

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FRANK T. BROGAN, as)
Commissioner of Education,)
)
Petitioner,)
)
vs.) Case No. 99-1297
)
LAURI M. MCMAHON,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Fort Myers, Florida, on June 16, 1999.

APPEARANCES

For Petitioner: Bruce P. Taylor
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For Respondent: Robert J. Coleman
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STATEMENT OF THE ISSUE

The issue is whether Respondent failed to maintain honesty in all her professional dealings by coaching her students by instructing them, prior to the test, on specific questions that were to be included in the Comprehensive Tests of Basic Skills.

PRELIMINARY STATEMENT

By Administrative Complaint dated November 14, 1998, Petitioner alleged that Respondent violated testing security by coaching her students on the questions for the Comprehensive Tests of Basic Skills prior to the administration of the test. The Administrative Complaint alleges that this action constitutes a failure to maintain honesty in all professional dealings, in violation of Rule 6B-1.006(5(a), Florida Administrative Code.

At the hearing, Petitioner called eight witnesses and offered into evidence 18 exhibits. Respondent called eight witnesses and offered into evidence 12 exhibits. All exhibits were admitted except Respondent Exhibit 12, which was proffered.

The court reporter filed the Transcript on August 2, 1999.

FINDINGS OF FACT

1. Respondent is a certified teacher, holding certificate number 640974. She is certified in elementary education, and her certificate is valid through June 30, 2000.

2. After earning her bachelor of science degree in education in 1988, Respondent was first hired in late January 1989 to teach fulltime at Lehigh Elementary School, where she taught first grade. Starting in the 1990-91 school year, Respondent taught six years at San Carlos Park Elementary School. During her first two years, she taught third grade. During her next two years, she taught first grade. During her last two years, she taught fifth grade.

3. The incident in question took place during Respondent's last year at San Carlos Park Elementary School. Largely, if not entirely, as a result of the incident, Respondent requested a transfer following the 1995-96 school year. The Lee County School District granted the request, and Respondent taught at Dunbar Middle School for the next two school years. During the 1998-99 school year, Respondent served as a tech specialist in the Lee County School District.

4. Petitioner alleges that Respondent committed an act of dishonesty in March 1996, while employed as a fifth-grade teacher. Specifically, Petitioner focuses upon Respondent's methods of preparing her fifth-grade students for the upcoming Comprehensive Tests of Basic Skills (CTBS). The CTBS is a norm-referenced assessment test to evaluate the progress of students compared to national standards. Although the CTBS results may be used for placement of students into gifted and other exceptional student education programs, the results, in March 1996, were generally not used for the evaluation of students or their teachers or schools.

5. In March 1996, the CTBS was one of several tests that school districts could use to measure the achievement level of their students as compared to nationalized standards. Although its practices have since changed, Lee County School District had purchased the fifth-grade CTBS five years earlier, rather than pay annually for a new test, so fifth-grade students in Lee

County public schools had taken the identical test for the five years preceding the March 1996 administration.

6. Petitioner has alleged that Respondent committed an act of dishonesty by teaching five specific questions from the CTBS to her fifth-grade students. These questions are drawn from the CTBS--Fourth Edition, published in 1989 by McGraw-Hill, Inc. The questions are as follows:

Item 23, p. 41: Which of these rules could you use to find the number missing from this number pattern?

1, 4, 10, 13, 19, 22, __, 31

- A add 3 to 22
- B add 6 to 22
- C add 3 to 19
- D add 8 to 19

Item 33, p. 42: Which of these would probably be weighed in ounces?

- A a child
- B a piano
- C a can of peas
- D a bag of oranges

Item 48, p. 44: Marsha dipped one end of a wooden cylinder into ink. Then she stamped a piece of paper with the inked end. What did the stamped figure probably look like?

- F [a circle]
- G [a rectangle]
- H [a triangle]
- J [a square]

Item 50, p. 45: Which pair of angles is congruent?

[The four alternatives are diagrammed in the form of four protractors with angles superimposed upon them in dark ink. This

question tests the ability of the student to identify as congruent angles two angles oriented in opposite directions so as to require the student to recognize that a 55-degree angle to the right is congruent with a 55-degree angle to the left.]

Item 13, p. 61: The writers of the Constitution decided that our country should hold a presidential election every

- A 2 years
- B 4 years
- C 6 years
- D 8 years

7. Four fifth-grade teachers administered the CTBS at San Carlos Park Elementary School in March 1996. The scores of their students on these and several other items are set forth in the following paragraphs.

8. For Item 23, which is a pre-algebra question, 74 percent of Respondent's students gave the correct answer. Sixty-one percent of the students of Teacher 1 and Teacher 2 gave the correct answer, and 59 percent of Lisa Shirey's students gave the correct answer.

9. Generally, Respondent's students scored well in the six other items comprising pre-algebra. They were first in two items, tied for first (with Ms. Shirey's students) in one item, second in one item, and third in two items.

10. For Item 33, which is a measurement question, 81 percent of Respondent's students gave the correct answer. Eighty-six percent of Ms. Shirey's students gave the correct

answer, as did 64 percent and 79 percent of Teacher 1 and 2's students, respectively.

11. Generally, Respondent's students scored well in the seven other items comprising measurement. They were first in one item, tied for first (with Ms. Shirey's students) in one item, second in three items (with Ms. Shirey's students first--in one case by 20 percentage points), and third in two items.

12. For Item 48, which is a geometry question, 74 percent of Respondent's students gave the correct answer. Seventy-four percent of Ms. Shirey's students gave the correct answer, as did 61 percent of Teacher 1 and 2's students.

13. For Item 50, which is also a geometry question, 42 percent of Respondent's students gave the correct answer. Forty-one percent of Ms. Shirey's students gave the correct answer, as did 36 percent and 25 percent of Teacher 1 and 2's students, respectively.

14. Generally, Respondent's students scored well in the four other items comprising geometry. They were first in two items and third in two items.

15. For Item 13, which is a political science question, 90 percent of Respondent's students gave the correct answer. Fifty-nine percent of Teacher 1 and Ms. Shirey's students gave the correct answer, and 71 percent of Teacher 2's students gave the correct answer.

16. Generally, Respondent's students scored slightly lower in the four other items comprising political science, as compared to their performance in mathematics, measurement, and geometry. They were first in one item, third in one item, and fourth in two items.

17. Examined in isolation, the scores of Respondent's class reflect varying levels of superior performance over the scores of the other fifth-grade classes. In Item 33, Respondent's class was five percentage points worse than the best score. In Item 50, Respondent's class was one percentage point better than the second class and 17 percentage points better than the fourth class. In Item 48, Respondent's class was 12 percentage points better than the second class and 13 percentage points better than the fourth class. In Item 23, Respondent's class was 13 percentage points better than the second class and 15 percentage points better than the fourth class. In Item 13, Respondent's class was 20 percentage points better than the second class and 31 percentage points better than the fourth class.

18. Other teachers enjoyed similar performance advantages on other items. In Item 14 in measurement, Ms. Shirey's class scored 20 percentage points higher than the second class and 37 percentage points higher than the fourth class. In Item 18 in geometry, Ms. Shirey's class scored 11 percentage points higher than the second class and 18 points percentage points higher than the fourth class. In Item 28 in sociology/anthropology,

Ms. Shirey's class scored 20 points higher than the second class and 28 points higher than the fourth class.

19. In isolation, then, the scoring of Respondent's class on the five CTBS questions in question does not offer much support that Respondent cheated in some fashion by giving her class the questions and answers in advance.

20. Respondent and the other fifth-grade teachers, as well as the administration at the school and district office, attached great importance to the performance of the students on the CTBS. School personnel at all levels altered the timing and delivery of curriculum to prepare better the fifth-grade students for the CTBS.

21. For example, the school administrators, with the approval of district administrators, furnished the fifth-grade teachers with practice tests. The teachers administered the tests and then went over in class the questions and correct answers.

22. The publication used by San Carlos Park Elementary School is called Scoring High, which is also published by McGraw-Hill, Inc.

23. Scoring High contains questions that resemble two of the subject questions. Item 9, p. 47, on Scoring High asks the student to recognize a pattern of numbers with increases of three. CTBS Item 23 asks a student to recognize alternating patterns of increases of three followed by increases of six.

Item 3, page 48, on Scoring High asks the student which of four items would be measured in tons: water in a lake, coal in a shipment, fuel in a plane, or air in a balloon. CTBS Item 33 asks a student to recognize that a lighter item would be measured in ounces. Item 9, page 49, on Scoring High asks the student to slice in half a cylinder to convert a depicted three-dimensional item to a two-dimensional rectangle. CTBS Item 48 asks a student to convert a cylinder's base into a two-dimensional circle.

24. Additionally, the fifth-grade team, which was chaired by Ms. Shirey, decided to accelerate the teaching of percentages, fractions, and decimals from the normal point in the school year, which was after March, to a point before the CTBS administration. Sherry Lane, the guidance counselor at San Carlos Park Elementary School, approved this change in the timing of the delivery of this instruction.

25. One textbook publisher even highlights CTBS Item 48 and Scoring High Item 9 in its textbook. The record does not indicate whether this is evidence of publishing to the CTBS or evidence of the universality of the concepts tested by the CTBS.

26. San Carlos Park Elementary School administered the CTBS over a period of one week. Accordingly, the school administration delivered the test booklets to Respondent up to one week prior to the portions of the test involving the questions that Petitioner claims Respondent to have improperly taught.

27. Respondent missed school due to illness on the Thursday and Friday preceding the week of testing of mathematics and social science. So, early in the next week, prior to the administration of the mathematics section, Respondent quickly reviewed mathematics with her class.

28. Respondent had scanned the test booklet prior to administering the test. Petitioner failed to prove that this was an act of dishonesty. In any event, given the fact that the Lee County School District had administered the same test for five years, it was likely that experienced teachers, such as Respondent, already were largely aware of individual questions on the CTBS.

29. In the case of geometric shapes and their conversion from three-dimensional to two-dimension representations, for instance, Respondent realized that she had taught this material months earlier, but had not reviewed it. So when she returned to class following her illness, she asked her students if the substitute teacher had covered this material. They replied that the substitute had tried to review the material, but had left them confused.

30. Thus, Respondent decided to conduct a quick review devoted to various material, including material that would be on the CTBS. She conducted this review openly in her classroom, which is located in a pod with the other fourth- and fifth-grade classrooms. Her classroom was divided from the adjoining

classrooms by thin dividers, not walls. Her classroom had doorless entries that were the width of two doors and always open to the hall.

31. The problem that led to this case arose when Ms. Shirey was walking her class to lunch and saw Respondent reviewing mathematics with some transparencies that Respondent had prepared. Ms. Shirey knew that they were to administer the mathematics section of the CTBS two days later. Ms. Shirey was immediately troubled by the fact that Respondent was using a transparency that was different from the ones that the fifth-grade teachers had all agreed to use. After leaving her students at lunch, Ms. Shirey took a copy of the CTBS and listened at the wall to Respondent teaching her class.

32. As to Item 48, Ms. Shirey heard Respondent ask her students what shape they would get if they stamped one end of cylinder onto a flat surface. In fact, Respondent asked her students this question as to a variety of objects that she found in her room and not all of them were cylinders.

33. As to Item 50, Ms. Shirey heard Respondent remind her students that they could measure from both sides of a protractor. As with the geometry material, Respondent spoke to her class in a normal tone and volume and made no attempt to conceal the material that she was reviewing. When she finished the review, she directed a student to clean the transparencies so that she could use them for instruction after lunch.

34. Alarmed, Ms. Shirey reported what she had seen and heard to Ms. Lane, who also listened from the empty classroom adjoining Respondent's classroom and heard Respondent ask what kinds of things would be measured in ounces. She heard the students name numerous things that would be measured in ounces. She heard Respondent go over the shapes of items, including the end of a cylinder. In ten minutes, she heard Respondent cover three or four items that she thought were on the CTBS.

35. A curriculum technical specialist summoned to the room overheard the part of the review devoted to what students would measure in ounces.

36. Last to arrive at the scene were the assistant principal and principal. They heard Respondent talk about what students would measure in grams and centimeters and the shape of an end of a cylinder. The principal entered Respondent's classroom and Respondent, who smiled at her, continued her review session.

37. The issue of how Respondent could ethically prepare her students for the CTBS has supplied many more questions than answers.

38. For example, Ms. Shirey, who has since realized her then-ambition to become an assistant principal at another school, testified that it was dishonest merely for Respondent to depart from the methods and materials that the fifth-grade team had

agreed upon. No other witness called by Petitioner has joined her in this definition of dishonesty.

39. Ms. Lane testified that she did not recall if anyone told the teachers not to look at the CTBS after they had received the test booklets, but before they had administered the test. Ms. Lane conducted an inservice meeting with the teachers on what was and was not legal in terms of test preparation. Ms. Lane opined that teachers could not take the material from the CTBS and insert it into a review because, professionally, this would put them "on dangerous ground." Ms. Lane thought that a teacher could teach previously taught concepts, but she would have stayed away from ounces, for example, in the days before the test. In her inservice meeting, Ms. Lane warned the teachers about reviewing test material shortly before the test. However, she conceded that sample tests, such as Scoring High, were acceptable to use, presumably at anytime.

40. There was animosity between Ms. Lane and Respondent. Respondent was the union representative at San Carlos Park Elementary School. Although a member of the union, Ms. Lane had disagreed deeply with a union recommendation that members vote against a contract with a raise. She had written the following note to be read by her fellow union members: "Fuck you all. None of you deserve it."

41. Undoubtedly, Petitioner's strongest witness in discussing the issue of what teachers should and should not do in

test preparation was Don Campbell, the Director of District Operations for the Lee County School District. He was the program administrator for assessment and testing in the 1995-96 school year.

42. Mr. Campbell testified that the district allows each school to decide how to prepare students for tests like the CTBS. Mr. Campbell trained test coordinators for each school, such as Ms. Lane for San Carlos Park Elementary School.

43. Mr. Campbell explained that McGraw-Hill publishes an examiner's manual for the CTBS. This manual recommends that teacher take the CTBS prior to giving it to their students. The manual also recommends administering and reviewing practice tests a day or two prior to the testing or even early on the day of testing. The manual's prohibitions against coaching all involve improper activities by the teacher or proctor during the actual administration of the CTBS.

44. Mr. Campbell also gave Ms. Lane a handout entitled, "Preparing Students to Take Standardized Achievement Tests." Authors Mehrens and Kaminski, in Understanding Achievement Tests: A Guide for School Administrators (1989), offer seven test-preparation strategies on a continuum from acceptable to unacceptable. The seven points are:

1. giving general instruction on district objectives without referring to the objectives that the standardized tests measure;
2. teaching test-taking skills;

3. providing instruction on objectives where objectives may have been determined by looking at the objectives that a variety of standardized tests measures (The objectives taught may or may not contain objectives on teaching test-taking skills.);
4. providing instruction based on objectives (skills and subskills) that specifically match those on the standardized test to be administered;
5. providing instruction on specifically matched objectives (skills and subskills) where the practice or instruction follows the same format as the test questions;
6. providing practice or instruction on a published parallel form of the same test; and
7. providing practice or instruction on the test itself.

45. Authors Mehrens and Kaminski agree that Point 1 is always ethical and Point 2 is typically ethical, and Points 6 and 7 are never ethical. The handout concludes:

Thus, the point at which you cross over from a legitimate to an illegitimate practice on the continuum is somewhere between Points 3 and 5. The location of the point changes depending on the inferences you want to make from the test scores.

46. Mr. Campbell has given considerable thought to the ethical restraints upon teaching to the test. He acknowledges that this is a common phenomenon, as is evidenced by part of the increase in scores in the statewide Florida Writes test. He acknowledges that imposing restrictions upon teachers in preparing their students for standardized testing necessarily

conflicts, to some degree, with the responsibilities already imposed upon teachers to teach their students effectively.

47. Turning his attention to the five subject questions, Mr. Campbell testified cautiously and conditionally. He hesitatingly drew a line somewhere between the positions of Petitioner and Respondent, but it was apparent that his standard was more aspirational than it was descriptive of a norm that, if violated, constitutes a failure to maintain honesty in professional dealings.

48. This record contains no mention of any policies of Petitioner or the Florida Department of Education delineating or even describing the specific test-preparation behavior that constitutes a departure from the requirement to maintain honesty.

49. Respondent has admitted teaching to the test, although it is not at all clear that she has admitted to dishonesty. For the sake of convenience and on the inadequate advice offered by a union representative, she withdrew her grievance on a district reprimand for the matters described in this order.

50. The conflict perceived by Mr. Campbell between the teacher's role in restricting herself in preparing her students for a standardized test and still trying to maximize the opportunity for her students to score well on the test is accompanied by another conflict, as recognized by Ms. Lane: even a standardized test serves secondarily as a tool of instruction, in addition to its primary role as a tool of assessment.

51. These twin conflicts pose a grave risk to the education of students in public schools as long as Petitioner fails to create a "bright-line" test for dishonesty in test preparation. Many teachers will follow Ms. Lane's advice and avoid, especially in the days preceding a standardized test and perhaps all term, covering such material as the bidirectionality of a protractor, the number of years in a presidential term, or the process of converting three-dimensional forms to two-dimensional forms (actually, since they are on a flat page, a two-dimensional form to a three-dimensional form to a two-dimensional form in a different plane).

52. Any teacher knows that coaching during a test is dishonest and a ground for discipline, just as any teacher knows that physically or sexually abusing his students is also a ground for discipline. The present record reveals no similar common understanding, even among Petitioner's witnesses, concerning what constitutes dishonesty in test preparation. It even seems that school districts that can afford test-preparation guides, published by the same publisher as the publisher of the standardized test, can safely teach to the test, using carefully selected practice questions that, in some cases, closely resemble the actual questions, and do so even on the morning of the test, because the examiner's manual recommends it.

CONCLUSIONS OF LAW

53. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes.)

54. Section 231.28(1)(i) authorizes Petitioner to discipline Respondent for violating the principles of professional conduct.

55. Rule 6B-1.006(5)(a), Florida Administrative Code, requires a teacher to maintain honesty in all professional dealings.

56. Section 6A-10.042(1)(b) and (f) prohibit persons, such as Respondent, from revealing tests or individual questions or encouraging any activity that could result in the inaccurate measurement of the performance of the person taking a test.

57. Petitioner must prove the material allegations by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

58. Petitioner has failed to prove by clear and convincing evidence either the specific standards, on which discipline may be predicated, applicable to teaching to standardized tests or that Respondent violated these standards.

RECOMMENDATION

It is

RECOMMENDED that Petitioner dismiss the Administrative Complaint against Respondent.

DONE AND ENTERED this 20th day of September, 1999, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order must be filed with the agency that will issue the final order in this case.