

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-3418TTS

ROSE DAVIDSON,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted by video teleconference on February 7, 2014, between sites in Miami and Tallahassee, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Heather L. Ward, Esquire  
Miami-Dade County Public Schools  
1450 Northeast Second Avenue  
Miami, Florida 33132

For Respondent: Mark Herdman, Esquire  
Herdman and Sakellarides, P.A.  
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STATEMENT OF THE ISSUE

Whether Rose Davidson (Respondent) committed the acts alleged in the Miami-Dade County School Board's (School Board)

Notice of Specific Charges and, if so, the discipline that should be imposed against Respondent's employment.

PRELIMINARY STATEMENT

At the times relevant to this proceeding, Respondent taught second grade at Ernest R. Graham K-8 Center (Graham Center).

At its regularly scheduled meeting on September 3, 2013, the School Board took action to suspend Respondent's employment without pay and institute this proceeding to terminate her employment. Respondent timely challenged the School Board's action, the matter was referred to DOAH, and this proceeding followed.

On November 15, 2013, the School Board filed with DOAH its Notice of Specific Charges. The Notice of Specific Charges alleged certain facts, and, based on those facts, alleged in three separate counts that Respondent was guilty of (I) misconduct in office, (II) violating School Board Policy 3210 (Standards of Ethical Conduct), and (III) violating School Board Policy 3210.01 (Code of Ethics).

The gravamen of the Notice of Specific Charges is that Respondent improperly assisted her students in preparing for the Stanford Achievement Test (SAT) and that she inflated and manipulated the scoring of a reading assessment test known as FAIR (Florida Assessments for Instruction in Reading).

Prior to the formal hearing, the parties filed a Pre-Hearing Stipulation, which contained certain stipulated facts. Those stipulated facts have been incorporated by the undersigned as findings of fact to the extent those facts are deemed relevant.

At the final hearing, the School Board presented the testimony of Myra Alfaro (Graham Center principal), Karen Belusic (Graham Center assistant principal), Respondent, Dr. Sally Shay (district director for the Office of Assessment Research and Data Analysis), Alvin Martin (school police officer), Eileen Gross (Graham Center teacher), and Rosa Sanchez (Graham Center reading coach). Petitioner's pre-marked Exhibits 1-19, 33-34, and 38-42 were admitted into evidence.

Respondent testified on her own behalf and presented the additional testimony of Tangle Butterfield (Lakeview Elementary School teacher) and Sharon Moyd (Lakeview Elementary School teacher). Respondent's pre-marked Exhibits 1-9 were admitted into evidence.

A Transcript of the proceedings, consisting of one volume, was filed on April 21, 2014. The deadline for the filing of proposed recommended orders was extended on the unopposed motion filed by the School Board. Thereafter, each party timely filed a Proposed Recommended Order, which has been duly considered by the undersigned in the preparation of this Recommended Order.

Unless otherwise noted, all statutory references are to Florida Statutes (2013), and all references to rules are to the version thereof in effect as of the entry of this Recommended Order.

#### FINDINGS OF FACT

1. At all times material hereto, Petitioner was the constitutional entity authorized to operate, control, and supervise the public schools in Miami-Dade County, Florida.

2. At the times relevant to this proceeding, Respondent was employed pursuant to a professional services contract as a second grade teacher at Graham Center, which is a public school in Miami-Dade County. Respondent's employment is governed by the collective bargaining agreement between the School Board and the United Teachers of Dade, the rules and regulations of the School Board, and Florida law.

3. Respondent has been employed by the School Board since 1990. She spent the first ten years of her career teaching elementary students at Westview Elementary. She next taught high school for approximately 15 years. She was thereafter transferred to Graham Center in the 2011-2012 school year where she taught second grade for that school year and the 2012-2013 school year.

## SAT

4. During the spring of every school year, all Miami-Dade County public school students in kindergarten, first grade, and second grade take the SAT to assess each student's reading comprehension and mathematics problem-solving skills. During the 2012-2013 school year, the reading portion of the SAT was administered on April 9, 2013, and the math portion was administered the following day.

5. The SAT is a norm-referenced standardized assessment used nationwide to gauge student achievement. The assessment provides a means to compare a student's achievement with peers across the country. The assessment also provides a means to determine a student's needs, and can serve as a tool in developing strategies to assist the student. The SAT can be administered only once per school year.

6. During the 2011-2012 and 2012-2013 school years, all of the kindergarten, first grade, and second grade students at Graham Center took the SAT.

7. During the 2011-2012 school year, Respondent served as a proctor for the administration of the SAT to a class, but she was not the administrator of the SAT.

8. For the 2012-2013 school year, Respondent served as the administrator of the SAT to her class.

9. In preparation for the upcoming administration of the SAT, Karen Belusic, Graham Center's assistant principal, conducted a training session on March 14, 2013, for all the second grade teachers at Graham Center on how to properly administer the SAT. Respondent attended the March 14 training session. The training informed the teachers about the procedures for administering the test, test security, and how to handle test materials. Ms. Belusic instructed the teachers not to look at test items, review test items, or assist students with test items. Teachers were told to report any testing irregularities.

10. In preparation for the administration of the annual SAT, during the first week of March 2013, School Board staff provided all public elementary schools with an SAT practice test to familiarize students with the format of the test. Respondent and the other second grade teachers at Graham Center received the practice test during the March 14 training session. The cover sheet of the practice test provided by School Board staff reflects that it is a "Practice Test Booklet" for the SAT.

11. In addition to the practice test provided by School Board staff, Eileen Gross, the grade chair for second grade at Graham Center, provided all second grade teachers a variety of practice booklets on a weekly basis beginning just prior to the week of February 16, 2013, and ending just before the week of March 25, 2013. Ms. Gross also distributed three reading

simulations and three math simulations to the second grade teachers.

12. Respondent considered the practice test she received from School Board staff and the materials she received from Ms. Gross to be basic.

13. Sharon Moyd is a fourth grade teacher at Lakeview Elementary School (Lakeview), which is a public school in Miami-Dade County. Respondent and Ms. Moyd are longtime friends. Well before the administration of the SAT, Respondent asked Ms. Moyd if she had any materials that would help her class prepare for second grade. Ms. Moyd asked several second grade teachers at Lakeview if they had any materials that might help her friend.

14. Tangle Butterfield, a Lakeview second grade teacher, gave Ms. Moyd what Ms. Butterfield understood to be a practice SAT test. That practice test was admitted into evidence as Petitioner's Exhibit 5 and will, for ease of reference, be referred to as Exhibit 5. Ms. Butterfield had received Exhibit 5 from a reading coach during a Saturday workshop in 2011. Ms. Butterfield and at least one other Lakeview teacher had utilized Exhibit 5 in preparing students for the SAT. The cover sheet of Exhibit 5 reflects that it is a "Practice Test Booklet" for the SAT, and is almost identical to the cover sheet of the practice test provided by the School Board staff.

15. Ms. Butterfield put Exhibit 5 in a manila envelope and gave it to Ms. Moyd. Ms. Moyd put the envelope in the trunk of her car without reviewing the contents of Exhibit 5, where it remained for several weeks.

16. In mid-March 2013, Ms. Moyd informed Respondent that she had something for Respondent. They arranged a mutually convenient place to meet (in a parking lot) where Ms. Moyd gave the envelope and its content to Respondent. Ms. Moyd never reviewed the contents of Exhibit 5.

17. Spring break was the week prior to the administration of the 2013 SAT. On the last Sunday of that week, Respondent "glanced over" Exhibit 5 because she wanted the school secretary to make copies of the material when school resumed the next morning.

18. The next morning, Respondent took Exhibit 5 to the office at Graham Center and had a secretary make enough copies for her students. Respondent then distributed the copies to her students for them to take home and study.

19. There was an allegation that Respondent told her students not to tell anyone about Exhibit 5. The greater weight of the credible evidence fails to establish that allegation.

20. Respondent gave out Exhibit 5 to her class and told the students that she would give them homework credit for taking the practice test. The next day, Tuesday, April 9, 2013, Respondent



collected the practice tests from the students and administered the reading section of the SAT to her class. That same day, when her students were out of the class at physical education and music, Respondent graded the practice tests that had been completed by her students, including the math section. Respondent marked the correct and incorrect answers. Respondent returned the graded booklets with the corrected answers for them to study prior to the next day's administration of the math portion of the SAT.

21. The math portion of the SAT is designed for the administrator to read the question to the class and for the student to answer the question as read. The SAT booklets that the students complete during the actual administration of the math portion of the SAT contains only multiple choice answers. They do not contain the corresponding questions.

22. The math portion of Exhibit 5 contains multiple choice answers for the students, but it does not have the corresponding questions in the same part of the booklet as the multiple choice answers. The last part of the math portion of Exhibit 5 includes instructions to the administrator of the test. Those instructions contain the questions the administrator is to read to the students.<sup>1/</sup>

23. Rosa Sanchez, a reading coach at Graham Center, served as a proctor for the SAT administered by Respondent on April 9 and 10, 2013.

24. On April 10 Ms. Sanchez observed a male student (K.R.) who kept dropping his pencil. Ms. Sanchez gravitated towards K.R. to make sure he was not disturbing other students. As Ms. Sanchez stood next to K.R. she looked at his test booklet and noticed that he had answered a question that Respondent had not yet read to the class.

25. The answer K.R. chose involved a chart, which took up most of the page. The student's test booklet did not contain the question. Before the students could answer the question, the test administrator was supposed to read instructions about where to start on the chart and how to move along the chart.

26. Ms. Sanchez told K.R. that he needed to stop working ahead because he had not yet heard the instructions from the teacher. K.R. told Ms. Sanchez that he remembered the question from the test booklet. Ms. Sanchez then raised her hand to Respondent, who was at the front of the class, to indicate that Respondent needed to stop the test. Instead of stopping, Respondent looked at K.R. and stated, "K. stop saying crazy things and pay attention." Ms. Sanchez immediately looked around and observed that other students appeared to be answering questions Respondent had not asked.

27. At the conclusion of the SAT, Ms. Sanchez reported what she believed to be an irregularity to Ms. Belusic, the assistant principal who served as the SAT chairperson for Graham Center. Together they informed Ms. Alfaro, the principal.

28. Ms. Alfaro went to Respondent's classroom and asked her for all copies of Exhibit 5. Respondent opened a locked cabinet, retrieved the material, and handed the material to Ms. Alfaro. When asked, Respondent told Ms. Alfaro that she had gotten the material from a teacher at Lakeview named Sharon.

29. Ms. Alfaro compared Exhibit 5 to the actual SAT test. Many of the same questions and answers contained in Exhibit 5 were identical to questions on the actual SAT test.

30. Upon further investigation, Dr. Sally Shay, the District Director of the Office of Assessment Research and Data Analysis, compared Exhibit 5 and the actual SAT test. On the reading portion, Exhibit 5 contained 30 questions and answers while the actual SAT contained 40 questions and answers. The questions and answers on the reading portion of Exhibit 5 were identical to 30 of the questions and answers on the real SAT. For the math portion, Exhibit 5 contained 30 questions and answers while the actual SAT contained 44 questions and answers. The questions and answers on the math portion of Exhibit 5 were identical to 30 of the questions and answers on the real SAT.

31. All of the SAT scores for Respondent's students were invalidated.

32. Petitioner failed to establish that Respondent knew or should have known that Exhibit 5 contained actual SAT questions.

33. Petitioner asserts that Respondent used actual SAT questions and answers to prepare her students so their higher scores would qualify her for a performance bonus of approximately \$350.00. That theory is improbable, and it is not supported by the evidence.

#### FAIR

34. The FAIR assessment is a state-mandated assessment test to evaluate a student's reading ability. Second graders take the FAIR assessment three times during a school year. There is a section of the assessment that deals with students spelling words on paper that are said by the teacher. In addition, there is a part of the test that involves the use of a computer, with the student reading the question from a booklet and giving the teacher his or her answer. The student sits next to the teacher, who inputs into the computer whether the student's answer was correct. There is a script that informs the teacher whether a particular answer is acceptable.

35. Toward the end of the 2012-2013 school year, after the SAT scores for Respondent's students were invalidated, Ms. Alfaro examined the scores of Respondent's students on the FAIR

assessments for the school year 2012-2013. By that time Respondent had administered the FAIR assessment to her students for all three periods. For the first period assessment, towards the beginning of the school year, Respondent's students' scores ranged from 14% to 99%. For the second period assessment, towards the middle of the school year, the scores ranged from 92% to 99%.<sup>2/</sup> For the third assessment, toward the end of the school year, one student scored 73%, but the other students ranged between 92% and 98%.

36. Ms. Alfaro considered the scores for the last two periods to be too high, and had Ivette Padron-Rojas, a Curriculum Specialist, re-assess Respondent's class for the third assessment period. The re-assessment resulted in substantially lower scores for most of Respondent's students.

37. Petitioner offers its theories for the discrepancies in scoring in paragraph 27 of the Notice of Specific Charges, which alleges in part that "tests administered by Respondent were misleading and erroneous, and that Respondent's scores were inflated and manipulated, in part due to Respondent providing students with the actual spelling words to study and practice prior to taking the assessment."

38. The School Board established that students' test scores for assessment period three were substantially higher when Respondent administered the assessment than they were when

Ms. Padron-Rojas administered the assessment. However, Petitioner failed to prove its allegation that Respondent provided the students with the actual spelling words to study before the students took the assessment, and there was no other evidence to establish that Respondent's administration of the assessment was "misleading," "erroneous," "inflated," or "manipulated."

40. The School Board failed to prove that Respondent acted inappropriately regarding the FAIR assessments.

#### CONCLUSIONS OF LAW

41. DOAH has jurisdiction over the subject matter of and the parties to this case pursuant to sections 120.569 and 120.57(1).

42. Because Petitioner seeks to terminate Respondent's employment, which does not involve the loss of a license or certification, Petitioner has the burden of proving the allegations in its Notice of Specific Charges by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

43. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law

Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000) (relying on American Tobacco Co. v. State, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997) quoting Bourjaily v. United States, 483 U.S. 171, 175 (1987)).

44. The School Board's Notice of Specific Charges alleges that Respondent is guilty of (I) misconduct in office, (II) violating School Board Policy 3210 (Standards of Ethical Conduct), and (III) violating School Board Policy 3210.01 (Code of Ethics).

45. Petitioner failed to prove the facts that underpin the violations alleged in the Notice of Specific Charges.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board of Miami-Dade County, Florida, enter a final order adopting the Findings of Fact and Conclusions of Law contained in this Recommended Order. It is FURTHER RECOMMENDED that the final order dismiss the charges against Rose Davidson set forth in the Notice of Specific Charges. It is FURTHER RECOMMENDED that the employment of Rose Davidson be reinstated with full back pay and benefits.

DONE AND ENTERED this 30th day of May, 2014, in Tallahassee,  
Leon County, Florida.



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CLAUDE B. ARRINGTON  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of May, 2014.

ENDNOTES

<sup>1/</sup> These instructions are found in School Board Exhibit 5,  
beginning at Bates stamp page 76.

<sup>2/</sup> Ms. Sanchez, the reading coach, reviewed the FAIR scores for  
Respondent's students for assessment period two and was not  
concerned the scores were too high because she had spent some 21  
days in Respondent's class and had observed Respondent teaching  
the students.

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.