

school provided a CRCT training session for the school employees including the Petitioner. During the session, the school provided a Test Examiner's Manual ("Manual") to each teacher. 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." (Testimony of Renee Bridges; Exhibit PSC-1.)

4.

The principal of West Town Elementary School, Arlene Pringle, instructed teachers to walk through their homeroom classrooms during the exam. (Testimony of Gloria Mosely, Petitioner; Statement of Matters Asserted ¶ 4; Answer ¶ 4.)

5.

Gloria Mosely administered the exam to Petitioner's homeroom. In compliance with the principal's instruction, Petitioner walked through her homeroom for approximately three minutes during the science section of the CRCT. Ms. Mosely testified that Petitioner looked through two students' answer sheets and gave visual signals to the students, apparently indicating that they should change their answers from wrong to right. Ms. Mosely testified that she warned Petitioner that they could not direct students to change their answers. Petitioner denies ever communicating with anyone when she walked through the classroom. (Testimony of Gloria Mosely, Petitioner.)

6.

Ms. Mosely provided the name of one of the two students involved in the alleged incident. However, the record contains conflicting testimony as to whether that student was actually in the classroom or enrolled in the school. (Testimony of Gloria Mosely, Petitioner.)

7.

Ophelia Farrar was the test proctor in Petitioner's classroom. During the CRCT, Ms. Farrar walked around the classroom.¹ Although Ms. Farrar saw Petitioner enter the classroom, she did not recall seeing Petitioner communicate with students or hearing any exchange between Ms. Mosely and Petitioner. (Testimony of Ophelia Farrar.)

8.

Stephanie Luke was the test proctor assigned to Petitioner's classroom on multiple occasions. Ms. Luke never observed any testing irregularities like coaching or providing verbal or visual cues by Petitioner to students while proctoring for Petitioner. (Testimony of Stephanie Luke.)

9.

The Georgia Bureau of Investigation ("GBI") questioned West Town Elementary School teachers after the Governor's Office of Student Achievement flagged the school as a "school of severe concern," meaning the school had an abnormally high amount of wrong to right erasures. (Testimony of Adrian Neely; Statements of Matters Asserted ¶ 3; Answer ¶ 3.)

10.

When the GBI first questioned Ms. Mosely, she denied observing any unusual activity during the CRCT. Ms. Mosely admitted that she lied during her initial interview. After the GBI investigators informed Ms. Mosely that they were conducting a criminal investigation that may result in jail time, she told investigators that she saw Petitioner direct students to change their answers. After GBI investigators told Ms. Mosely that someone implicated her and offered her immunity for telling the truth, Ms. Mosely admitted that she changed some of her students'

¹ This is contrary to Ms. Mosely's testimony that Ms. Farrar was working on the computer during the CRCT.

answers from wrong to right after the exam. Ms. Mosely received immunity from prosecution in exchange for her cooperation with the investigation. (Testimony of Gloria Mosely; Exhibit D-1.)

11.

Based on Ms. Mosely's statements, the Commission found probable cause that Petitioner violated the Commission's laws, rules, and regulations and recommended a two-year suspension of Petitioner's educator's certificate. (Statement of Matters Asserted ¶¶ 7-8; Answer ¶¶ 7-8.)

II. CONCLUSIONS OF LAW

1.

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

2.

The 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.

3.

The Commission contends that Petitioner's alleged actions during the administration of the Spring 2009 CRCT violated Commission Rules 505-6-.01(3)(d) [Standard 4: Honesty]; 505-6-.01(3)(g) [Standard 7: Confidential Information]; 505-6-.01(3)(i) [Standard 9: Required Reports]; 505-6-.01(3)(j) [Standard 10: Professional Conduct]; and Department of Education Rule 160-3-1-.07(4) [Failure to Adhere to Written Regulations and Procedures].

4.

The Commission alleges that Petitioner violated Standard 4 of the Code of Ethics for Educators. Standard 4 provides:

Honesty - An educator shall exemplify honesty and integrity in the course of professional practice. Unethical conduct includes but is not limited to, falsifying, misrepresenting or omitting:

1. professional qualifications, criminal history, college or staff development credit and/or degrees, academic award, and employment history;
2. information submitted to federal, state, local school districts and other governmental agencies;
3. information regarding the evaluation of students and/or personnel;
4. reasons for absences or leaves;
5. information submitted in the course of an official inquiry/investigation; and
6. information submitted in the course of professional practice.

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

5.

The Commission argues that Petitioner violated Standard 7 of the Code of Ethics for Educators which provides:

Confidential Information – An educator shall comply with state and federal laws and state school board policies relating to the confidentiality of student and personnel records[,] standardized test material and other information. Unethical conduct includes but is not limited to:

1. sharing of confidential information concerning student academic and disciplinary records, 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.; and
4. violation of other confidentiality agreements required by state or local policy.

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

6.

The Commission also alleges that Petitioner violated Standard 9 of the Code of Ethics for Educators, which requires an educator to “file reports of a breach of one or more of the standards in the Code of Ethics for Educators” Ga. Comp. R. & Regs. 505-6-.01(3)(i).

7.

The Commission argues that Petitioner violated Standard 10 of the Code of Ethics for Educators, which stated at the time of the alleged conduct:

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. 505-6-.01(3)(j).

8.

Finally, the Commission contends that Petitioner violated Department of Education Rule 160-3-1-.07(4), which provides in relevant part:

Testing Regulations and Procedures - 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.

9.

Four witnesses testified at the hearing, namely Ophelia Farrar, Stephanie Luke, Petitioner, and Gloria Mosely.

10.

The Court finds the testimony of Ophelia Farrar to be credible. Ms. Farrar recalls being in the classroom where Petitioner allegedly directed two students to change their test answers from wrong to right. She recalls Petitioner entering the classroom and briefly walking around. However, she does not recall hearing or observing Petitioner communicate with any students as alleged by Ms. Mosely. Further, Ms. Farrar does not recall hearing or observing a conversation between Petitioner and Ms. Mosely during which Ms. Mosely allegedly warned Petitioner that she should not direct the students to change their answers. Ms. Farrar also refutes the allegation by Ms. Mosely that she was working at a computer during the alleged incident. Ms. Farrar was walking around the classroom during the brief visit by Petitioner. Neither party questioned the credibility of Ms. Farrar's testimony.

11.

The Court finds the testimony of Stephanie Luke to be credible. Ms. Luke recalled that she worked in Petitioner's classroom as a test proctor often. She was not in Ms. Mosely's classroom on the day of the alleged incident. When she was present during the testing in Petitioner's classroom, Ms. Luke never observed any test violations by Petitioner. She never observed Petitioner communicating with any of the students during the exam. Neither party questioned the credibility of Ms. Luke's testimony.

12.

The Court finds the testimony of Petitioner to be credible. On the day of the alleged incident Petitioner briefly entered the classroom because she was ordered to do so by the school's principal. She walked around the classroom and left promptly without communicating with anyone. To find this testimony credible, the Court has considered that Petitioner has consistently repeated the same recollection of the event. The Court has further considered Petitioner's motive for visiting the classroom, namely to comply with the school principal's order. Her brief visit to the classroom substantiates this purpose. Petitioner, even when faced with the possibility of criminal charges and a jail sentence, did not dither from her original recollection of the incident.

13.

The Court, however, is troubled by the otherwise uncorroborated testimony of Gloria Mosely. In resolving the issue of Petitioner's alleged complicity, the Court has considered the documentary evidence and the credibility of Ms. Mosely's testimony. The Court considered Ms. Mosely's manner of testifying, her intelligence, her means and opportunity of knowing the facts to which she testified, the nature of the facts to which she testified, the probability or improbability of her testimony, her interest or want of interest, her prior inconsistent testimony, her admitted initial lying when questioned about the incident and her personal credibility. The preponderance of the credible evidence is that the Court cannot rely on Ms. Mosely's recollection of the events to the detriment of Petitioner.

Ms. Mosely's testimony consisted of several questionable concerns, namely the following: Ms. Mosely had been evasive and untruthful when she was first questioned about the incident. Ms. Mosely admits that she initially lied to the investigators. Ms. Mosely did not

mention Petitioner or the alleged incident until she was threatened with criminal charges and time in jail. Also, Ms. Mosely's testimony is inconsistent with the testimony of Ms. Farrar who was present in the classroom when the alleged incident occurred. Ms. Mosely mentioned a student by name whom Petitioner allegedly directed to change her answer from wrong to right. There is no evidence that such a student was in the classroom at the time of the alleged incident. More importantly, Ms. Mosely admitted that she was personally involved with the school cheating incident. Ms. Mosely personally changed students' answers on the test from wrong to right after the students left the classroom. It is difficult for the Court to believe that Ms. Mosely was concerned with Petitioner's alleged conduct when Ms. Mosely was admittedly engaged in a significantly more abhorrent conduct.

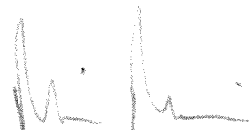
14.

Accordingly, the Commission failed to prove that Petitioner violated any Code of Ethics for Educators or Department of Education rules and regulations. Based on the evidence presented, the Court finds in favor of Petitioner.

III. DECISION

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

SO ORDERED, this 19th day of December, 2013.



MICHAEL MALIHI
Administrative Law Judge