

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

CORLISS DAVENPORT,
Educator/Petitioner,

v.

**PROFESSIONAL STANDARDS
COMMISSION,**
Respondent.

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Docket No.:
OSAH-PSC-SAN-1577238-60-Miller



JUL 2 2015

FINAL DECISION

I. INTRODUCTION

Kevin Westray
Kevin Westray, Legal Assistant

The hearing in this matter took place on May 18, 2015,¹ pursuant to O.C.G.A. §§ 20-2-984.5(d), 50-13-41, and 50-13-13, before the undersigned administrative law judge of the Office of State Administrative Hearings. The hearing's purpose was to determine whether the Petitioner's Georgia teaching certificate should be sanctioned on the grounds set forth in the Statement of Matters Asserted. The Petitioner, Corliss Davenport, appeared and was represented by Shalini A. Patel, Esq. The Respondent, the Professional Standards Commission ("Commission"), was represented by Rebecca S. Mick, Assistant Attorney General.

After consideration of the evidence and the arguments of the parties, the Commission's decision to sanction the Petitioner's Georgia teaching certificate is **REVERSED**.

II. FINDINGS OF FACT

1.

The Petitioner holds a certificate to teach in the State of Georgia, and she held a teaching certificate at all times relevant to this proceeding. (Statement of Matters Asserted ("Matters Asserted") ¶ 1; Response to Statement of Matters Asserted ("Answer") ¶ 1.)

¹ The record closed on June 5, 2015, when the hearing transcript was received.

2.

The Petitioner served as the principal of Paul Laurence Dunbar Elementary School (“Dunbar”) in the Atlanta Public Schools (“APS”) system from 2002 to 2006. During the Petitioner’s first year at Dunbar, approximately 500 students attended the school. However, enrollment dropped significantly during her tenure due to the closure of the Mechanicsville housing project, from which a large number of students were drawn. The school experienced a corresponding decline in its staff members, with approximately 22 teachers remaining when the Petitioner left Dunbar in 2006. (Matters Asserted ¶ 2; Answer ¶ 2; T. 30-31, 51-52, 60-62.)

3.

Although Dunbar had been identified as a poorly performing school for ten years preceding the Petitioner’s arrival, she was determined to make substantial improvements. The Petitioner believed that “every child could succeed and would succeed,” and she set high expectations for her teachers. She led by example, arriving early to work and often staying late. However, she encountered skepticism and resistance from a large segment of her teaching staff. Both the Petitioner and Clara Axam, a former APS administrator who worked closely with the Petitioner,² described the atmosphere at Dunbar as “toxic.”³ (T. 14, 62-64, 101-103.)

4.

The Petitioner implemented a number of measures in an effort to boost Dunbar’s performance and better serve its students. She made efforts to improve and overhaul the staff, and she placed several teachers on professional development plans (“PDPs”) to give them an

² Ms. Axam was the project director for the Mechanicsville community learning collaborative, which managed the Annenberg grant described in paragraph 4 of the Findings of Fact, *infra*. (T. 98-99.)

³ In fact, the school climate was so problematic that if Ms. Axam had been involved with Dunbar when the Petitioner was hired, she would likely have recommended that the school be reconstituted. Reconstitution means that all of the existing staff would have been released and the Petitioner would have had the opportunity to hire new teachers and reopen Dunbar as an essentially new school. (T. 101-02.)

opportunity to improve the quality of their instruction. She invited teachers from high-performing schools to observe the faculty and provide peer feedback. She asked teachers to walk around their classrooms and engage with the students rather than sitting at their desks. She encouraged teachers to take on extra volunteer work during their off hours to ensure that students' individual needs were identified and addressed using a rigorous program of assessment and benchmarking. In addition, the Petitioner oversaw the implementation of several programs designed to improve teaching and school performance. For example, during her tenure, Dunbar was awarded a \$12 million grant from the Annenberg Foundation that allowed the school to train teachers, track individual student progress in detail, and operate a four-week intensive summer program for students identified as needing extra help. (T. 52-53, 57-58, 64-67, 70-71, 78-81, 84-85, 102-103, 105; Exhibit P-A.)

5.

During the Petitioner's tenure at Dunbar, Adequate Yearly Progress ("AYP") was the federal government's method of holding states and local schools accountable for their students' academic progress. Failure to meet AYP was stigmatizing and resulted in a school earning a designation of "Needs Improvement." In Georgia, AYP was measured by the scores of either third, fourth, or fifth graders⁴ on the state's Criterion-Referenced Competency Test ("CRCT"). Dunbar was already in "Needs Improvement" status when the Petitioner arrived in 2002, and despite her efforts, the school did not achieve AYP while she was the principal. Dunbar did hit one of its AYP targets in 2005, when fifth graders' CRCT scores increased adequately in one of three tested areas. During that same year, however, their scores declined in the two other tested areas. (T. 44, 68-70.)

⁴ The grade to be measured for purposes of AYP varied from year to year. (T. 68.)

6.

The Georgia Department of Education (“GaDOE”) has promulgated a Student Assessment Handbook (the “Handbook”) and an Examiner’s Manual that together govern the proper administration of the CRCT. According to the Handbook, the Petitioner, as Dunbar’s principal, bore the “ultimate responsibility for all testing activities [at] the local school.” The Handbook further provides as follows:

It is a breach of test security if anyone performs the following:

...

- coaches examinees during testing, or alters or interferes with examinees’ responses in any way;
 - makes answers available to examinees;
- ...
- participates in, directs, aids, counsels, assists, encourages, or fails to report any of these prohibited acts

Voice inflection and pointing are considered impermissible coaching behaviors that would lead a student to give a particular response. Finally, among other directives, the Examiner’s Manual instructs test examiners that “. . . under no circumstances should you restate or reword test items (unless specified by a student’s IEP), suggest answers, or evaluate student work during the testing session.” These provisions of the Handbook and Examiner’s Manual remained virtually identical throughout the Petitioner’s tenure at Dunbar. (T. 17-19; Exhibits R-1 at 18 and 31, R-2 at 6.)

7.

Two former Dunbar teachers, Remonia Toombs and Lashain Blake, testified that the Petitioner violated the provisions of the Handbook and Examiner’s Manual by instructing teachers to provide students with unauthorized assistance during CRCT testing. Ms. Toombs

taught at Dunbar before the Petitioner arrived and continued to teach there during the 2003-04 and 2004-05 school years. At the hearing, she testified that during the 2003-2004 CRCT, the Petitioner visited her classroom and instructed her to walk around the room⁵ and point out incorrect answers to students taking the test. However, Ms. Toombs' testimony was not credible, in light of her obvious hostility toward the Petitioner and her resistance to any and all school-improvement initiatives that the Petitioner proposed. (T. 42-43, 46-47, 72, 78-79.)

8.

Lashain Blake, who taught fifth grade at Dunbar during the 2004-2005 school year, testified that during a staff meeting in the spring of 2005, the Petitioner told the entire faculty and staff to cheat on the CRCT by using voice inflection when reading test questions to students and by pointing out answers while walking through the classroom during the administration of the test.⁶ However, the Court declines to credit Ms. Blake's testimony, for several reasons. First, her testimony was not corroborated by any other witness, including Ms. Toombs, despite Ms. Blake's claim that the school's entire staff was present at the meeting. Second, three other former faculty members who attended staff meetings during the Petitioner's tenure as principal corroborated the Petitioner's testimony that she had never made such statements or otherwise encouraged cheating.⁷ Finally, the evidence showed that Ms. Blake felt some level of animosity

⁵ It is undisputed that the Petitioner asked Ms. Toombs to spend less time seated at her desk, but this directive applied at all times, not merely during test administration. In fact, the Petitioner placed Ms. Toombs on a PDP, in part to encourage her to get up from her desk and interact with students, and later recommended the nonrenewal of her teaching contract. (T. 43, 45-47, 78-79.)

⁶ To the extent Ms. Blake presented testimony regarding any further alleged testing improprieties, such allegations have not been considered because they are not found in the Matters Asserted. (T. 24-25, 34, 81.) Under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1, *et seq.*, the Petitioner was entitled to receive "[a] short and plain statement of the matters asserted" against her. O.C.G.A. § 50-13-13(a)(2)(D). "The fundamental requirement is notice calculated to apprise the party of each claim asserted so that [s]he can prepare any defense [s]he may have as to each charge." Schaffer v. State Bd. of Veterinary Med., 143 Ga. App. 68, 69 (1977).

⁷ Tena Mitchell, Christopher Estes, and Luana Slaughter testified that they attended staff meetings at Dunbar and never heard the Petitioner instruct teachers to cheat. Ms. Mitchell was a technology specialist who was on staff

toward the Petitioner after she was placed on a PDP due to her failure to provide the differentiated instruction that the Petitioner expected.⁸ (T. 13, 23-28, 30-31, 52-54, 57, 77-78, 80-82, 106.)

9.

The Petitioner's direct supervisor during her time at Dunbar was Michael Pitts, a school system administrator who was later convicted of racketeering charges in the widely-publicized APS cheating scandal. Although Mr. Pitts pressured the Petitioner to guarantee that Dunbar students would meet specific testing targets, the Petitioner refused to do so. Further, while other Dunbar educators were implicated in the cheating scandal based on conduct that occurred after the Petitioner's departure, the Commission presented no evidence of inflated CRCT scores, suspicious erasures on Dunbar students' answer sheets, or other indicia of cheating during the Petitioner's tenure as principal. Rather, Dunbar made incremental gains during this period, likely due to the Petitioner's implementation of reform measures that encouraged differentiation of the curriculum and rigorous benchmarking. (T. 14, 52-54, 85-88, 104-05.)

10.

The Petitioner resigned her position at Dunbar at the end of the 2005-06 school year. At present, she works as the program manager and director for the City of Atlanta's thirty-three recreation centers. (T. 60, 92-94.)

during the 2004-2005 school year, when the meeting in question occurred. Mr. Estes was assistant dean of academics and was not present for the 2004-2005 school year, but was present for the 2005-2006 and 2006-2007 school years. Ms. Slaughter was a teacher during the 2003-2004 school year only. (T. 12-13, 51-52, 54, 56-57.)

⁸ Ms. Blake's testimony that the Petitioner retaliated against her by placing her on a PDP after she refused to engage in cheating on the CRCT was not credible. (T. 28-30.)

11.

After completing its investigation, the Commission found probable cause to revoke the Petitioner's teaching certificate. The Petitioner timely appealed. (OSAH Form 1 and attachments; Matters Asserted ¶ 8; Answer ¶ 8.)

III. CONCLUSIONS OF LAW

1.

The Commission bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

The Commission is the Georgia agency responsible for certification of public school educators in Georgia. See O.C.G.A. § 20-2-982. The Commission is authorized to sanction an educator who has violated the statutes and rules governing the teaching profession, including the standards of performance contained in the Code of Ethics for Educators. O.C.G.A. § 20-2-984.1; see Ga. Comp. R. & Regs. 505-6-.01. Pursuant to O.C.G.A § 20-2-984.5(c):

If the commission finds that there is probable cause for imposing a sanction against the educator, it may recommend any combination of the following:

- (1) That the educator be warned, reprimanded, monitored, or any combination thereof; or
- (2) That the certificate of the educator be suspended, revoked, or denied.

See also Ga. Comp. R. & Regs. 505-6-.01(5). Here, the Commission proposes to sanction the Petitioner's teaching certificate based on alleged violations of GaDOE rules and Standards 4, 7, 9 and 10 of the Code of Ethics for Educators.

3.

GaDOE has promulgated a rule governing the administration of standardized tests and assessments which provides, in relevant part:

Local school systems shall adhere to all written regulations and procedures relating to testing and test administration, including the distribution and collection of test materials, test security, use of test results and official testing dates established in the *Student Assessment Handbook*, test administration manuals such as *System Coordinator's Manual*, *School Test Coordinator's Manual*, and *Examiner's Manual*, and assessment supplements and correspondence.

Ga. Comp. R. & Regs. 160-3-1-.07(4). The rule further states, "Local systems shall train and orient any persons involved directly or indirectly in the assessment process and procedures required for appropriate and secure administration of all state-mandated assessments." Ga. Comp. R. & Regs. 160-3-1-.07(4)(g).

4.

Standard 4 of the Code of Ethics for Educators, entitled "Misrepresentation or Falsification," states as follows:

An educator should exemplify honesty and integrity in the course of professional practice. Unethical conduct includes but is not limited to:

- . . .
3. falsifying, misrepresenting, omitting or erroneously reporting information regarding the evaluation of students and/or personnel

Ga. Comp. R. & Regs. 505-6-.01(3)(d) (eff. July 15, 2003 through September 14, 2004) (Matters Asserted, Exhibit B).⁹

5.

Standard 7 of the Code of Ethics for Educators, entitled "Confidential Information," provides:

⁹ This version of Standard 4 of the Code of Ethics for Educators was in effect at the time of the 2003-04 CRCT. It is consistent with the current standard and intervening standards in all material respects. See Ga. Comp. R. & Regs. 505-6-.01(3)(d) (eff. September 15, 2004 through Oct. 15, 2009) (Matters Asserted, Exhibits C, D, E).

An educator should comply with state and federal laws and local school board policies relating to the confidentiality of student records, unless disclosure is required or permitted by law. Unethical conduct includes but is not limited to sharing of confidential information concerning student academic and disciplinary records, personal confidences, health and medical information, family status and/or income, and assessment/testing results.

Ga. Comp. R. & Regs. 505-6-.01(3)(g) (eff. July 15, 2003 through September 14, 2004)
(Matters Asserted, Exhibit B).¹⁰

6.

Pursuant to Standard 9 of the Code of Ethics for Educators, entitled “Professional Conduct:”

An educator should file reports of a breach of one or more of the standards in the Code of Ethics for Educators, child abuse (O.C.G.A. § 19-7-5), or any other required report. Unethical conduct includes the failure to make a required report as soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner. . . .

Ga. Comp. R. & Regs. 505-6-.01(3)(i) (eff. July 15, 2003 through September 14, 2004)
(Matters Asserted, Exhibit B).¹¹

7.

Standard 10 of the Code of Ethics for Educators, entitled “Professional Conduct,” provides:

An educator should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that impairs the certificate holder’s ability to function professionally in his or her employment position (e.g., harassment of colleagues, misuse or mismanagement of tests, test materials or test items, uncontrolled anger, etc[.]) or a pattern of behavior or

¹⁰ This version of Standard 7 of the Code of Ethics for Educators was in effect at the time of the 2003-04 CRCT. It is consistent with the current standard and intervening standards in all material respects. See Ga. Comp. R. & Regs. 505-6-.01(3)(g) (eff. September 15, 2004 through Oct. 15, 2009) (Matters Asserted, Exhibits C, D, E).

¹¹ This version of Standard 9 of the Code of Ethics for Educators was in effect at the time of the 2003-04 CRCT. It is consistent with the current standard and intervening standards in all material respects. See Ga. Comp. R. & Regs. 505-6-.01(3)(i) (eff. September 15, 2004 through Oct. 15, 2009) (Matters Asserted, Exhibits C, D, E).

conduct that is detrimental to the health, welfare, discipline, or morals of students (e.g., inappropriate language, physical altercations, inadequate supervision, inappropriate discipline, etc.).

Ga. Comp. R. & Regs. 505-6-.01(3)(j) (eff. July 15, 2003 through September 14, 2004) (Matters Asserted, Exhibit B).¹²


8.

The Commission failed to prove, by a preponderance of the evidence, that the Petitioner violated Ga. Comp. R. & Regs. 160-3-1-.07 and/or Standards 4, 7, 9, and 10 of the Code of Ethics for Educators. As detailed in the Findings of Fact, above, the evidence presented at the hearing was insufficient to support a finding that the Petitioner instructed any member of her staff to provide unauthorized assistance to students taking the CRCT during her tenure as Dunbar principal.

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Commission's decision to sanction the Petitioner's Georgia teaching certificate is hereby **REVERSED**.

SO ORDERED, this 2nd day of July, 2015.


KRISTIN L. MILLER
Administrative Law Judge

¹² This version of Standard 10 of the Code of Ethics for Educators was in effect at the time of the 2003-04 CRCT. It is consistent with the current standard and intervening standards in all material respects. See Ga. Comp. R. & Regs. 505-6-.01(3)(g) (eff. September 15, 2004 through Oct. 15, 2009) (Matters Asserted, Exhibits C, D, E).