



SEP 25 2014

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

Kevin Westray

Kevin Westray, Legal Assistant

JENNIFER HEATHER AKERS,
Educator/Petitioner,

v.

PROFESSIONAL STANDARDS
COMMISSION,
Respondent.

Docket No.:
OSAH-PSC-SAN-1458948-155-Woodard

PSC No.: 13-4-1025

FINAL DECISION

I. Introduction

Petitioner requested a hearing in response to the sanction proposed by the Professional Standards Commission (“Commission” or “Respondent”). The hearing on this matter was held on August 5, 2014 before the undersigned Administrative Law Judge at the Whitfield County Courthouse in Dalton, Georgia. Petitioner appeared at the hearing and was represented by Mr. Jeffrey E. Clements, Esq. Respondent was represented by Amanda Jones, Assistant Attorney General.

After consideration of the evidence and the arguments of the parties, and for the reasons stated below, the Commission’s decision to sanction Petitioner’s teaching certificate is **AFFIRMED**. However, the Commission’s proposed sanction of a one-year suspension of Petitioner’s teaching certificate is **MODIFIED** to a public reprimand of Petitioner’s teaching certificate.

II. Findings of Fact

1.

Petitioner currently holds a valid certificate to teach in the State of Georgia and held such certificate at all times relevant to the issues before this Court. During the period relevant to this Decision, Petitioner was employed as a teacher at Westside Middle School in Whitfield County and served as a Criterion-Referenced Competency Test (CRCT) Test Examiner during the 2012-2013 school year. *Testimony of Jennifer Akers; Respondent’s Exhibit A.*

2.

In preparation for the 2013 CRCT, Whitfield County School System provided teachers, including Petitioner, with trainings and orientation on administering the tests. During these trainings, teachers were taught the ethical rules governing administration of the CRCT, including the strict prohibition against discussing “test items or actual test content with anyone at any time.” Attendees of the trainings were further advised that discussing test items or answers could result in a reprimand or unpaid suspension. *Testimony of Eddie Nix; Respondent Exhibit B, C, D, and E.*

3.

Westside Middle School administered the CRCT to students over a five-day period in April 2013. On April 18, 2013, Petitioner administered the language arts portion of the CRCT to her students and, pursuant to her role as a CRCT Test Examiner, remained in the classroom to observe students during CRCT testing. *Testimony of Jennifer Akers; Respondent Exhibit A.*

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After Petitioner had administered the CRCT and collected the test materials, she exited the classroom and stood in the hallway to await a test proctor, who would monitor her classroom when she left to turn in the test booklets and answer sheets to the testing coordinator. Amy Fowler, another teacher at Westside Middle School, was also waiting in the hallway after having administered the CRCT. *Testimony of Amy Fowler.*

5.

As the two teachers waited in the hallway, Petitioner attempted to speak with Ms. Fowler about the CRCT. Although she mentioned the word “plagiarism” to Ms. Fowler in reference to the general subject matter of a question that she had observed on the CRCT, she did not repeat the specific language of any CRCT question or answer. Ms. Fowler did not acknowledge Petitioner’s comments, or attempt to discuss the CRCT with Petitioner. *Testimony of Jennifer Akers; Testimony of Amy Fowler; Respondent Exhibits A, F.*

6.

Ms. Fowler reported the incident to her supervisor, and Whitfield County School System commenced an investigation into whether Petitioner violated CRCT testing procedures. After interviewing Petitioner and Ms. Fowler regarding the incident, Whitfield County School System issued a Letter of Direction to Petitioner expressing concern over her comments and advising her

to “adhere to all measures of test security” and not to disclose any information that she should happen to see during testing in the future. Although Petitioner was not permitted to serve as a CRCT Test Examiner during the remainder of the test period or during administration of the CRCT the following school year, neither Westside Middle School nor Whitfield County School System took further disciplinary action. *Testimony of Jennifer Akers; Respondent Exhibit F.*

7.

Based upon the foregoing facts, the Professional Standards Commission commenced an investigation into the incident. Eddie Nix, an Investigator with the PSC’s Ethics Division, obtained a written statement from Petitioner during the course of this investigation. *Testimony of Eddie Nix; Respondent Exhibit A.*

8.

In her written statement, Petitioner acknowledged that she had “scanned,” but had not read, the CRCT questions because she was concerned that a student might have made a mistake in placing responses in the correct “bubble” on the answer sheet. She acknowledged that, because she determined that the student was correctly filling out the answer sheet, she expressed her relief to Ms. Fowler after the termination of the test period. Petitioner wrote that she mentioned the term “plagiarism” to Ms. Fowler because, in scanning the test booklet, the word had “jumped off the page.” *Testimony of Eddie Nix; Testimony of Jennifer Akers; Respondent Exhibit A.*

9.

Based upon the findings of its investigation, the PSC found probable cause that Petitioner had committed violations of its laws, rules, and regulations. Specifically, the PSC determined that Petitioner’s conduct amounted to violations of Rule 505-6-.01(3)(k) [Testing], Rule 505-6-.01(1)(g) [Confidential Information], and Rule 505-6-.01(3)(j) [Professional Conduct] of the Rules of the Georgia Professional Standards Commission. The PSC recommended a one-year suspension of Petitioner’s teaching certificate. Petitioner requested a hearing on or about January 13, 2014 and the matter was referred to the Office of State Administrative Hearings for adjudication. *Statement of Matters Asserted; Petitioner’s Request for Hearing dated January 13, 2014.*

10.

At the hearing on this matter, Ms. Fowler opined that Petitioner made the “plagiarism” comment because she was apparently concerned that the children were being tested on subjects that were not part of the standard eighth grade curriculum. Ms. Fowler confirmed that Petitioner did not mention the specific content of any question or answer on the CRCT in her comments to her, only the general subject matter of plagiarism. Ms. Fowler testified that Petitioner did not attempt to further engage her regarding the CRCT testing. *Testimony of Amy Fowler.*

11.

Petitioner testified that she became concerned that some of her students were skipping significant numbers of questions, or placing answers within the wrong bubble. One student in particular had skipped between sixteen and twenty questions on her answer sheet and had placed “tick marks” next to the skipped questions on the answer sheet. This alarmed Petitioner, not only because the student risked bubbling in her responses at the wrong place on the answer sheet (or “off-numbering”) but also because the tick marks would result in a large number of erasures, and teachers had been warned that a large number of eraser marks on answer sheets would result in an investigation into the teacher that had administered the tests.

12.

In order to ensure that the student was marking her answers in the appropriate place on the answer sheet, Petitioner looked over the student’s answer booklet. She observed the word “plagiarism” in one of the questions. Petitioner knew that students had not learned “plagiarism” as part of their regular curriculum. After observing the student for a moment, Petitioner determined that the student was placing her responses in the appropriate bubble on the answer sheet. Petitioner testified that she spoke with Ms. Fowler after the tests had been collected to express her concern over the erasures and her relief at her discovery that the student had not off-numbered the answer sheet as she had feared. Petitioner further testified that she blurted out the term “plagiarism” to Ms. Fowler only to describe the point at which she determined the student’s answer sheet was not off-numbered. *Testimony of Jennifer Akers.*

III. Conclusions of Law

Based on the above Findings of Fact, the undersigned makes the following Conclusions of Law:

1.

Respondent seeks to sanction Petitioner's teaching certificate. Therefore, Respondent bears the burden of proof. GA. COMP. R. & REGS. 616-1-2-.07. The standard of proof is a preponderance of the evidence. GA. COMP. R. & REGS. 616-1-2-.21.

2.

The Georgia Professional Standards Commission ("the Commission") is responsible for adopting standards of performance and a code of ethics for educators. O.C.G.A. § 20-2-984.1(a) (2013). Pursuant to this responsibility, the Commission has promulgated the Code of Ethics for Educators, which "defines the professional behavior of educators in Georgia and serves as a guide to ethical conduct." GA. COMP. R. & REGS. 505-6-.01(1) (2013). The Code of Ethics also "defines unethical conduct justifying disciplinary sanction." *Id.* Such disciplinary sanctions may include suspension or revocation of an educator's teaching certificate. GA. COMP. R. & REGS. 505-6-.01(5)(a) (2013). In the present case, the Commission proposes to impose a sanction of a one-year suspension of Petitioner's certificate for her alleged violation of Standards Seven, Ten, and Eleven of the Code of Ethics. The Court concludes that Petitioner violated Standards Seven and Eleven of the Code of Ethics.

3.

Standard Seven requires educators to "comply with state and federal laws and state school board policies relating to the confidentiality of student and personnel records, standardized test material and other information." GA. COMP. R. & REGS. 505-6-.01(3)(g) (2013). Standard Seven defines unethical conduct to include:

1. sharing of confidential information concerning student academic and disciplinary records, health and medical information, family status and/or income, and assessment/testing results unless disclosure is required or permitted by law;
2. sharing of confidential information restricted by state or federal law;
3. violation of confidentiality agreements related to standardized testing including copying or teaching identified test items, publishing or distributing test items or answers, discussing test items, violating local school system or state directions for the use of tests or test items, etc.; and
4. violation of other confidentiality agreements required by state or local policy.

Id. By discussing test items with Ms. Fowler, Petitioner committed a violation of Standard Seven.

4.

Standard Ten of the Code of Ethics requires educators to “demonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the teaching profession.” GA. COMP. R. & REGS. 505-6-.01(3)(j) (2013). According to Standard Ten “[u]nethical conduct includes but is not limited to any conduct that impairs and/or diminishes the certificate holder's ability to function professionally in his or her employment position, or behavior or conduct that is detrimental to the health, welfare, discipline, or morals of students.” *Id.* Respondent introduced insufficient evidence to demonstrate that Petitioner’s conduct violated Standard Ten.

5.

Standard Eleven of the Code of Ethics requires educators to “administer state-mandated assessments fairly and ethically.” GA. COMP. R. & REGS. 505-6-.01(3)(k) (2013). “Unethical conduct includes, but is not limited to . . . committing any act that breaches Test Security . . . and . . . compromising the integrity of the assessment.” Respondent demonstrated, by a preponderance of the evidence, that Petitioner’s conduct constituted a violation of Standard Eleven of the Code of Ethics.

6.

Although Respondent met its burden in showing that Petitioner’s conduct was violative of Standards Seven and Eleven of the Code of Ethics, the undersigned concludes that the proposed sanction of a one-year suspension of Petitioner’s teaching certificate is inappropriate based on the totality of the evidence. While Petitioner’s comments to Ms. Fowler technically violated the Code of Ethics for Educators, it is clear from the evidentiary record that they were made in the absence of deliberation, with no improper motive, while Petitioner was in an excited state. Her comments could not have affected students’ performance on the tests and they had no bearing on continued administration of the CRCT, other than she was not permitted to serve as a Test Examiner for the remainder of the testing period. Indeed, Whitfield County Schools saw fit to impose no additional discipline or sanction against Petitioner following its internal review. Accordingly, considering the innocent nature and negligible consequences of Petitioner’s conduct, a one-year suspension of Petitioner’s teaching certificate is too harsh a penalty.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is the Final Decision of the undersigned that Respondent's decision to sanction Petitioner's teaching certificate is **AFFIRMED**. However, its proposed sanction is **MODIFIED** to a reprimand

SO ORDERED this 25th day of September, 2014.


M. PATRICK WOODARD
Administrative Law Judge