

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LORI MONROE,)
)
 Petitioner,)
)
 vs.) Case No. 06-1501
)
 DEPARTMENT OF EDUCATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a final administrative hearing in this case on June 6, 2006, in Orlando, Florida.

APPEARANCES

For Petitioner: Matthew J. Carson, Esquire
Department of Education
Division of Vocational Rehabilitation
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For Respondent: Charlie S. Martin, Esquire
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STATEMENT OF THE ISSUE

Whether Respondent, Department of Education, should have invalidated Petitioner's, Lori Monroe, Florida Teacher

Certification Examination, for her alleged violation of a test-taking protocol.

PRELIMINARY STATEMENT

Petitioner sat for the Florida Teacher Certification Examination on March 4, 2006, at the University of Central Florida, in Oviedo, Florida. By letter dated March 20, 2006, Respondent advised Petitioner that she had been assigned an "invalid" score for "completing the answer sheet for the Elementary Education K-6 examination after time was called for that examination." By letter dated March 29, 2006, Petitioner requested an administrative hearing.

On April 25, 2006, Respondent forwarded the case to the Division of Administrative Hearings. The following day, April 26, 2006, an Initial Order was forwarded to both parties. On May 9, 2006, the case was scheduled for a final hearing to be held in Orlando, Florida, on June 6, 2006.

The case was heard as scheduled. Petitioner testified on her own behalf. Respondent offered the testimony of three witnesses: Barbara Sherwood, Raymond Hefelee, and Renee Luallen. Witnesses Sherwood and Hefelee were administrators of the particular test in question; Ms. Luallen is the coordinator of Educational and Training Practices for Respondent. Respondent offered nine exhibits that were admitted into evidence and marked Respondent's Exhibits 1 through 9.

The Transcript of the final hearing was filed with the Division of Administrative Hearings on July 12, 2006. On the agreement of the parties, the date for filing proposed recommended orders was extended. Both parties filed Proposed Recommended Orders which were considered by the undersigned.

FINDINGS OF FACT

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

1. Petitioner is seeking to be certified as a teacher. She submitted appropriate application and sat for the March 4, 2006, Florida Teacher Certification Examination.
2. Respondent is the state agency responsible for certifying teachers in the State of Florida and conducts the Florida Teacher Certification Examinations.
3. The Florida Teacher Certification Examinations are given four times per year in various locations around the state.
4. Because of the frequency and volume of Florida Teacher Certification Examinations, the application process and information regarding testing procedures are refined. The preliminary information provided examinees includes a statement of understanding, written in the first person, which makes specific reference to the fact that the examinee "must follow the instructions of the test administration personnel," and, "If

I do anything prohibited by this paragraph, my examination results will be voided."

5. In addition, examinees are provided an information sheet identifying "cheating behaviors." Included in the list of "cheating behaviors" is the following: "During the examination administration, continuing to work on the examination after the testing time had elapsed, and the directive to stop working has been given by a room proctor or supervisor."

6. Included in the referenced refinements in testing procedures are instructions contained in a Test Administration Manual provided to test room supervisors and proctors that ensure the appropriate administration of the tests.

7. The Test Administration Manual specifically delineates the procedure to be followed upon observation by a room supervisor or proctor when "an examinee continues to work on the test when time is called." In the instant case, the room supervisor and proctor, both of whom were experienced test administrators, followed the appropriate procedures.

8. Both the room supervisor and proctor were within several feet of Petitioner who was sitting in the front-row seat of the classroom. Not only was Petitioner within easy view, but, certainly close enough to clearly hear the general instructions to stop. They observed Petitioner continue to

enter answers on her answer sheet after examinees had been told to stop two times.

9. It is unfortunate that the particular conduct of the Petitioner is characterized as "cheating," as the evidence, including the observations of the room supervisor and proctor, portrays Petitioner as being so focused on the examination that she did not hear the instruction to stop and, unfortunately, continued to answer questions after the test had concluded.

10. Respondent advised Petitioner by letter dated March 20, 2006, that she had been assigned a score of "invalid" and that she had not fulfilled the requirement for a passing score on the Elementary Education K-6 examination.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction of the parties to and subject matter of this proceeding. § 120.57, Fla. Stat. (2005).

12. Respondent is responsible for certifying teachers in Florida and conducts certification examinations for Florida educators. § 1012.56, Fla. Stat. (2005).

13. Respondent has adopted Florida Administrative Code Rule 6A-4.0021 to implement the foregoing statutory provisions. The rule provides, in pertinent part, as follows:

(1) Scope. This rule governs the written examinations for teacher certification.

Additional requirements for certification are specified in Chapter 6A-4, F.A.C.

(2) Description of the examinations and competencies to be demonstrated.

(a) The Florida Teacher Certification Examination shall be developed by the Commissioner of Education.

(b) The written examinations shall include subtests of reading, writing, mathematics, professional skills, and subject area specialty. These examinations may contain multiple choice questions and questions requiring the examinee to write an answer or demonstrate a proficiency.

* * *

(3) Administration of the examinations.

(a) The examinations shall be administered by a test administration agency or agencies under contract with the Florida Department of Education.

(b) The examination shall be administered at least four (4) times each year. The Commissioner of Education shall establish examinations dates each year which may include supplemental test administrations. The Commissioner of Education shall designate the registration deadlines, administration sites, and examinations available for the supplemental administrations.

* * *

(c) The examination shall be administered at centers designated by the Commissioner of Education.

* * *

(11) Score reports for the reading, writing, mathematics, professional skills, and subject area examinations.

(a) A properly authenticated score report is defined as the original score report issued directly by the test administration agency without any qualification, reservation, or irregularity.

14. In the instant case, Petitioner did not receive a "properly authenticated score report," as that term is used in Florida Administrative Code Rule 6A-4.0021, because there had been an "irregularity" reported. The "irregularity" involved her alleged "cheating" on the examination by continuing to work on the examination after the testing time had elapsed, and a directive to stop working had been given.

15. As an examinee, Petitioner bears the burden of proof that she did not violate the particular test protocol as alleged by Respondent. Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

16. Petitioner has failed to meet the burden of proof. The evidence is persuasive that she continued to enter answers on her answer sheet after the test time had elapsed and instructions to stop had been given.

RECOMMENDATION

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

RECOMMENDED that the Department of Education enter a final order concluding that an irregularity had occurred and that "invalid" was the appropriate test score for the subject test.

DONE AND ENTERED this 19th day of July, 2006, in Tallahassee, Leon County, Florida.



JEFF B. CLARK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of July, 2006.

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.