

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CICIEL GHOBRIAL, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 10-0549  
 )  
 DR. ERIC J. SMITH, AS )  
 COMMISSIONER OF EDUCATION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on May 21, 2010, in Winter Park, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ciciel Ghobrial, pro se  
Robert Ghobrial, Qualified Representative  
2328 Middleton Avenue  
Winter Park, Florida 32792

For Respondent: Bonnie Wilmot, Esquire  
Department of Education  
Turlington Building, Room 1244  
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner cheated or otherwise acted inappropriately during the Florida Teacher Certification Examination on July 25, 2009.

PRELIMINARY STATEMENT

Petitioner, Ciciel Ghobrial (hereinafter "Ghobrial"), took the Florida Teacher Certification Examination (the "Exam"), given by the Department of Education, on July 25, 2009. By way of a letter dated August 27, 2009, Respondent notified Ghobrial that her essay portion of the Exam had been given a grade of "Invalid" due to Respondent's belief that Ghobrial had cheated on the Exam. Ghobrial timely filed a request for a formal hearing, which was forwarded to the Division of Administrative Hearings so that a formal hearing could be conducted. The hearing was held on the date set forth above, and both parties were in attendance.

At the final hearing, Ghobrial (for whom English is a second language) appeared pro se, but allowed her son, Robert Ghobrial, to verbalize the majority of her testimony. Ghobrial and her son each testified on Ghobrial's behalf. Ghobrial's Exhibits 2 through 20 were offered and accepted into evidence.

Respondent called five witnesses: Phil Canto, Virginia D'Attoma, Diorah Nelson, Elizabeth Griffey, and Ada Yahner. Respondent's Exhibits 1 through 10 and 12 were offered and accepted into evidence.

The parties advised that a transcript of the final hearing would be ordered. The Transcript was filed on June 14, 2010. Ghobrial asked for an extension of time to file her proposed

recommended order, and the request was granted without opposition. Each party timely submitted a Proposed Recommended Order, and each was duly considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Ghobrial is a native of Sudan, who migrated to the United States in November 1993. Her native language is Arabic. Ghobrial has a bachelor's degree in philosophy, with a minor in child psychology from the University of Cairo, Egypt. Ghobrial, her husband, and all four of her children have advanced college degrees. Education is important to Ghobrial.

2. Within months of her arrival in the United States, Ghobrial obtained employment as a pre-kindergarten teacher at Creative Learning Center in Winter Park, Florida. Inasmuch as Ghobrial was at that time still trying to master the English language, her primary responsibilities were caring for infants and toddlers. Ghobrial worked at the center for six years, during which time she became assistant director of the child care center. She then worked as a paraprofessional in the Orange County School System for four years. In 2006, Ghobrial was given the opportunity to teach first and second grades at Arbor Ridge Elementary School in Orlando, Florida, under a temporary teaching certificate. That certificate had expired as of the date of the final hearing in this matter.

3. Beginning in March 2003, Ghobrial began her efforts to pass the Exam so that she could obtain a permanent teaching license. The paper-based version of the Exam is offered several times throughout the year in different locations. The Exam consists of four subtests, one of which involves the writing of an original essay on one of two possible topics. The purpose of the essay portion of the Exam is to "demonstrate an examinee's ability, in the time allotted, to compose and write an original essay that completely addresses the topic in an effective, well-organized manner, with good grammar and spelling."

4. Ghobrial quickly realized that the Exam was written in such a way that her unfamiliarity with the English language was a large impediment. It took several tries before she began to obtain passing grades for any portions of the Exam. Try as she may, however, Ghobrial was unable to master the essay portion of the Exam.

5. Ghobrial took the essay portion of the Exam 12 times prior to the test at issue. During the time she was taking the essay portion, she took the other portions as well. She passed the Prekindergarten/Primary 3K Examination on October 22, 2005. On January 20, 2007, she passed the Professional Education portion of the Exam. On January 12, 2008, Ghobrial passed the General Knowledge Subtest 4: Mathematics, portion of the Exam. The General Knowledge Subtest 2: English Language Skills was

passed on October 25, 2008. Then, on April 4, 2009, Ghobrial passed the General Knowledge Subtest 3: Reading, portion of the Exam. All that remained was to pass the General Knowledge Subtest 1: Essay.

6. Ghobrial took every step available to her to ensure ultimate passage of the essay portion. She practiced her writing using on-line test-taking sites. She enrolled in an English prep course at Valencia Community College ("Valencia") in 2008 and a college prep reading course in 2009. She also enrolled in a Freshman Comp I course at Valencia for additional education and training. Meanwhile, she obtained private tutoring as part of her unyielding efforts to pass the essay portion of the Exam.

7. Each person taking the Exam is provided with registration materials which sets forth how the Exam will be administered and the purpose of the Exam and prescribes what actions or behaviors will be deemed improper. One portion of the registration materials (which Ghobrial admittedly received) defines the following activity as cheating: "During the examination administration, writing an essay that shows evidence of having been prepared before the examination; that is, presenting an essay that is not an original essay composed by the examinee during the test in direct and specific response to an essay topic presented on the test."

8. The Essay portion of the Exam was set up to test the exam takers' ability to organize, write, spell, and correctly insert grammar into a composition of their own creation. Each time the test was given, there would be two essay topics from which to choose. The topics were general and open-ended. It was not the intent of the test to measure one's knowledge about a particular subject; rather, it was to determine how well the person could correctly put their thoughts and ideas on paper. Essay topics would be general topics from which each examinee could narrow the focus as much as he or she saw fit.

9. It was important for the Exam graders to be consistent with their review of the essays. The graders had to calibrate their reviews so that each grader was looking for the same grammatical and structural content. In order to do that, the list of essay topics had to be fairly limited so that graders could be trained as to those particular essay questions. Having too many different topics would not allow for a uniform review of all essays.

10. At the July 25, 2009, Exam, two essay topics were offered; one of them was "An invention in the field of science or technology that influences people's lives." Ghobrial had seen this topic several times in past exams, and it was even a topic she had seen during her private tutoring practice sessions. She had even practiced writing a similar essay in the

recent past. Thus, the essay topic was very familiar to her and gave her some hope that this familiarity would result in a passing score.<sup>1</sup> As she had done in her practice essays, Ghobrial narrowed the scope of the essay down by focusing on one particular invention--computers. When Ghobrial took the essay portion of the Exam on October 25, 2008, this same topic was offered. Ghobrial's essay in that exam concentrated on the television as an invention influencing people's lives.

11. On the July 25, 2009, exam, Ghobrial wrote about computers as an invention that had influenced people's lives. When Ghobrial saw this topic during her exam preparation courses, she switched to computers as the influential invention. She wrote the essay at the Exam site without benefit of notes or other aids. She did, however, remember some of what she had written on practice essays and surely that may have influenced what she wrote in her Exam essay on the day in question.

12. Ghobrial's essay was reviewed by two graders: One gave her a grade of three and the other gave her a grade of five. A combined grade of six is considered passing. However, any time there is a discrepancy of more than one number by two graders, another grader must review the essay as well. That being the case, Ghobrial's essay was selected for review by the chief grader assigned to that particular grading session.

13. During the time that Ghobrial's essay was being graded by the chief grader, Respondent was made aware that there appeared to be some essays written by examinees that were too similar in content to be coincidence. That being the case, graders were cautioned to be on the lookout for any essay bearing similarity to the suspected copies. When the chief grader did her re-review of Ghobrial's essay, she found there to be similarities between Ghobrial's essay and two other essays. As a result Ghobrial was given a grade of Invalid for her essay. (The other two essays were also given a grade of Invalid, but neither of those examinees contested their grade.)

14. Ghobrial's essay contained the following sentences or phrases that were deemed suspect because of their similarity to certain on-line essays (and presumably to the two other suspect essays, as well):

- "'Computer is an electronic brain' as compared to the on-line version of the essay which included the term 'computer is a wonderful electronic brain'."
- "'Has changed our lives through dramatic advances in science and medicine, business, and education' versus 'has significantly changed our world through advances in science and medicine, business and education'."



- "'Clearly, so many advances in science and medicine are due to computers in the last fifty years' versus 'in the last fifty years'," which Ghobrial had written in a practice exam.
- "'Clearly, no modern office could operate as efficiently without a variety of computer equipments [sic]' versus 'Indeed, offices and banks can't operated as efficiently, without a variety of computers'."
- "'Thus, both teachers and students have come to rely on computers in a way which was not possible 40 years ago' versus 'Thus, both students and teachers have come to rely on computers to enhance learning in a way not possible years ago'."
- "'We landed on the moon and returned safely all because of computers' versus 'landed men on the moon because of computers'."

15. The structure of the three essays was also similar.

Each contained the following:

- An introductory paragraph identifying computers as the topic of the essay;
- Paragraph 2 discussing science and medicine;
- Paragraph 3 referring to business;
- Paragraph 4 with a reference to education; and

- A summary paragraph with an almost identical phraseology.

16. Those phrases and sentences, when compared to the organization of the on-line essay, caused the graders to take a longer look at Ghobrial's essay. They found too many similarities to be deemed a coincidence, thus drawing the conclusion that Ghobrial must have cheated. Of the 32 sentences in Ghobrial's essay, about 12 of them had some similarity to the on-line essay. (Respondent asserts there are 20 sentences with similarities, but that contention is not completely borne out by the facts when reviewing the essays subjectively.)

17. Ghobrial admittedly used on-line practice exams to prepare for the Exam. There is nothing inherently wrong with doing that; it is absolutely important for a person to prepare for the Exam using all means within his or her grasp. One of the on-line services called "123helpme.com," included an essay entitled "Computers of the World." Some of the language in the on-line essay is strikingly similar to what Ghobrial wrote during the Exam. The two essays are not verbatim, nor is there complete similarity of content. But they are similar.

18. Ghobrial does not deny that she may have seen the on-line essay. She was preparing for the Exam as best she could and would have relied on any available source. There is no evidence as to whether the other two suspect examinees saw the

same on-line essay practice test, but that inference could be drawn from the similarity of their work.

19. However, Ghobrial did not memorize the essay, nor is there any indication she had a copy of the essay to refer to while she was taking the Exam. Rather, Ghobrial had some recall of the topic based on the fact that she had studied it as part of her preparation.

20. It is a very close call as to whether the essay written at the time of the July 25, 2009, Exam was "original" in all aspects. The essay was obviously influenced by Ghobrial's preparation for the Exam; but just as obviously, she drafted the essay without benefit of notes, and it was "original" in the form submitted for the Exam. That is, the essay was drafted during the Exam time under close supervision and monitoring.

21. Ghobrial, when testifying on her own behalf, was very credible and sincere. She is still working to master the English language, but showed sufficient understanding to have crafted the essay as it was submitted.

22. Respondent's witnesses were no less credible. Each of them expressed their opinions based on their training and experience. And although Respondent's witnesses established the basis for their determination that Ghobrial had "cheated" by memorizing the essay, there is no direct evidence to support their final contention.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Sections 120.57 and 120.569, Florida Statutes (2009).

24. Section 1012.56, Florida Statutes (2009), sets forth the educator certification requirements for all teachers in the State of Florida and says in pertinent parts:

(2) Eligibility Criteria--To be eligible to seek certification, a person must:

\* \* \*

(g) Demonstrate mastery of general knowledge, pursuant to subsection (3);

\* \* \*

(3) Mastery of General Knowledge -- Acceptable means of demonstrating mastery of general knowledge are:

(a) Achievement of passing scores on basic skills examination required by state board rule; . . . .

25. Clearly, Ghobrial would need to demonstrate mastery of general knowledge by successfully passing the essay portion of the basic skills examination.

26. Section 1008.24, Florida Statutes (2009), is entitled "Test Security" and states in pertinent part:

(1) It is unlawful for anyone knowingly and willfully to violate test security rules adopted by the State Board of Education for

mandatory tests administered by or through the State Board of Education or the Commissioner of Education to students, educators, or applicants for certification or administered by school districts pursuant to s. 1008.22, or, with respect to any such test, knowingly and willfully to:

\* \* \*

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

27. Ghobrial was aware of and appeared to fully understand the content of the test administration manuals prior to commencement of the essay portion of the Exam.

28. The burden of proof in this matter is on Respondent to prove, by a preponderance of the evidence, that Ghobrial is guilty of cheating on the Exam. See Division of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

29. It is, therefore, incumbent on Respondent to provide evidence that Ghobrial knowingly and willfully violated the test security rules for the Exam. That would include proof that Ghobrial entered the test site with the willful intention of writing an essay that was not original in content. In order to do that, Ghobrial would have had to have known the topics that would be offered during the essay portion of the Exam. There has been no showing that Ghobrial, or anyone else, knew what the topics would be. The mere fact that one of the topics had found

its way to an on-line test preparation site does not implicate Ghobrial.

30. Based upon a careful review of the evidence and the demeanor of the witnesses, Respondent has not proven that Ghobrial did anything more than create a new, original essay using knowledge she had gleaned from prior exposure to the essay topic.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by Respondent, Dr. Eric J. Smith, as Commissioner of Education, deeming Petitioner, Ciciel Ghobrial's, essay to have been an original composition deserving of a passing grade.

DONE AND ENTERED this 12th day of July, 2010, in Tallahassee, Leon County, Florida.



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R. BRUCE MCKIBBEN  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of July, 2010.

ENDNOTE

<sup>1/</sup> Respondent does not know how the essay topic became part of an on-line training session. The essay topics are protected from dissemination to the public so that the topics can be used multiple times. The fact that the topic was part of an on-line essay preparation course is of concern to Respondent, but that fact is not an issue in the current proceeding.

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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.