

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MATTHEW B. FORREST,

Petitioner,

vs.

Case No. 19-5650

RICHARD CORCORAN, AS COMMISSIONER  
OF EDUCATION,

Respondent.

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RECOMMENDED ORDER

A duly-noticed final hearing was held in this case on January 7, 2020, in Lake City, Florida, before Suzanne Van Wyk, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Matthew B. Forrest, pro se  
10743 Alden Road, Unit 4  
Jacksonville, Florida 32246

For Respondent: Bonnie Ann Wilmot, Esquire  
Gavin Hollis Dunn, Esquire  
Department of Education  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

STATEMENT OF THE ISSUE

Whether Respondent properly invalidated Petitioner's Florida Teacher Certification Examination for Health K-12 for violating test center rules, as alleged in the Agency Action Letter dated September 17, 2019.

## PRELIMINARY STATEMENT

Petitioner took and passed the General Knowledge portions of the Florida Teacher Certification Examination (“FTCE”) on February 25, 2019. Petitioner took the Health K-12 Certification Examination on August 7, 2019, at the Pearson test center located at Florida Gateway College in Lake City, Florida.

On or about September 17, 2019, Petitioner received notice from the Department of Education that his Health K-12 examination results had been invalidated. Petitioner timely filed a request for hearing to contest the invalidation of his examination, which the Department of Education forwarded to the Division of Administrative Hearings for assignment of an administrative law judge to conduct a fact-finding hearing.

The final hearing was scheduled for January 7, 2020, and commenced as scheduled. At the final hearing, Petitioner testified on his own behalf, and offered no exhibits into evidence. Respondent presented the testimony of John Hartzog, the test center coordinator at Florida Gateway College; and Jasmine Carnell, the Department’s test administration project coordinator. Respondent's Exhibits R1 through R10 were admitted in evidence.

The one-volume Transcript of the final hearing was filed on January 22, 2020. Respondent timely filed a Proposed Recommended Order on February 3, 2020, which has been considered by the undersigned in preparing this Recommended Order. Petitioner did not file a proposed recommended order.

## FINDINGS OF FACT

1. Petitioner, Matthew B. Forrest, resides in Jacksonville, Florida where, at all times relevant hereto, he was a football coach and teacher of Health Opportunities in Physical Education (“HOPE”) at Creekside High School.

2. In order to continue teaching HOPE for the 2019-2020 school year, Petitioner was required to become a certified teacher by passing both the General Knowledge and the Health K-12 components of the FTCE.

3. Respondent, Richard Corcoran, as Commissioner of Education (hereinafter, “Respondent” or “Department), is the agency with the duty and authority to certify teachers for the State of Florida. For purposes of this Recommended Order, the Department is the “test program sponsor.”

4. The Department administers the FTCE through third party test administrators. The test administrator in the instant case is a company known as “Pearson.”

5. Petitioner took and passed the General Knowledge Examination on February 25, 2019.

6. Petitioner took the Health K-12 Examination on three different occasions. The administration of the exam relevant hereto was on August 7, 2019.

7. Two different types of breaks may be taken during test administration.

8. A scheduled break is automatic, usually given between sections of an exam. The test administrator instructs candidates as to the length of the break and when to return to the testing room. During a scheduled break, a candidate may access personal items which have been stored at the test center.

9. An unscheduled break is voluntary, and may include time to use the restroom or water fountain.

10. John Hartzog was the test center administrator for the August 7, 2019 exam administration.

11. Petitioner took three unscheduled breaks during the exam. The first lasted 16 minutes, while the other two breaks lasted 6 minutes each. At each break, Petitioner notified the proctor he was leaving to use the restroom.

12. At the Florida Gateway College test center, the restrooms are separate from the testing rooms. The two are located in the same building, but are accessed by different entrances connected by an outdoor covered walkway.

13. The restrooms are considered part of the test center building; however, the parking lot is not.

14. During Petitioner's third unscheduled break, Mr. Hartzog walked down to the restrooms to check on Petitioner. Mr. Hartzog observed Petitioner exiting his personal vehicle in the parking lot.

15. Petitioner explained that he had water bottles stored in his vehicle and had retrieved and consumed a water bottle after he used the restroom.

16. Through the window of the vehicle, Mr. Hartzog observed a case of 12-ounce water bottles on the back seat directly next to a beach bag, which was unzipped. Mr. Hartzog observed Petitioner's exam study notes and other papers, as well as Petitioner's cell phone, in plain view in the open bag.<sup>1</sup>

#### Administrative Charges

17. On or about September 17, 2019, Petitioner received the Agency Action Letter, which states, in pertinent part, as follows:

As noted on the program website under 'Policies,' the FTCE/FELE testing rules DO NOT permit an examinee to leave the test center or to access personal items during an unscheduled break. Therefore, the scores for your Health K-12 examination taken on August 7, 2019, have been invalidated.

18. The Department has charged Petitioner with both leaving the test center, and accessing prohibited materials, during an unscheduled break.<sup>2</sup>

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<sup>1</sup> Mr. Hartzog photographed the items on the back seat, as well as the items in the open bag. The photographs were admitted in evidence as Respondent's Exhibit 10.

<sup>2</sup> The Department's Agency Action Letter does not specifically state what actions taken by Petitioner constitute a violation of the rules. Respondent's position was clarified throughout the final hearing.

## CONCLUSIONS OF LAW

19. The Division has jurisdiction of the parties to, and subject matter of, this proceeding. *See* § 120.57, Fla. Stat. (2019).

20. Respondent is responsible for certifying teachers in Florida and conducts certification examinations for Florida educators. § 1012.56, Fla. Stat. The statute governs contracts for administering written examinations, and provides that the “delivery system for these examinations shall provide for overall efficiency, user-friendly application, reasonable accessibility ... and prompt attainment of examination results.” § 1012.56(9)(f), Fla. Stat.

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

(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 Examinations shall be developed by the Commissioner of Education.

(b) The written examinations shall include subtests of English language skills, 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 examinations shall be administered at least four (4) times each year. The Commissioner of Education shall designate the registration

deadlines, administration sites, and examination dates.

(c) The examinations shall be administered at sites designated by the Commissioner of Education.

\* \* \*

(10) Score reports for the general knowledge essay, english language skills, reading, and mathematics subtests, professional education test, 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.

(b) The examinee shall be sent an authenticated score report as described in paragraph 6A-4.0021(10)(a), F.A.C.

22. Petitioner did not receive a “properly authenticated score report” as that term is used in the rule. Respondent invalidated Petitioner’s examination following the investigation of the proctor’s report of “candidate error or misconduct.”

23. As the party seeking certification, Petitioner bears the burden to prove, by a preponderance of the evidence, that he has met the requirements for his examination score to be reported. *See Dept. of Banking and Fin. v. Osborne Stern & Co.*, 670 So. 2d 932, 934 (Fla. 1996). However, Respondent has the burden to establish, by a preponderance of the evidence, both that Petitioner committed the violations alleged in the Agency Action Letter and that such violations warrant invalidation of Petitioner’s exam. *See Id.*

#### Leaving the Test Center

24. Upon arrival at the test center, Petitioner signed in for the exam on a digital screen, where he agreed to the following pertinent Professional & Regulatory Candidate Rules (“test center rules”):

**You must leave the testing room for all breaks. If you want to leave the test center building**

**during any breaks, verify with the TA whether your test program sponsor permits you to leave the building.**

25. Petitioner admitted he broke the rules by going to the parking lot after using the restroom on his third unscheduled break. Without permission from the test center administrator, Petitioner left the test center and entered his vehicle in the parking lot.

Accessing Prohibited Materials

26. The Department has published standardized information for examinees defining prohibited materials and aids, both electronic and non-electronic. The Department provides that prohibited aids are “items that may give an unfair advantage to an examinee and/or detract from a fair and standardized assessment.”

27. The test center rules to which Petitioner agreed provide, in pertinent part, as follows:

If you are taking **any break, you MUST receive permission from the TA PRIOR to accessing personal items that have been stored** (with the exception of comfort aids, medication, and food, which you may access without permission). Unless specifically permitted by the test program sponsor, personal items that cannot be accessed during **any break** include but are not limited to mobile phones, test notes, and study guides.

28. “Access” is defined as follows:<sup>3</sup>

Definition of access (Entry 2 of 2)

transitive verb

: to get at : to gain access to: such as

a: to be able to use, enter, or get near (something)

accessed the computer by phone

a system that makes it easier to access the money in your bank account

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<sup>3</sup> See “Access.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/access>. Last visited Feb. 5, 2020.

b: to open or load (a computer file, an Internet site, etc.)  
a file that can be accessed by many users at the same time

29. While Petitioner was in his vehicle, he had the ability to use, to get at, or to get near his cellular phone and exam study notes. Pursuant to the plain meaning (dictionary definition) of the verb “to access,” Petitioner accessed prohibited materials during an unscheduled break.

#### Invalidation of Examination

30. Neither the applicable statute nor the rule addresses penalties for violating FTCE testing procedures.

31. Ms. Carnell testified that Respondent’s authority to invalidate Petitioner’s exam for violating test center rules derives from the Department’s document titled “Important Testing Information and Agreement to the Testing Rules,” which Petitioner was required to acknowledge during exam registration, and which reads, in pertinent part:

**There are two types of automatic score invalidations:**

- If you retake the same test sooner than the 31<sup>st</sup> calendar day after the previous administration, or sooner than the 31<sup>st</sup> calendar day after attending a score verification session for that test, or within three years of receiving a passing score, the score(s) for the latter administration will be invalidated.
- Possession of a cell phone (or any electronic prohibited aid) during testing will result in an automatic score invalidation.

For more information regarding score invalidations and invalidations due to cheating, refer to the memorandum titled “Important Information about Cheating Behaviors and Test Score Invalidations” and the “Agreement to the Testing Rules” below.

\* \* \*



I understand that **if I am found possessing a cell phone or an electronic prohibited aid** (regardless of circumstances and whether on/off), unless on a scheduled break, I will not be allowed to continue testing, the test site will report this information to the Department, and this act of possession of an electronic prohibited aid **will result in an automatic score invalidation.**

32. The referenced “Important Information about Cheating Behaviors and Test Score Invalidations” reads as follows:

**If an examinee is found possessing a cell phone or an electronic prohibited aid** as outlined in Section 2, the examinee will not be allowed to continue testing, the test site will report this information to the Department, and this act of possession of an electronic prohibited aid **will result in an automatic score invalidation.**<sup>[4]</sup>

33. Respondent has not charged Petitioner with possession of a prohibited electronic aid.<sup>5</sup> Therefore, the cited registration documents do not authorize Respondent to automatically invalidate Petitioner’s exam.

34. Ms. Carnell further identified the Pearson test center rules themselves as authority for Respondent’s invalidation of Petitioner’s exam.

35. Upon signing in for the exam, Petitioner agreed to the following Candidate Statement:

I understand the information provided above and agree to follow these rules in addition to any other program rules I may have agreed to during my registration for this test. If I do not follow the rules or I am suspected of cheating or tampering with the computer, this will be reported to Pearson VUE and the test sponsor, and I acknowledge and

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<sup>4</sup> Section 2 defines electronic prohibited aids to include cellular phones as well as a variety of other electronics, including CD players, MP3 players, and other electronic communication/recording/listening devices.

<sup>5</sup> Upon inquiry from the undersigned, Respondent’s counsel clarified on the record that the Department’s position is that Petitioner “had access to prohibited aids,” not that he possessed a cell phone. T.68:4-T.69:7.

understand that my test may be invalidated, and the sponsor may take other action such as decertifying me, and I will not be refunded my test fee.

36. With regard to the second allegation—accessing prohibited materials during an unscheduled break—the test center rules prohibit an examinee from accessing cell phones, test notes, and study guides during any break, unless specifically permitted by the test program sponsor.

37. Petitioner did not meet his burden to prove he had satisfied all the requirements to have his score on the Health K-12 examination reported.

38. Respondent met the burden to prove that Petitioner committed both of the violations alleged in the Agency Action Letter.

39. The candidate statement portion of the test center rule provides as follows:

If I do not follow the rules or I am suspected of cheating or tampering with the computer, this will be reported to Pearson VUE and the test sponsor, and I acknowledge and understand that *my test may be invalidated*, and the sponsor may take other action such as decertifying me, and I will not be refunded my test fee (emphasis added).

40. Thus, the Department has the discretion to invalidate Petitioner's exam for violation of the Pearson test center rules.

41. Invalidation of Petitioner's exam score for violation of the specified test center rules, while not automatic, is certainly consistent with the aim of preventing an examinee from gaining an unfair advantage in test administration.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Commissioner of Education issue a final order invalidating Petitioner's FTCE Health K-12 Examination due to his

violations of test center rules during the August 7, 2019 administration of the exam.

DONE AND ENTERED this 14th day of February, 2020, in Tallahassee, Leon County, Florida.



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SUZANNE VAN WYK  
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Filed with the Clerk of the  
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this 14th day of February, 2020.

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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.