T-182). She recalls Petitioner reading the CRCT instructions to the class, which included directions "to go back [and check work]." (T-183).

25.

Based on Mr. Bristow's experience as an educator and an administrator, if a teacher assisted students on the CRCT by identifying an answer, or made comments throughout the test that the teacher was seeing wrong answers that needed to be corrected, such action would be a violation of Professional Conduct and Testing Standards. (T-159-160).

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 Professional Standards Commission has adopted the Code of Ethics for Educators that guides the professional behavior of educators in Georgia. O.C.G.A. § 20-2-984.1. The Commission is authorized to sanction an educator who has violated the standards of performance contained in the Code of Ethics for Educators. 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.

In this case, Respondent charges that Petitioner has violated the Code of Ethics for Educators, and recommends her teaching certificate be suspended for one year.

3.

In April of 2011, Standard 10 of the Code of Ethics for Educators stated in relevant part:

Standard 10: Professional Conduct - 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 the students.

GA. COMP. R. & REGS. r. 505-6-.01(3)(j).

In this case, the undersigned concludes that Petitioner touched N.R.'s and J.L.'s testing materials either with her pencil, eraser or finger. However, contrary to the students' interpretation of Petitioner's actions, the undersigned concludes that Petitioner was attempting to monitor the students by checking that they were filling out the appropriate section on the answer sheet, not seeking to provide them with the correct answers. Nonetheless, the undersigned also concludes that during the CRCT testing Petitioner told her students that she had seen incorrect answers. This comment violated CRCT testing guidelines.² Given that multiple students noted Petitioner's statement, and were aware that it was problematic, this conduct diminished her ability to function professionally in her employment position. Accordingly, Petitioner's conduct violated Standard 10 of the Code of Ethics for Educators.

4.

In April of 2011, Standard 11 of the Code of Ethics for Educators stated in relevant part:

Standard 11: Testing – An educator shall administer state-mandated assessments fairly and ethically. Unethical conduct includes but is not limited to:

1. committing any act that breaches Test Security; and
2. compromising the integrity of the assessment.

GA. COMP. R. & REGS. r. 505-6-.01(3)(k).

The undersigned concludes that Petitioner compromised the integrity of the test assessment by telling students that she had seen incorrect answers. Petitioner could have encouraged her students to check their work. By telling students that she had seen incorrect answers, Petitioner made it more likely that students would change answers that they were unsure were correct, thus compromising the integrity of the assessment. Her conduct was a violation of Standard 11 of the Code of Ethics for Educators.

² The written directions for the Science CRCT were not tendered into evidence at the hearing by either party. However, given that Mr. Bristow specifically noted that this comment was a breach of Professional Conduct and Testing standards, the undersigned reasons that it was not included in the scope of the CRCT written directions.

IV. Decision

The Code of Ethics for Educators has been designed to protect the health, safety and general welfare of students in Georgia. In accordance with the foregoing findings of fact and conclusions of law, the undersigned concludes Petitioner's conduct did violate the Code of Ethics for Educators and Petitioner's appeal is **DENIED**. However, the undersigned concludes that the most serious allegation against Petitioner, that she had identified students' wrong answers, were not proven, and thus that Respondent's proposed one-year suspension of her teaching certificate be **MODIFIED** to a thirty-day suspension.

SO ORDERED, this 12 day of February, 2013.



RONIT WALKER
Administrative Law Judge