

STATE OF MICHIGAN
STATE TENURE COMMISSION

Amy ReVoir,
Appellant

v

Docket No. 18-5

Ann Arbor Public Schools,
Appellee

Attorney for Appellant: Jeffrey S. Donahue
John A. Maise
White Schneider PC
Suite 200
1223 Turner Street
Lansing, MI 48906

Attorney for Appellee: Christopher M. Trebilcock
Barbara A. Ruga
Clark Hill PLC
Suite 3500
500 Woodward Avenue
Detroit, MI 48226

DECISION AND ORDER ON EXCEPTIONS

On July 16, 2018, appellant Amy ReVoir filed a claim of appeal challenging the June 27, 2018 decision of appellee Ann Arbor Public Schools to discharge her. There was a hearing on the claim of appeal on October 30, October 31, November 1, November 2, and November 29, 2018, before Administrative Law Judge Michael J. St. John (ALJ).¹

The ALJ issued a preliminary decision and order (PDO) on March 18, 2019, finding that appellee proved some of the charged conduct and that the decision to

¹ In addition to the transcripts of the hearing testimony, the record includes the transcript of the October 29, 2018 deposition of David Comsa, appellee's deputy superintendent of human resources and general counsel.

discharge appellant was not based on a reason that was arbitrary or capricious.

Both parties filed exceptions to the PDO, with supporting briefs, on April 8, 2019, and cross exceptions, with supporting briefs, on April 18, 2019.

DISCUSSION

Appellant holds a Michigan professional teaching certificate that is valid for all subjects in grades K-5, all subjects in a self-contained classroom in grades K-8, English language arts (ELA) in grades K-8, and social science in grades 6-8. She was first employed by appellee in 2000. After working in various schools in the district, she was assigned at the beginning of the 2016-2017 school year to teach seventh grade ELA and seventh grade social studies at Slauson Middle School. Her performance was rated minimally effective that school year; she was therefore placed on an individualized development plan (IDP).² She was again assigned to Slauson Middle School for 2017-2018, this time to teach eighth grade ELA and eighth grade social studies; her IDP carried over to that school year. (Tr, pp 39-40, 220, 875-876, 881-883, 890-891; Joint Exhibit 8E).

The charges relate in large part to appellant's conduct during the 2017-2018 school year surrounding the administration of common assessments, which are tests that are administered to students across the district on a yearly basis. The data generated by common assessments, which are identical for all students in a given grade level and in a given discipline area, are used to assist the assessment

² MCL 38.93 provides in pertinent part as follows.

If the [tenured] teacher has received a rating of ineffective or minimally effective on an annual year-end performance evaluation, the school district shall provide the teacher with an individualized development plan developed by appropriate administrative personnel in consultation with the individual teacher.

of staff needs for professional development, to support the development of school improvement plans, to monitor students' proficiency and growth, to assess students' mastery of concepts both in isolation and in comparison to students across the district and to students of different teachers, and to allow teachers to assess their own instructional practices. (Tr, pp 24, 30, 226-227, 458). In addition, the performance of a teacher's students on a common assessment is used to calculate the statutorily mandated student growth component of the teacher's year-end evaluation³ by comparing the students' performance on a common assessment pre-test administered before the teacher has taught the material covered in the pre-test with their performance on an identical common assessment, called a post-test, administered later in the school year after the teacher has taught the material. (Tr, pp 23, 53, 111, 293, 453-454, 521-522).

Appellant decided that she would use the eighth grade social studies multiple choice common assessment for purposes of calculation of the student growth factor for her 2017-2018 year-end evaluation. (Tr, p 1183).⁴ She administered the pre-test of that assessment near the beginning of that school year and she administered the post-test on January 22, 2018. (Tr, pp 909, 957, 1026-1027, 1106; Exhibit H).⁵ On January 24, 2018, David Comsa, appellee's deputy

³ For the 2017-2018 school year, MCL 380.1249(2)(a)(i) provided that 25% of a teacher's annual year-end evaluation was to be based on student growth and assessment data. 2018 PA 235.

⁴ There was also a social studies essay common assessment. (Tr, pp 113-q 114).

⁵ In 2017-2018, appellant was one of only two Slauson Middle School teachers who chose to use the social studies common assessment to calculate student growth for purposes of the evaluation of their teaching performance. The other teacher was James Grant. Thus, only appellant and Mr. Grant administered the social studies common assessment pre-test to their students that school year. (Tr, pp 1208-1210).

superintendent of human resources and general counsel, placed her on administrative leave pending an investigation of concerns about how she prepared her students for the social studies common assessment post-test. (October 29, 2018 deposition of David Comsa (Comsa deposition);⁶ Exhibit I).

On June 27, 2018, Mr. Comsa and Khajasamieon Parks, appellee's executive director of middle level education, filed three charges against appellant, requesting her dismissal. The first charge alleged conduct that amounted to unethical and dishonest assessment practices in preparing her students for the 2017-2018 social studies multiple choice common assessment post-test. The second charge alleged the same regarding a multiple choice component of the 2017-2018 ELA common assessment post-test. In the third charge, Mr. Comsa and Ms. Parks alleged that appellant was insubordinate in failing to provide appellee with lesson plans after she was placed on administrative leave on January 24, 2018. (Joint Exhibit 1). By a vote of 5 to 1, the board of education decided to proceed on the charges. (Joint Exhibit 2). The ALJ found that appellee proved the first charge (PDO, pp 79-82) and that it proved the second charge "in substantial part" (PDO, pp 82-83). With respect to the third charge, the ALJ found both that appellant's conduct was not insubordinate and that appellee proved that charge "in very small part." (PDO, p 84).

Appellant filed seven exceptions and appellee filed three exceptions. We will consider the exceptions in the order we deem appropriate, beginning with consideration of appellant's third exception, which is a challenge to the ALJ's finding

⁶ The deposition transcript is not paginated.

that appellee proved the first charge. That charge was based on the facts that, following administration of the social studies multiple choice common assessment pre-test in September 2017, appellant made copies of the 35 pre-test items and the four alternative answers listed for each; that, between that time and administration of the same items and alternative answers as the post-test on January 22, 2018, she provided her students with study guides consisting of the pre-test items and alternative answers with the correct answers indicated; and that she reviewed the pre-test questions and answers with her students in class on various occasions in advance of January 22, 2018. In addition, according to a December 6, 2017 lesson plan that she left for a substitute teacher, appellant informed the substitute that the students were to take "another" practice common assessment, that the substitute was to project the answer key on the overhead projector, and that the students could keep the test, which was the pre-test.⁷ The lesson plan included appellant's

⁷ The ALJ found that the practice common assessment given to appellant's students on December 6, 2017, was not an exact replica of the post-test but that it was "more than 90% similar." (PDO, p 68).

It appears that appellant's students received two different study guides to help them prepare for the social studies multiple choice common assessment post-test. It is apparent that, to create one of the study guides, appellant retyped most of the 35 pre-test items and alternative answers and that she photocopied two pages of the pre-test, one that consisted of five items and a map and another that consisted of two items and a chart. (Tr, pp 1111-1112; Exhibits D, E, H). Both that study guide and the post-test contained the same 35 items but appellant's method of recreating the pre-test in the guise of a study guide resulted in the study guide items bearing several duplicate numbers and in the study guide items being in a different order than they were in the post-test. The fact that appellant retyped most of the pre-test explains slight discrepancies between that study guide and the post-test, including, for example, her correction of a grammatical error in pre-test item #17 (one of two items identified as #24 in the study guide), her clerical errors in alternative B of study guide item #18 (pre-test item #23) and in alternative A of study guide item #26 (pre-test item #32), her omission of language in pre-test item #33 (one of two items identified as study guide #27), and her omission of a word in alternative B of pre-test item #11 (study guide item #11). The only significant discrepancy between that study guide and the pre-test (and post-test) was in item #12, for which appellant combined two of the pre-test (post-test) alternative answers and offered three alternatives that were neither

request that, for item #12 on the common assessment, the substitute "PLEASE Beg, Plead students to answer A on REAL test. . .BECAUSE that's what the test wants from pg 2 passage." (Tr, pp 963-964, 969-970, 1026-1030, 1037-1042, 1056-1058, 1107-1109; Joint Exhibit 1, Exhibits A, D, E, H, FF).

At the hearing, appellant testified that she was under the impression that other teachers were preparing their students for the social studies common assessment post-test in the same manner that she was doing. (Tr, pp 1078-1079). However, as noted by the ALJ (PDO, p 79), every one of the other social studies teachers who testified at the hearing stated that they did not provide the pre-test and answer key to their students to prepare them for the post-test. (Tr, pp 41-44, 49-50, 357-362, 411, 419-420, 429, 443-445, 817-818, 824-827, 832, 837; Exhibits C, G, X). Illustrative of the testimony of appellant's fellow social studies teachers was that of social studies department chair James Grant, who testified that appellant's practice was unethical, that it merely measured students' ability to memorize answers, that it gave them the message that the learning process is not significant, and that it violated not only common sense but also the norms and standards of professional teaching. (Tr, pp 50, 73, 108, 1213). Administrators who testified at the hearing echoed Mr. Grant's characterization of appellant's practice. For example, Ms. Parks believes that appellant's practice, which she

reflective of the pre-test (post-test) responses nor intended to be reasonable choices. She testified that she thought there was possibly more than one correct answer to item #12. (Tr, pp 1064, 1112-1113).

In addition to being given the study guide that appellant retyped from the pre-test, appellant's students received an exact copy of the pre-test and, as indicated in the December 6, 2017 lesson plan, they were allowed to keep that test after in-class discussion of the correct responses.

considers unethical, amounted to cheating, academic fraud, and dishonesty and that it deprived the district of data necessary to determine her students' mastery of concepts taught during the first semester. In Ms. Parks' view, professional educators are expected to know that such conduct is cheating. (Tr, pp 612, 614, 636, 638-639). Lisa Anglin, Slauson Middle School principal, found that providing students with answers to a common assessment was unethical; that it did not teach them how to learn but rather deprived them of the chance to acquire "the tools that they need to explore content, to question content, [and] to develop responses to content and opinions;" and that it defeated the purpose of common assessments to determine "where kids that are similarly situated in each grade or content area or department are in their learning." (Tr, pp 238-239, 249). Lee Ann Dickinson-Kelley, assistant superintendent for pre-K-12 instruction, found that appellant's practice deprived her students of an opportunity to demonstrate their knowledge and amounted to deliberate, planned academic dishonesty and cheating that are antithetical to professionalism and that undermined and demeaned the purpose of common assessments to provide data about students' proficiency. (Tr, pp 472-474, 481-484). Slauson Middle School assistant principal Brandon Szwejkowski expressed a similar assessment of appellant's conduct. (Tr, p 168). It is also noteworthy that it was two of Mr. Grant's students who brought appellant's instructional practices to light when, during administration of the social studies common assessment post-test in January 2018, they reported to him that they had previously seen an exact version of the assessment during study sessions with some of appellant's students. One of those students testified that she was

concerned that she would be accused of cheating by virtue of the fact that she had seen the post-test in the guise of appellant's study guide. (Tr, pp 68-70, 126-129).

In support of this exception, appellant asserts that, when she gave her students the social studies common assessment multiple choice items and correct answers as a study guide, she did not know that the post-test would be identical to the pre-test. She agreed that, if she had known that the post-test was going to be identical to the pre-test, her conduct would not have been appropriate or professional. (Tr, p 1115). However, common assessment pre-tests and post-tests have always been identical (Tr, pp 111, 1144),⁸ and the ALJ found that appellant's testimony that she did not know that the 2017-2018 social studies common assessment pre-test and post-test would be identical was not credible. (PDO, pp 79-82). Giving due deference to the superior position of the ALJ to determine credibility based on his opportunity to view the witnesses and to hear their testimony, we are persuaded of no error in this ruling. *Harris v Ann Arbor Public Schools* (11-3), lv den unpublished order of the Court of Appeals, issued December 14, 2012 (Docket No. 309788). As the ALJ found, appellant's December 6 lesson plan clearly shows that she "believed that her students would see. . .all of [the pre-test] questions on the real upcoming post-test common assessment." (PDO, p 81).

Appellant testified that she covered chapters four through nine of the social studies curriculum before administering the social studies multiple choice common

⁸ A minor exception noted in the record was the fact that, in 2016-2017, one item was mistakenly included twice in the seventh grade social studies multiple choice pre-test. That item was replaced with another item in the post-test. In addition, some of the items in that year's seventh grade social studies multiple choice post-test were in a different order than they were in the pre-test. (Tr, pp 1167-1172; Exhibits PP, QQ).

assessment post-test. (Tr, pp 970, 1052). Some of the common assessment multiple choice items were taken from the teacher's guide for those chapters of the curriculum. (Tr, pp 50-55; Joint Exhibit 6, Exhibit U). The ALJ rejected appellant's argument that, because her students were exposed to teacher's guide items during the semester, her use of the common assessment pre-test as a study guide was not unethical or dishonest. (PDO, pp 84-85).

The teacher's guide contains a total of 106 multiple choice items for chapters four through nine. (Joint Exhibit 6). The 35 items on the social studies multiple choice common assessment post-test (Exhibit U) included 13 items (including alternative answers) that were identical to items in the teacher's guide and eight items that were not based on items in the teacher's guide for chapters four through nine. Among the remaining 14 items on the post-test, the differences between teacher's guide items and post-test items ranged from minor differences in language and punctuation, rearrangement of the order of alternative answers, and significant differences in alternative answers. Thus, it is clear that, even assuming, as appellant argues, that her students were exposed to teacher's guide items during the semester, that exposure was not equivalent to being handed the answer key for the 35-item common assessment post-test.

We find persuasive the overwhelming evidence that appellant's conduct in preparing her students for the social studies multiple choice common assessment post-test was unethical and dishonest and, for this reason, we find no error in the ALJ's finding that appellee proved the first charge. We therefore deny appellant's third exception.

As noted above, the second charge was that appellant engaged in unethical and dishonest conduct in preparing her students for an ELA multiple choice common assessment post-test. As further noted above, the ALJ found that appellee proved the second charge only "in substantial part." Appellant's fourth exception challenges the ALJ's finding that she "used poor professional standards and poor academic rigor" in preparing her students for the ELA multiple choice common assessment post-test (PDO, p 83). Appellee's first exception challenges the ALJ's determination that appellee did not prove this charge in its entirety. We will address these exceptions together.

The ELA multiple choice common assessment pre-test that is at issue consisted of 50 items, each of which required the students to choose a synonym for an underlined word from among 4 possible responses. (Exhibit N). As the ALJ found, appellant's method to prepare her students for this component of the ELA common assessment was very similar to the method she used to prepare them for the social studies multiple choice common assessment post-test. (PDO, p 82). In the months following her administration of this component of the ELA common assessment pre-test, appellant gave study guides to her students that were exact copies of the pre-test, starting with five items and adding five items at a time until the study guide consisted of the entire 50-item pre-test. She went over the study guides with her students in class throughout the first semester, gave them the correct responses, and allowed them to keep the study guides. She told her students to review the study guides and that, "These are questions you might see again." (Tr, pp 975, 977-982, 1007-1012, 1015, 1018-1020, 1042; Exhibit N).

The ELA multiple choice common assessment post-test that is at issue was identical

to the pre-test; it was scheduled to be administered in March 2018, after appellant was placed on administrative leave. (Tr, pp 320, 1010; Exhibits N, O).⁹

In finding that appellee did not prove the second charge in its entirety, the ALJ noted the fact that appellant chose to use the social studies multiple choice common assessment, but not the ELA multiple choice common assessment, in the calculation of the student growth component of her year-end evaluation. (PDO, pp 75, 83). He found that appellant's motivation vis-à-vis the social studies common assessment was to improve the student growth component of her year-end evaluation (PDO, pp 75, 81-82), but that her motivation vis-à-vis the ELA common assessment was "unclear other than to make her look like a more effective teacher than she really was." (PDO, p 83). He found that appellant used "poor teaching methodology and pedagogy" in preparing her students for the ELA multiple choice common assessment post-test but that, "Unlike with the social studies common assessment, [her] actions do not appear to have been done for such obvious personal gain." *Id.* He also found, however, that, "Repeatedly providing students with the exact questions and answers to common assessments, regardless of the teacher's motivation for doing so, is grounds for serious discipline up to, and including termination." *Id.*

We agree with this last statement of the ALJ and therefore find that, based on the undisputed facts surrounding appellant's preparation of her students for the ELA common assessment post-test, appellee proved the second charge. Slauson Middle School ELA teacher and ELA department chairperson Sarah Greene testified

⁹ The 2016-2017 ELA vocabulary multiple choice pre-test and post-test were also identical to each other. (Tr, p 1136).

that appellant's method of preparing her students for the ELA multiple choice common assessment post-test was unethical, that it constituted academic fraud and cheating, that it modeled to students that cheating is acceptable, and that it was outside the standards and norms of the teaching profession. (Tr, pp 325, 327, 338, 347-349). Slauson ELA teacher Maria Murphy also expressed her view that providing students with the exact questions and answers for the common assessment would violate commonly accepted professional and ethical standards for teachers. (Tr, pp 389, 399).¹⁰

Based on the record, we find that appellee proved by a preponderance of the evidence that appellant engaged in unethical and dishonest conduct in her preparation of her students for the ELA multiple choice common assessment post-test. We therefore find that appellee proved the second charge and we grant appellee's first exception. Because we find that appellee proved the second charge, it is unnecessary to address appellant's fourth exception, which we therefore deny.

We turn now to consideration of appellant's first exception, in which she challenges the ALJ's statement that appellee was not required to prove that appellant "acted intentionally." (PDO, p 78). According to appellant, appellee was required to prove that she "intended to and did act dishonestly," and appellee did not sustain its burden of proof if it established only that appellant "merely exercised

¹⁰ In addition to her other assignments, appellant "co-taught" one section of ELA with Ms. Murphy during the 2017-2018 school year so that appellant could learn the eighth grade curriculum. The class took place in Ms. Murphy's classroom and, for the most part, Ms. Murphy conducted it just as she taught her other classes. Appellant played only a supportive role, including, for example, helping individual students while Ms. Murphy was the lead instructor. Appellant did not give a copy of the ELA multiple choice common assessment pre-test to the students in the "co-taught" class. (Tr, pp 378, 401-403, 405-406, 971).

poor judgment or made a mistake.” (Brief in support of appellant’s exceptions, pp 14-15).

In *Van Schelven, et al. v Board of Education of the Grand Haven Area Public Schools* (97-21 et al.), the school district proved that the teacher engaged in clearly dishonest conduct (i.e., knowingly accepting, endorsing, and cashing school district checks issued to a fictitious person). In her exceptions, the teacher challenged the rulings of the administrative law judge that her intent was not relevant and that the school district was not required to prove the purpose of her conduct. This Commission rejected her arguments, ruling that the school district was not required to prove the teacher’s intent or that she was motivated by an improper purpose. Similarly, we have found in our consideration of appellant’s first and second exceptions that appellee proved that appellant engaged in clearly unethical and dishonest conduct, and we find that appellee was not required to prove what motivated her to engage in such conduct. She clearly acted with deliberation and cannot reasonably claim that she “merely. . .made a mistake.”

We therefore deny appellant’s first exception.

In her second exception, appellant argues that the ALJ erred in his review of the following decisions of this Commission: *Schisler v Bay City Public Schools* (14-19), *Nadolsky v West Ottawa Public Schools* (08-5), *Pack v Board of Education of Mt. Morris Consolidated Schools* (07-53), and *Bradley v Crestwood School District Board of Education* (95-24), aff’d unpublished memorandum opinion of the Court of Appeals, issued January 13, 1998 (Docket No. 194791), lv den 459 Mich 886 (1998). The ALJ found that appellant’s actions were “less severe” than the cheating and academic fraud of the teachers involved in those cases but that that “does not

mean that [appellant's] conduct is acceptable or that [appellee's] decision to discharge [appellant] is arbitrary and capricious." (PDO, p 86). According to appellant, her conduct amounted to, "at worst, questionable test preparation practices." (Appellant's brief in support of exceptions, p 16). In contrast, she argues, was the conduct of the teachers involved in those cases, who "directly and obviously influenced scores on a student's test either *during* or *after* the student had taken the examination." *Id* (Emphasis in original). Appellant supports this exception by repeating her argument that appellee was required to prove that she intended to perpetuate academic dishonesty, an argument that we addressed in our consideration of her first exception. In addition, we find no reversible error in the ALJ's analysis of the four cited cases, some of which we discuss in our consideration of other exceptions. We therefore deny this exception.

The ALJ ruled that appellee was not required to prove that appellant's conduct had an adverse effect on students, staff, or the school community. He also found, however, that appellee proved such adverse effect. (PDO, pp 86-87). In her fifth exception, appellant argues that the ALJ erred in ruling that a showing of adverse effect was not required. In her sixth exception, she challenges the ALJ's finding that appellee did, in fact, prove adverse effect.

The ALJ's ruling that appellee was not required to prove that appellant's conduct had an adverse effect on students, staff, or the school community was based on longstanding authority that, "[W]here a teacher's conduct occurs on school grounds during working hours, or otherwise involves students, and is obviously inappropriate, disciplinary action may be taken without a pleading or showing of adverse effect." *Miller v Grand Haven Board of Education*, 151 Mich App

412, 421 (1986), lv den 426 Mich 881 (1986). For example, in *Bradley, supra*, a counselor was discharged for planning and executing an academic cheating scheme. Because the counselor's conduct was obviously inappropriate and involved students, this Commission found that the school district was not required to prove adverse effect. Nevertheless, there was ample evidence of adverse effect, including evidence that the counselor induced students to violate the student code of conduct by joining in her scheme.

Similarly, in the instant case, we find no error in the ALJ's ruling that appellee was not required to prove the adverse effect of appellant's conduct, which occurred during class, involved students, and was obviously inappropriate. We disagree with appellant's argument that her conduct involved merely her "pedagogical philosophy" and that therefore, under *Miller*, appellee was required to prove adverse effect. See *Miller*, 151 Mich App 420 ("It may well be appropriate to expect a showing of adverse effect in cases of discipline arising from disputes centering around pedagogical or personal philosophies or courses of conduct."). This statement by the Court of Appeals followed its discussion of *Beebee v Haslett Public Schools*, 66 Mich App 718 (1976), rev'd 406 Mich 224 (1979), including a discussion of the Supreme Court's rejection of the Court of Appeals' characterization of the *Beebee* case as involving a disagreement about teaching philosophy rather than about the teacher's failure to implement her teaching philosophy. 151 Mich App 416-417. In the instant case, appellant did not claim, and she does not clearly claim in support of her exceptions, that her practice of giving answer keys to students in advance of district-wide assessments was

consistent with a pedagogical philosophy that she espouses.¹¹ Thus, even assuming that a showing of adverse effect is required when the disagreement between a teacher and a controlling board involves only a difference in pedagogical philosophy, we are not persuaded that this case presents an example of such a disagreement.

We also agree with the ALJ that the record establishes that appellant's conduct adversely affected the school community in several ways. For example, as found by the ALJ, her conduct deprived her students of meaningful opportunities to learn the content of the material tested in the common assessments. See *Jaworsky v Huron Valley Schools* (10-45). Another adverse effect was the disruption in appellant's students' educational program when substitute teachers took over her instructional duties. *Whitley v Board of Education of the Cadillac Area Public Schools* (13-41). In addition, because of appellant's conduct related to the social studies common assessment, Mr. Grant was forced to choose another method to calculate the student growth component of his year-end evaluation. (Tr, pp 240-

¹¹ In support of her seventh exception, appellant claims that she was "operating under the admittedly incorrect impression that the post-test would be different in some manner or form as compared to the pre-tests [sic], whether through a modification of syntax, the order of the questions, or even different questions." (Appellant's brief in support of exceptions, p 34). She claims to have believed she was "administering an old test, in much the same way as old tests are used to study for exams throughout a person's educational career." *Id.* She argues that, "[T]here is nothing inherently wrong with using an old practice test to help students gain an understanding of how a test will look, what sort of time constraints they will have, and what areas of knowledge are covered by the upcoming test." *Id.* She further claims that her "utilization of the pre-test as a guideline for what areas of history would be covered by the post-test is not in and of itself improper and has pedagogical purpose." *Id.* at p 39.

These arguments are unavailing in light of the ALJ's reasonable finding that appellant's claim that she did not know that the post-tests would be identical to the pre-tests was not credible.

241, 485). It is also noteworthy that, as noted above, appellee became aware of appellant's conduct only because, during administration of the post-test, two of Mr. Grant's students reported having seen appellant's study guide. The testimony of one of those students about her concern that she would be accused of cheating establishes an additional example of the adverse effect of appellant's conduct.

As Dr. Anglin testified, appellant's students had to be retaught how to prepare for assessments and they needed to be reassured that they were capable of learning. (Tr, pp 245-247). Ms. Dickinson-Kelley testified that appellant deprived her students of the opportunity to show what they had learned. In her words, "[S]tudents learned a lesson. . .about cheating." (Tr, p 484). We agree.

For these reasons, we deny appellant's fifth and sixth exceptions.

In her seventh exception, appellant argues that the ALJ erred in declining to address the factors identified in *Szopo v Richmond Community Schools Board of Education* (93-60) (PDO, pp 87-89). In that case, which was decided under the previous statutory standard of "reasonable and just cause" for review of a controlling board's decision to discharge a teacher,¹² this Commission provided a non-exhaustive list of common sense factors that had been considered in reviewing the discipline imposed for professional misconduct.¹³ In addition, we have

¹² The legislature replaced the "reasonable and just cause" standard with the "not arbitrary or capricious" standard in 2011. 2011 PA 100. MCL 38.101(1).

¹³ The factors identified in *Szopo* were: whether the conduct was deliberate, planned, criminal, fraudulent, or deceitful; whether it involved sexual misconduct, drugs, or a weapon; the teacher's motive or purpose; whether there was harm to a specific victim; how much the conduct deviated from the norms of appropriate conduct for teaching professionals and others; the teacher's disciplinary record and the effect of previous disciplinary action; the teacher's attitude and acceptance of responsibility; and the likelihood of recurrence of the conduct.

recognized that, in a given case involving review of a controlling board's decision under the current standard of "not arbitrary or capricious," it may be helpful to consider some of the factors described in *Szopo*. *Purdun v Ionia Public Schools* (16-5 and 16-7); *Bethke v Godwin Heights Public Schools and Board of Education* (15-29); *Cona v Avondale School District* (11-61), *aff'd* 303 Mich App 123 (2013), *lv den* 497 Mich 887 (2014); *Ware v Southfield Public Schools* (12-3), *lv den* unpublished order of the Court of Appeals, issued August 29, 2013 (Docket No. 313435). It has always been clear that the factors described in *Szopo* are not of equal importance and that facts related to just one factor may support discharge in a particular case. *Bowers v Hastings Area School System* (11-54); *Alward v Manistee Intermediate School District* (04-34). However, express consideration of each of the factors identified in *Szopo* has never been required under either the "reasonable and just cause" standard or the "not arbitrary or capricious" standard. Further, as this Commission first recognized in *Cona, supra*, notwithstanding that there may be factors that support a level of discipline that is less drastic than that imposed by a controlling board, our current responsibility under the Teachers' Tenure Act is not to fashion a penalty that we ourselves would prefer but to review the board's decision for arbitrariness and capriciousness. Once a determination is made that a discharge decision was the result of a deliberate, principled, reasoned process supported by evidence, the inquiry that this Commission is statutorily authorized to conduct ends. *Mertz v Byron Center Public Schools Board of Education* (17-9), *lv den* unpublished order of the Court of Appeals, issued December 20, 2018 (Docket No. 344146), *lv pending* (Supreme Court Docket No. 159051); *Green v Reeths-Puffer Public Schools* (16-3), *lv den* unpublished order of

the Court of Appeals, issued May 18, 2018 (Docket No. 340889), *lv den*, ____ Mich ____ (Docket No. 158012, issued April 2, 2019); *Lefebvre v Norway-Vulcan Area Schools* (18-1).

Here, it is clear that, as found by the ALJ, appellee engaged in a deliberate, principled, reasoned process when it investigated appellant's conduct and decided to proceed on the charges. Much of the information uncovered in the investigation implicated factors that have long been considered in reviewing disciplinary decisions of controlling boards, including the significant deviation of appellant's planned, deliberate conduct from the norms of appropriate conduct reasonably expected of teaching professionals; academic fraud; and harm to students. Taken together, these aspects of appellant's conduct provided appellee with a reason to discharge her that was neither arbitrary nor capricious. The decision in *Nadolsky, supra*, which also involved a teacher's administration of a common assessment, provides ample support for this conclusion. The portion of the common assessment at issue in that case consisted of 29 items, 27 of which were multiple choice. For those 27 items, the teacher italicized the correct answers. For the remaining 2 items, he changed the items from short essay to multiple choice and typed the correct answers in enlarged, bold font. During the test, students caught on quickly to the fact that the teacher was signaling the correct responses. Applying the "reasonable and just cause" standard of review, this Commission upheld the decision to discharge the teacher, finding that his conduct constituted academic fraud in that it was "tantamount to giving the students the answer key." Citing *Pack, supra*, where a teacher was found to have engaged in egregious academic fraud and blatant academic dishonesty when he gave the answer key to a student during an

examination, this Commission found that Mr. Nadolsky's conduct, which was done deliberately and with forethought, was similarly dishonest in that it resulted in fraudulent grades that misrepresented students' achievement, challenged the integrity of the grading system, and defeated the purpose of the common assessment. Rejecting Mr. Nadolsky's defense that there was no policy prohibiting his manner of administering the common assessment, this Commission noted "the common sense proposition that no professional teacher requires a written directive prohibiting the highlighting of answers on common assessments."

Appellant argues that *Nadolsky* and *Pack* are distinguishable because she did not give her students the answer keys during administration of the common assessment post-tests. It is undisputed, however, that she gave the answer keys to her students in advance of the post-tests and that she repeatedly reviewed those answer keys with them. It is unnecessary to compare the level of egregiousness of appellant's conduct with that of the conduct of Mr. Nadolsky and Mr. Pack. The Teachers' Tenure Act only requires that a controlling board's reason to discharge a teacher not be arbitrary or capricious. Here, Ms. Parks explained her reasons for recommending appellant's discharge as follows.

Number one, giving students what was essentially the answer key to the assessment, in my estimation, was egregious enough that it warranted dismissal. In that—inherent in that is a lack of honesty, a lack of competence in Ms. ReVoir who occupies a position that is largely unsupervised on a day-to-day basis and trusting that her professional judgments would be sound. It also spoke to her role as a role model for students, of someone who would have the academic integrity to be able to guide students in the same vein. (Tr, p 641).

Mr. Comsa similarly described the reasons that, based on his review of ethical standards, documents collected during the investigation of appellant's conduct, and prior decisions of this Commission, he recommended appellant's discharge.

I reached the conclusion that Ms. Revoir acted unethically in providing answers to a common assessment. I felt that she violated her duty as a role model. I think that she marginalized the students by having them think that cheating was okay and she denied them proper pedagogy. She didn't teach them. She said by her own words, please, please, please make sure that they answer this question correct. . .I felt that. . .she was unfit to teach. . .I think it's unethical because. . .[i]t skews the results of the common assessment. It's unfair to the students. It models to them that cheating is okay . . .[Y]ou have no common set of data since she in effect modified a common assessment by providing the answers when no other faculty member did that. So I don't think that exhibits good role modeling. I think that's violative of the norms of teaching. . .[E]ven students can be disciplined if they obtain answers dishonestly." (Comsa deposition).

Based on careful consideration of this testimony and the entire record, we find that the statutory standard was satisfied in this case. Appellee's decision to discharge appellant is reasonably based on evidence, including appellant's admitted conduct, and it is in line with the longstanding precedent of this Commission that steadfastly emphasizes the crucial important of academic integrity.

For all these reasons, we deny appellant's seventh exception.

Appellee filed three exceptions, the first of which we considered together with our review of appellant's fourth exception. In its second exception, appellee argues that appellant's preparation of her students for both the social studies and the ELA common assessments violated a board policy. According to the evidence, the purposes of the policy in question are to provide standardized processes to report

each student's progress and to ensure that staff members communicate student progress information to families in a uniform fashion. (Exhibit T). The policy language referenced in the charges states, "Staff members must maintain accurate, verifiable evidence of student progress to support information as reported on district forms." *Id.* The ALJ found that appellant did not violate this policy "since the grades that she reported were accurate." (PDO, p 71). According to the ALJ, "That the students' grades were inflated as a result of [appellant] having provided the students' [sic] with advance copies of the assessments and answers does not make the scores inaccurate." *Id.* However, the ALJ also found that appellant's conduct "deprive[d] 8th grade students and parents of timely and accurate feedback about students' academic growth and subject mastery in social studies and English vocabulary." *Id.*

Appellant entered her students' scores on the social studies multiple choice common assessment post-test in the district's computerized grade reporting program. (Tr, pp 557-560, 926, 1059-1060; Joint Exhibit 12). Those scores did not accurately reflect her students' progress in mastery of the social studies curriculum and, as such, were not verifiable evidence of such progress. On the contrary, the scores indicated levels of progress that could not be reliably confirmed. In our judgment, this effect of appellant's conduct was akin to the effect of Mr. Nadolsky's conduct, which this Commission found involved the reporting of fraudulent grades that misrepresented students' academic achievements. *Nadolsky, supra.* Appellant deprived students, parents, and staff of accurate information regarding her students' academic progress, as did Mr. Nadolsky. We therefore find that her conduct surrounding the social studies

multiple choice common assessment violated the cited board policy and we grant appellee's second exception.¹⁴

Appellee's third exception relates to the ALJ's findings regarding the third charge, which alleged that appellant was insubordinate in failing to provide appellee with lesson plans after Mr. Comsa placed her on administrative leave on January 24, 2018.

Insubordination is the willful refusal to comply with a clear, reasonable, and fairly applied administrative directive or policy by someone who knows about the directive or policy and fully understands it. *Green, supra; Harris, supra.*

The ALJ found that appellant's failure to provide lesson plans "can hardly be considered insubordination" and that her conduct was "neither knowing nor willful and is therefore not insubordination." (PDO, p 84). The ALJ nonetheless also stated that appellee proved the third charge "only in very small part." We agree with the former statement of the ALJ. It is not disputed that, after Mr. Comsa placed appellant on administrative leave, she contacted Fred Klein, her union representative, who then spoke with Ms. Parks about whether appellant was required to provide lesson plans during her leave. According to Mr. Klein, Ms. Parks said that she would get back to him about lesson plans. After the meeting, Mr. Klein's impression was that appellant was not required to provide lesson plans at that time and he told appellant to hold off on providing lesson plans until he heard from Ms. Parks. He never heard back from Ms. Parks. (Tr, pp 860-862, 874).

¹⁴ As noted above, because she was placed on administrative leave in January 2018, appellant did not administer the ELA multiple choice common assessment post-test to her students. She therefore did not violate the board policy related to that common assessment.

Thus, notwithstanding that Mr. Comsa and Dr. Anglin told appellant by email and letter that she was to provide lesson plans (Exhibits I, J), based on Mr. Klein's testimony, we agree with the ALJ's finding that appellant did not knowingly and willfully disobey those directives. Under the circumstances, we find that appellee did not prove by a preponderance of the evidence the existence of a clear directive that appellant fully understood and willfully disobeyed. We therefore find that appellee did not prove the third charge and we deny appellee's third exception.

ORDER

For the foregoing reasons, we order the following:

Appellant's exceptions are denied.

Appellee's first and second exceptions are granted.

Appellee's third exception is denied.

Appellant is hereby discharged.

David Campbell, Chairperson

R. Stephen Olsen, Secretary

Michelle Richard, Member

William Wooster, Member

Absent: Jeff Sewick, Member

Dated: June 7, 2019