

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CHARLIE CRIST, AS COMMISSIONER )  
OF EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 03-2382PL  
 )  
BETTY N. GOGGINS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was conducted in this case on October 17, 2003, in Lake City, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: William B. Graham, Esquire  
Ginger L. Barry, Esquire  
McFarlain & Cassidy  
305 South Gadsden Street  
Tallahassee, Florida 32301

For Respondent: Betty N. Goggins, pro se  
1291 East Camp Street  
Lake City, Florida 32025

STATEMENT OF THE ISSUES

The issues are whether Respondent violated standardized testing procedures while proctoring the SAT-9 Test for her first grade class, and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On December 17, 2002, Charlie Crist, as Commissioner of Education (Petitioner) issued an Administrative Complaint against Respondent Betty N. Goggins (Respondent). The complaint alleged that Respondent had violated standardized testing procedures while proctoring the SAT-9 Test for her first grade class in violation of Sections 231.2615(1)(i) and 231.2615(1)(c), Florida Statutes (2002), and Florida Administrative Code Rules 6B-1.006(3)(a), 6B-1.006(4)(b), 6B-1.006(5)(a), and 1.006(5)(h).

Respondent requested a formal hearing but thereafter withdrew that request, proceeding instead with an informal hearing before the Education Practices Commission (EPC) on May 29, 2003. During the informal hearing, it became apparent that the case presented disputed issues of material fact. Accordingly, the informal hearing was terminated so that the case could be referred to the Division of Administrative Hearings.

The EPC referred the case to the Division of Administrative Hearings on June 27, 2003.

A Notice of Hearing dated July 7, 2003, scheduled the hearing for September 5, 2003.

When the hearing commenced on September 5, 2003, Petitioner requested a continuance based upon the unavailability of a

witness. Administrative Law Judge Charles C. Adams granted the request. That same day, Judge Adams issued an Order rescheduling the hearing for September 24, 2003.

On September 16, 2003, Respondent filed a letter requesting that the hearing date be changed due to a scheduling conflict. Judge Adams issued an Order dated September 18, 2003, rescheduling the hearing for October 17, 2003.

Subsequently, the Division of Administrative Hearings designated the undersigned as the Administrative Law Judge to conduct the formal hearing.

During the hearing, Petitioner presented the testimony of three witnesses and offered three exhibits that were accepted into evidence. Respondent testified on her own behalf and offered one exhibit that was accepted into evidence.

A transcript of the proceeding was filed on November 4, 2003. Petitioner filed a Proposed Recommended Order on November 14, 2003. As of the date of the issuance of this Recommended Order, Respondent has not filed proposed findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. Respondent holds Florida Educator Certificate No. 467712, covering the area of Elementary Education. Her certificate is valid through June 30, 2007.

2. Respondent has been a public school teacher in Florida for 21 years. During that time, she has worked as a classroom teacher in fifth and first grades at four different schools. At all times material here, Respondent was a first grade teacher at Niblack Elementary School (Niblack) in Columbia County, Florida.

3. Respondent was the curriculum resource teacher at Niblack for the 2000/2001 school term, the first year Niblack was established. She helped organize the new school, selecting textbooks and other school materials. She assisted in the development of school improvement plans and the creation of the Parent Teacher Organization.

4. Respondent worked long hours beyond the normal school hours to ensure the success of Niblack as a neighborhood school. She had good report with the parents and the community. After her first year at Niblack, Respondent returned to the classroom as a first grade teacher because she missed being with the children.

5. Prior to the incident at issue here, Respondent has never been the subject of any disciplinary action. She has always received positive teacher evaluations. For the school years 1999/2000, 2000/2001, and 2001/2002, Respondent's evaluations reflect that she met or exceeded expectations.

6. When school began in the Fall of 2001, Nikki Crawford was the paraprofessional assigned to work with the first grade

students at Niblack. In the first week of classes, a conflict arose between Ms. Crawford and some of the first grade teachers, including Respondent. The initial conflict involved the scheduling of Ms. Crawford's time in each of the first grade classrooms.

7. Eventually, Mark Crutcher, Niblack's Principal, and personnel at the school district level had to intervene in order to resolve the conflict. The purpose of the intervention was to clarify that the teachers and not Ms. Crawford were in control of the classrooms.

8. The SAT-9 is a standardized test that is used to evaluate student performance. The staff at Niblack uses the test results as a guide to determine what the students learned over the past year, how they compared to other students nationally, and where the students should be placed the following school year. The test results do not benefit an individual teacher personally or professionally. The school does not receive a grade or funding based on the test results.

9. The administration of the SAT-9 in the first grade is the first time that students at Niblack experience a standardized test. For the 2001/2002 school year, the test was administered in April 2002.

10. The SAT-9 is a secure test that requires teachers and proctors to undergo training on test procedures. Amber Todd,

Niblack's guidance counselor and testing coordinator, provided that training for the 2001/2002 school term.

11. During the training, Ms. Todd gave Respondent a copy of the state statutes governing testing procedures. On or about April 5, 2002, Respondent signed a document indicating that she had received a copy of the test security requirements for the 2001/2002 administration of the SAT-9.

12. Ms. Todd gave Respondent a document outlining the general testing procedures at Niblack. The document explained the mechanics of distributing and returning the tests to the guidance counselor's office. In regard to test preparation, the document listed spatial seating as one of several topics. The topics relating to procedures during testing included, but were not limited to, cheating and disruptive behavior. The document did not reference appropriate or inappropriate communication between teachers and students during the test.

13. Ms. Todd gave Respondent a photocopy of the test security page out of the test manual but did not give her a copy of the test manual. However, Ms. Todd informed Respondent that she could review the manual in Ms. Todd's office.

14. Respondent had prior experience in administering the SAT-9. She did not take advantage of the opportunity to review the test manual in Ms. Todd's office prior to the test in April 2002.

15. Ms. Todd informed Respondent that the desks in the classroom needed to be separated. Ms. Todd and the test manual directed Respondent to read the script in the manual verbatim and to strictly follow the time allowed for each test section.

16. Finally, Ms. Todd told Respondent and Ms. Crawford that they had discretion to redirect students but not to coach them. Respondent and Ms. Crawford could tell students to stay in their seats, to stop talking, and to pay attention. Teachers and proctors were allowed to tell students they were working in the wrong section, to erase the answers in the wrong section, and to go back to the correct section.

17. Ms. Crawford was assigned to proctor the SAT-9 in Respondent's class in April 2002.

18. When the test began, Respondent had not separated all of the students' desks. With the exception of a couple of desks that had been moved to one side, the desks were arranged in the normal classroom configuration with desks touching in groups of threes. The only other change in the classroom was that the seating location of some students had been rearranged.

19. Respondent did not separate the desks because she wanted room to walk between the students during the test. The classroom was small and crowded with 18 desks. However, the most persuasive evidence is that Respondent did not make an effort to separate the desks to the extent possible.

20. When Respondent began the first section of the test, she read the script of the instructions to her students. She read the sample question, which was in a story format, and the multiple choice answers as required. Pursuant to the test instructions, Respondent had to direct some of the students to erase their answers to the sample question and to mark the correct answers.

21. Respondent then deviated from the script by reading aloud the first part of the first test question and telling the students to put their finger where the question began. She did not read the answers to the first question. Respondent did not improperly read any other portion of the test.

22. Respondent was responsible for timing each section of the test. At one point during the test, Ms. Crawford asked Respondent how long the students had to finish a test section. Respondent replied that they had until 9:20 a.m. Ms. Crawford's testimony that Respondent began the timed test at 8:54, allowing the students an extra 6 minutes to complete the section is not persuasive.

23. Students are not allowed to work on test sections that are not being timed. In other words, if a student begins to work in section 2 while section 1 is being timed, the teacher and the proctor should tell the student to erase his or her answers in section 2 and go back to work on section 1.



24. During the test, Ms. Crawford informed Respondent that a student named Tyler was working in the wrong section. Respondent then told Tyler to go back to the section she should have been working on. Respondent's communication with Tyler was not improper according to the training provided by Ms. Todd. Ms. Crawford also had to redirect a couple of Respondent's students to erase their answers in the wrong section of the test and to begin working in the correct test section.

25. A second student named Latrice put her head on her desk and closed her booklet within five minutes after a timed test began. Respondent did not believe Latrice could not have finished the test so quickly. Respondent picked up and opened Latrice's booklet. Respondent told Latrice that she could not possibly be finished and needed to go back and check her answers. Respondent also told Latrice she must have some of the answers wrong.

26. Respondent made this statement to Latrice without actually checking to see if any of her answers were wrong. Even so, Respondent's communication with Latrice was inappropriate. If Latrice had finished the test and closed her booklet, Respondent should have taken the booklet without telling Latrice that she needed to keep working because she must have some of the answers wrong.

27. After the test, Ms. Crawford informed Ms. Todd that Respondent had violated the reading portion of the SAT-9 test procedures by failing to separate the desks, by failing to properly time the test on one section, by failing to follow the script, and by improperly coaching two students. Ms. Todd then informed Mr. Crutcher about the allegations of improper test procedures.

28. The Columbia County School District decided to invalidate the reading portion of the SAT-9 test for Respondent's first grade class. They did not invalidate the math portion of the test. The school district then administered a substitute reading test to the students.

29. The Columbia County School District subsequently suspended Respondent without pay from May 21, 2002, through May 28, 2002. Respondent transferred to another Columbia County school for the 2002/2003 school term. As of the date of the hearing, Respondent continued to be employed by the Columbia County School District.

#### CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.569, 120.57(1), and 1012.796(6), Florida Statutes (2003).

31. Petitioner has the burden of proving the allegations in the Administrative Complaint by clear and convincing evidence. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

32. Section 228.301, Florida Statutes (2001), which relates to test security in effect for the 2001/2002 school year, stated as follows in relevant part:

(1) It is unlawful for anyone knowingly and willfully to violate test security rules adopted by the State Board of Education or the Commissioner of Education for mandatory tests administered by or through the State Board of Education or the Commissioner of Education to students . . . or administered by school districts pursuant to Section 229.57, Florida Statutes, or with respect to any such test, knowingly and willfully to:

\* \* \*

(c) Coach examinees during testing or alter or interfere with examinees' responses in any way;

\* \* \*

(f) Fail to follow test administration directions specified in the test administration manuals; or

(g) Participate in, direct, aid, counsel, assist in, or encourage any of the acts prohibited in this section.

(2) Any person who violates this section is guilty of a misdemeanor of the first degree, punishable by a fine or not more than \$1,000 or imprisonment for not more than 90 days, or both.

33. Florida Administrative Code Rule 6A-10.042, relating to maintenance of test security, states as follows in pertinent part:

(1) Tests implemented in accordance with the requirements of Sections . . . 229.57, . . . Florida Statutes, shall be maintained and administered in a secure manner such that the integrity of the tests shall be preserved.

\* \* \*

(c) Examinees shall not be assisted in answering test questions by any means by persons administering or proctoring the administration of any test.

(d) Examinees' answers to questions shall not be interfered with in any way by persons administering, proctoring, or scoring the examinations.

\* \* \*

(f) Persons who are involved in administering or proctoring the tests or persons who teach or otherwise prepare examinees for the tests shall not participate in, direct, aid, counsel, assist in, or encourage any activity which could result in the inaccurate measurement or reporting of the examinees' achievement.

34. Although the incidents referred to in the Administrative Complaint took place when Florida Statutes 2001 were in effect, the Administrative Complaint alleged that Respondent violated Sections 231.2615(1)(c) and 231.2615(1)(i), Florida Statutes (2002). Prior to the effective date of Florida Statutes (2000), these statutes, in substantially the same form,

were located in Section 231.28, Florida Statutes (1999). They are currently located in Section 1012.795, Florida Statutes (2003). With this change, jurisdiction has been retained over the allegations in the Administrative Complaint. Salloway v. Department of Professional Regulation, 421 So. 2d 573 (Fla. 3rd DCA 1982).

35. Section 1012.795, Florida Statutes (2003), states as follows in pertinent part:

(1) The Education Practices Commission may suspend the teaching certificate of any person . . . for a period of time not to exceed 3 years, thereby denying that person the right to teach for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the teaching certificate of any person, thereby denying that person the right to teach for a period of time not to exceed 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the teaching certificate of any person . . . or to impose any other penalty provided by law, provided it can be shown that the person:

\* \* \*

(c) Has been guilty of gross immorality or an act involving moral turpitude.

\* \* \*

(i) Has violated the Principles of Professional Conduct for the Education Profession prescribed by the State Board of Education rules.

36. The Administrative Complaint also alleges that Respondent violated Florida Administrative Code Rules 6B-1.006(3)(a), 6B-1.006(4)(b), 6B-1.006(5)(a), and 6B-1.006(5)(h). Florida Administrative Code Rule 6B-1.006 states as follows in relevant part:

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(3) Obligation to the student requires that the individual:

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

\* \* \*

(4) Obligation to the public requires that the individual:

\* \* \*

(b) Shall not intentionally distort or misrepresent facts concerning an educational matter in direct or indirect public expression.

\* \* \*

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

\* \* \*

(h) Shall not submit fraudulent information on any document in connection with professional activities.

37. The statutes do not define gross immorality or moral turpitude. However, "gross immorality" is immorality, which involves an act or conduct that is serious, rather than minor in nature, and which constitutes a flagrant disregard of proper moral standards. See Frank T. Brogan, as Commissioner of Education v. Paula D. Redo, DOE Case No. 95-178-R (Final Order, March 18, 1996), adopting in toto, DOAH Case No. 95-2804 (Recommended Order, December 11, 1995).

38. Florida Administrative Code Rule 6B-4.009, deals with dismissal actions initiated by school boards against instructional personnel, and provides additional guidance to ascertain the meaning of the terms "gross immorality" and "moral turpitude." The Rule states as follows in pertinent part:

(2) Immorality is defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

\* \* \*

(6) Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time, a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

See Fla. Admin. Code R. 6B-4.009.

39. In the instant case, there is no evidence that any cheating occurred during the test. However, that does not excuse Respondent's failure to follow the testing procedures requiring her to separate her students' desk to the extent possible.

40. Additionally, Respondent inappropriately read aloud the first question on the first test section, telling the students to put their finger on the starting point. This instruction, which was not part of the script in the test manual, gave Respondent's students an advantage not available to other students taking the test.

41. Finally, Respondent inappropriately instructed Latrice to go back and check her answers because she must have some answers wrong. Respondent should not have interfered with Latrice's test performance after she completed the test section.

42. Despite Respondent's failure to follow the correct test procedures, Petitioner has not proved by clear and convincing evidence that Respondent engaged in an act that



constitutes gross immorality or moral turpitude. Respondent's conduct was professionally inappropriate, but it did not rise to the level of violating Section 1012.795(1)(c), Florida Statutes (2003).

43. Petitioner has proved by clear and convincing evidence that Respondent violated Section 1012.795(1)(i), Florida Statutes (2003), because she violated the Principles of Professional Conduct for the Education Profession in several ways. First, Respondent violated Florida Administrative Code Rule 6B-1.006(3)(a) by failing to make a reasonable effort to protect her students from conditions harmful to learning and/or to their mental and/or physical health. Respondent knew or should have known that her failure to properly space the desks and follow the script would invalidate the test results and require the administration of a second substitute test.

44. Second, Respondent violated Florida Administrative Code Rule 6B-1.006(4)(b) by misrepresenting facts concerning an educational matter in direct or indirect public expression. As an experienced schoolteacher, Respondent knew or should have known that her inappropriate communication with Latrice would interfere with her answers and an accurate assessment of her ability under standardized testing conditions.

45. Third, Respondent violated Florida Administrative Code Rule 6B-1.006(5)(a), by failing to maintain honesty in all

professional dealings. During the test, Respondent tried to help young children taking a standardized test for the first time. She did not deliberately set out to skew the test results but she knew or should have known that her actions would result in dishonest test results.

46. Lastly, Respondent violated Florida Administrative Code Rule 6B-1.006(5)(h) by submitting fraudulent information on any document in connection with professional activities.

Respondent knew the test results would be relied upon to assess her students' performance as compared to other students in the school, the state, and the nation. By not following the correct testing procedures, Respondent knew or should have known that the results of the test were a false representation of their abilities.

47. Pursuant to the disciplinary guidelines set forth in Florida Administrative Code Rule 6B-11.007, violations of Florida Administrative Code Rule 6B-1.006, may result in penalties ranging from a reprimand to revocation, including probation and suspension. Some penalty ranges for particular statutory and rule violations are prescribed specifically. For example, the penalty for altering student/school records in violation of Rule 6B-1.006(4)(b) ranges from probation to a 3-year suspension. See Fla. Admin. Code R. 6B-11.007(2)(f).

48. Florida Administrative Code Rule 6B-11.007(3) sets forth the aggravating and mitigating factors to be considered in individual cases. The aggravating factors that apply here are as follows: (a) the severity of the offenses; (b) the number of offenses; (c) the damage caused by the offenses; and (d) the deterrent effect of the penalty imposed. The mitigating factors applicable here are as follows: (a) Respondent's lack of prior discipline; (b) the length of time Respondent has taught and her contribution as an educator; (c) the effect of the penalty upon Respondent's livelihood; and (d) the absence of self-gain for Respondent.

49. During the hearing, Respondent admitted that she had not strictly followed the test procedures. It was apparent that Respondent is a dedicated teacher who, if anything, was too anxious for her students to be successful. On balance, Respondent's teaching certificate should be placed on probation subject to terms and conditions set by the EPC for a period of five years.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That the EPC enter a final order, placing Respondent's teaching certificate on probation for a period of five years.

DONE AND ENTERED this 20th day of November, 2003, in  
Tallahassee, Leon County, Florida.

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SUZANNE F. HOOD  
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Filed with the Clerk of the  
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this 20th day of November, 2003.

COPIES FURNISHED:

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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 should be filed with the agency that will issue the final order in this case.