

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHAGUFA MUBARIK,)
)
 Petitioner,)
)
 vs.) Case No. 04-0696
)
 DEPARTMENT OF EDUCATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On May 3, 2004, an administrative hearing in this case was held by videoconference between Tallahassee and Orlando, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Shagufa Mubarik, pro se
2426 Island Club Way
Orlando, Florida 32822

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

STATEMENT OF THE ISSUE

The issue in the case is whether the allegations set forth in the Respondent's letter to the Petitioner dated February 16, 2004, are correct.

PRELIMINARY STATEMENT

By letter dated February 16, 2004, the Department of Education (Respondent) notified Shagufa Mubarik (Petitioner) that her score from the January 24, 2004, administration of the Professional Education Test had been invalidated. The letter stated that the reason for the invalidation was the Respondent's determination that the Petitioner cheated on the test. The letter advised the Petitioner that she had the right to dispute the determination through an administrative hearing. By letter dated February 20, 2004, the Petitioner disputed the determination and requested a hearing. The Respondent forwarded the request for hearing to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Respondent presented the testimony of three witnesses and had Exhibits numbered 1 through 5 admitted into evidence. The Petitioner testified on her own behalf, presented the testimony of one witness, and had one composite exhibit admitted into evidence. The one-volume Transcript of the hearing was filed on June 16, 2004. Both parties filed proposed recommended orders that were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Pursuant to statute, the Florida Department of Education has developed and administers the Florida Teacher

Certification Examination. A Florida teacher seeking certification as an educator by the State of Florida must obtain a passing score on the exam.

2. In November 2003, the Petitioner applied to take the Teacher's Professional Education Test on January 24, 2004. The Petitioner signed the registration application on November 13, 2003, acknowledging that she agreed to the provisions set forth in the exam application materials. The Respondent received the Petitioner's signed application on November 17, 2003.

3. The instruction sheet contained in the exam application materials provides in relevant part that examinees may not "communicate with other examinees in any way" or "give or receive assistance from other examinees," and states that related violations will result in the examination being "voided."

4. Approximately two weeks prior to the exam, the Respondent sent a letter to all registrants. The Petitioner received a copy of the letter. In the letter, the Respondent outlined behaviors regarded as cheating, and specifically identified cheating to include "looking, or attempting to look, at the examination answers, responses, or other materials of another examinee."

5. Prior to exam administration, supervisors and proctors received a Test Administration Manual and received instruction

on identification of "cheating" or "suspected cheating," including observation of an examinee looking or attempting to look at another examinee's test materials or answer sheet.

6. As to cheating, the Test Administration Manual sets forth the procedure to be followed by a supervisor or proctor who observes or suspects cheating is occurring, and provides in relevant part as follows:

3. If a room supervisor who observes cheating activity, or to whom cheating activity is reported by a room proctor, is reasonably certain that cheating is taking place based on the clarity, duration, or vantage point of the observations, whether or not another individual can confirm the observation, the room supervisor shall
 - a. collect the examinee's examination materials;
 - b. inform the examinee that he or she will not be allowed to complete that examination or participate in any further testing on that examination administration date;
 - c. make notes of the identity of those involved or in a position to have observed or been aware of the activity and the relative locations in, and other pertinent features of, the examination room;
 - d. at the conclusion of the testing time, quietly request examinees who were not involved in but were in a position to have observed or been aware of the cheating to come to a private office or other appropriate location to be interviewed by, and give a statement to the room supervisor; and

e. prepare a full written report of the incident, including as attachments all witnesses' statements and other pertinent documents or tangible items and make the report part of the Room Supervisor's Irregularity Report.

4. Suspected cheating - If a room supervisor reasonably suspects that cheating activity is occurring but cannot be certain, even after conferring with one or more other individuals, that a cheating activity is taking place, the room supervisor shall

a. continue to make observations and quietly notify a room proctor to continue to make observations of the suspicious activity;

b. follow steps c, d, and e in number 3 above; and

c. include in the Irregularity Report a notation that the answer folder of the examinee suspected of cheating should be analyzed in connection with the circumstances described in the report.

7. During the exam administration on January 24, 2004, a supervisor present in the room where the Petitioner was located observed the Petitioner staring at the answer sheet of another person (identified as "Rekha"), who was also taking the exam. Rekha was seated to the left and slightly ahead of the Petitioner in the exam room.

8. At the hearing, the supervisor described the Petitioner's suspicious behavior as "constant staring" and "noticeable concentration" towards Rekha's answer sheet.

9. At the time the room supervisor observed the Petitioner's behavior, the test period was drawing to a close. Many examinees had already completed their work and left the room. By the time the supervisor saw the Petitioner's behavior, there were no other examinees in position to observe the Petitioner.

10. After the exam ended, the supervisor compared the Petitioner's answer sheet with that of Rekha, and observed that there were a number of erasures and answer changes on the Petitioner's answer sheet that matched Rekha's answers.

11. The supervisor completed an "Irregularity Report" dated January 24, 2004, in which he wrote:

I witnessed Shagufa constantly looking at Rekha's answer sheet, in about the last 30 minutes of test. I compared answer sheets afterwards and noticed several answer changes on Shagufa's sheet to what was on Rekha's.

12. The irregularity report and the answer sheets were submitted to the Respondent for further review.

13. After the Respondent received the materials, the Respondent assigned Dr. Cornelia Orr, an expert in test response analysis, to review the answer sheets. Dr. Orr testified persuasively at the hearing and her testimony is credited.

14. Dr. Orr compared the exam score for the Petitioner (referred to as Examinee A) with that of Rekha (referred to as

Examinee B) and determined that their scores were "very similar."

15. Dr. Orr reviewed the erasures on the answer sheets and determined that there were 27 erasures on the Petitioner's answer sheet. There were four erasures on Examinee B's sheet. Of the Petitioner's 27 erasures, 18 were changed from incorrect to correct answers and matched the answers of Examinee B. An additional four answers were changed from correct to incorrect answers and matched incorrect answers of Examinee B.

16. Dr. Orr reviewed the incorrect answers on both sheets and determined that the Petitioner missed 54 questions, that Examinee B missed 48 questions, and that 30 of the Petitioner's incorrect responses matched the incorrect answers of Examinee B. Dr. Orr described the incidence of corresponding incorrect answers on the two answer sheets as "highly unusual."

17. After concluding her review of the two answer sheets, Dr. Orr then analyzed the answers and scores of the 3,747 persons who took the test on the same day to determine the correlations between all examinees to Examinees A and B's answers.

18. For all examinees, the average number of wrong answers corresponding to those of Examinee B was nine, as compared to the Petitioner's 30 incorrect answers which matched those of Examinee B.

19. Based on Dr. Orr's review and evaluation, she determined that the chance probability of the Petitioner's high number of incorrect answers corresponding to those of Examinee B was one in 33,000.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat. (2003).

21. The Respondent has the burden of proving by clear and convincing evidence the allegations of cheating by the Petitioner. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

22. The State Board of Education is responsible for development of procedures by which professional teaching certificates are awarded. Such certification requires successful completion of an examination. See § 1012.56 Fla. Stat. (2003).

23. As set forth in the instructions provided to all exam registrants, the Respondent's policy is to void the examination of any examinee determined to be cheating. Cheating is defined to include an examinee looking or attempting to look at another examinee's materials.

24. The evidence in this case, including the visual observation by the exam supervisor and Dr. Orr's review of the answer sheets and analysis of the exam responses, establishes that the Petitioner cheated on the examination.

25. In addition to denying that she cheated on the exam, the Petitioner asserts that the room supervisor did not follow the proper procedure when he observed the Petitioner looking at another answer sheet. Specifically, the Petitioner notes that her examination materials were not collected at the time the supervisor observed the behavior, that she was allowed to complete the test, and that the room supervisor did not interview other examinees in a position to have observed the Petitioner's behavior.

26. The evidence establishes that the room supervisor substantially complied with the procedure for "suspected cheating." After initially noticing the Petitioner's behavior, he continued to observe the suspicious activity. He did not interview other examinees because by the time he observed the behavior, other examinees in the vicinity of the Petitioner had completed their work and left the room. There were no examinees in a position to have observed or been aware of the activity. He prepared an "Irregularity Report" wherein he reported the suspected activity to the appropriate authorities.

RECOMMENDATION

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

RECOMMENDED that the Department of Education enter a Final Order voiding the score of Shagufa Mubarik on the January 24, 2004, Professional Education Test.

DONE AND ENTERED this 14th day of July, 2004, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of July, 2004.

COPIES FURNISHED:

Shagufa Mubarik
2426 Island Club Way
Orlando, Florida 32822

Scott J. Odenbach, Esquire
Department of Education
325 West Gaines Street, Suite 1244
Tallahassee, Florida 32399-0400

Honorable Jim Horne, Commissioner of Education
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Daniel J. Woodring, General Counsel
Department of Education
1244 Turlington Building
325 West Gaines Street
Tallahassee, Florida 32399-0400

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.