

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARIA GUERRERO,)
)
 Petitioner,)
)
 vs.) Case No. 03-3569
)
 DEPARTMENT OF EDUCATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on January 27, 2004, by video teleconference, with the parties appearing in Miami, Florida, before Patricia Hart Malono, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Maria Guerrero, pro se
80 East 18th Street
Miami, Florida 33010

For Respondent: Scott Odenbach, Esquire
Department of Education
325 West Gaines Street, Suite 1244
Tallahassee, Florida 32399-0400

STATEMENT OF THE ISSUE

Whether the Petitioner failed to follow testing procedures on the Essay subtest of the General Knowledge Test administered

July 26, 2003, as alleged by the Respondent in correspondence dated September 3, 2003.

PRELIMINARY STATEMENT

In correspondence dated September 3, 2003, the Department of Education ("Department") notified Maria Guerrero that her response on the Essay subtest portion of the General Knowledge Test administered on July 26, 2003, had been invalidated because Ms. Guerrero failed to follow the Department's policy on cheating. Ms. Guerrero timely requested an administrative hearing, and the Department forwarded the matter to the Division of Administrative Hearings for assignment of an administrative law judge.

At the hearing, the Department presented the testimony of Kathy Fearon and Lourdes Fernandez, and Department's Exhibits A through F were received into evidence. Ms. Guerrero testified in her own behalf, and offered no exhibits. Anna Fernandez, Ms. Guerrero's daughter, acted as interpreter, with the Department's agreement.

The one-volume transcript of the proceedings was filed with the Division of Administrative Hearings on February 10, 2004, and the parties timely filed proposed findings of fact and conclusions of law, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. On June 18, 2003, Ms. Guerrero completed the Registration Application to take the Certification Examination for Florida Educators that was administered on July 26, 2003.

2. A Registration Bulletin accompanied the Registration Application and contained directions for completing the application. On page 24 of the Registration Bulletin, applicants were advised that, in signing Block 19 of the Registration Application, they were agreeing to the conditions set forth in the Registration Bulletin, including the following:

I understand that all of the examination booklets, answer sheets, and other examination materials are the sole property of the Florida Department of Education and that I am not permitted to take any of the examination materials from the examination center or to reproduce the materials in whole or part by any method. If I do anything prohibited by this paragraph, my examination performance will be voided.

I understand that during the examination I will not be permitted to use written notes, make written notes of the content of the examination booklets, use scratch paper, or communicate with other examinees in any way. I also understand that the only materials that may be on my desk during the examination are the test booklets, answer sheets, pencils and eraser, and examination aids that are specified on my admission

ticket, and that I will be permitted to use the margin of my test booklet for any preliminary work preparatory to answering specific questions. I understand that I am not permitted to give assistance to or receive assistance from other examinees, I must follow the instructions of the test administration personnel, and I must be the person whose name appears on the test receipt card for this test. If I do anything prohibited by this paragraph, my examination will be voided.

3. Approximately two weeks before an examination is administered, it is the Department's practice to send the candidates for the examination their admission tickets and a copy of Certification Examinations for Florida Educators, which includes the following:

Cheating is any unauthorized activity that impairs or alters the circumstances of the examination as a measure of the knowledge or skills it was designed to assess, including but not limited to the following:

* * *

g. During or after the examination administration, taking, or attempting to take, from the examination room, copies of, or notes regarding, examination questions, prompts, answers, responses, or examination question stimulus materials.

Ms. Guerrero received a copy of Certification Examinations for Florida Educators, along with her examination admissions ticket.

4. Ms. Guerrero was admitted to the examination center on July 26, 2003.

5. Two essay topics were included in the essay booklet for the examination, and the candidates were to choose one topic on which to write. Ms. Guerrero does not understand English very well, and, shortly after the examination began, she wrote the two essay topics on the back of the admission ticket so she would better understand them before she chose the topic on which to write her essay. Ms. Guerrero also wrote her "logic rules" on the front of the admission ticket to make sure that she remembered them. Ms. Guerrero used the admission ticket as though it were a piece of scratch paper.

6. At 8:35 a.m., the examination proctor observed Ms. Guerrero writing on her examination admission ticket and immediately began walking to Ms. Guerrero's seat to confront her. As soon as she saw the proctor approaching, Ms. Guerrero realized that she should not have written on any of the examination materials because they belong to the Department.

7. Ms. Guerrero moved to put the admission ticket into her purse, but the proctor arrived at her seat before she could complete the action. Ms. Guerrero gave the admission ticket to the proctor, who prepared an irregularity report on the incident.

8. The proctor allowed Ms. Guerrero to continue taking the examination.

9. The Department decided to invalidate the Essay subtest of Ms. Guerrero's examination as a result of the proctor's report of the irregularity.

CONCLUSIONS OF LAW

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

11. The Department is charged with administering an examination to measure the mastery of general knowledge of applicants for certification as teachers in Florida. See § 1012.56(2), (3), and (8), Fla. Stat. (2003). Florida Administrative Code Rule 6A-4.0021 governs the written examinations required for teacher certification, and these examinations include subtests in various subjects, one of which is writing. See Fla. Admin. Code R. 6A-4.0021(2)(b).

12. Candidates to take the examination are required to submit a completed and signed Form CG-20-03, Registration Application: Certification Examinations for Florida Educators, which is incorporated by reference into Florida Administrative Code Rule 6A-4.0021(4)(a)1.a.

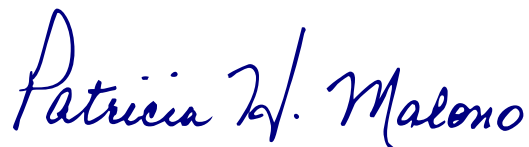
13. As set forth in the findings of fact herein, Ms. Guerrero, by writing the two essay topics on her examination admission ticket, performed an act expressly prohibited in the

Registration Bulletin which accompanied the Registration Application by making written notes of the contents of an examination booklet. Accordingly, the Department appropriately invalidated the Essay subtest of the General Knowledge Test administered July 26, 2003.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Education enter a final order invalidating the Essay subtest of the General Knowledge Test administered to Maria Guerrero on July 26, 2003.

DONE AND ENTERED this 4th day of March, 2004, in Tallahassee, Leon County, Florida.



PATRICIA HART MALONO
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of March, 2004.

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.