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**BEFORE THE HAYWOOD COUNTY
BOARD OF EDUCATION**

IN THE MATTER OF:

Amelia Lovett & Kellie Davis

DOCKET NO: 51.01-099416J

INITIAL ORDER

This matter was heard in Brownsville, Tennessee, on August 20-21, 2008, before Bettye Springfield, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Haywood County Board of Education. Jason Bergeron, with the Nashville bar, represented the Haywood County School System. The Respondents, Amelia Lovett and Kellie Davis, were represented by Teresa Luna and Charles Farmer, with the Madison County bar.

At the conclusion of the hearing, the matter was taken under advisement, pending the parties' filing Proposed Findings of Fact and Conclusions of Law. Those documents were filed by October 1, 2008.

The subject of this proceeding is the proposed termination of the Respondents' tenure with the Haywood County School System for inefficiency, neglect of duty, insubordination, and improper or unprofessional conduct. After consideration of the record and the arguments of the parties in this matter, it is determined that the Haywood County School Board's decision to terminate Respondent Amelia Lovett from her teaching position should be **upheld**, and the decision to terminate Respondent Kellie Davis from her teaching position should be **overruled**.

This determination is based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. At all times pertinent hereto, the Respondents were employed as teachers by the Haywood County School System.

2. Amelia Lovett was employed as a fourth grade teacher at East Side Elementary School in Haywood County from 2006-2008.

3. Kellie Davis was employed as a fourth grade teacher at East Side Elementary School in Haywood County from 2005-2008.

4. During the week of April 14, 2008, the Tennessee Comprehensive Assessment Program (TCAP) tests were administered at East Side Elementary School. The State of Tennessee mandated that all testing personnel be trained in both the procedural administration of the test and in the security guidelines that should be followed.

5. Procedures for TCAP security materials include the development of a code of ethics to be signed by teachers who proctor the tests.

6. Haywood County Schools adopted a test security policy that required all personnel to sign a statement that all security measures had been followed regarding the TCAP test. The teachers at East Side Elementary School were not required to sign a Testing Code of Ethics prior to giving the test.

7. Marjorie Vaultx was responsible for coordinating all state-mandated tests in Haywood County Schools. She attended or participated in a number of training sessions offered by the Department of Education to prepare school systems for TCAP. Ms. Vaultx then held training sessions for building test coordinators, including East Side Elementary School's testing coordinator, Flodine Hudson.

8. A month in advance of the training sessions, teachers were notified via e-mail of the availability of the testing instructions on the Tennessee Department of Education's website.

9. On April 8, 2008, a mandatory TCAP training session was held for all East Side Elementary faculty members. Ms. Hudson discussed TCAP security, stressed the serious nature of test security, mentioning that thirty (30) teachers in Shelby County had lost their jobs because of security breaches, and provided all teachers with individual folders containing instructions and other necessary materials to read with regards to administering the TCAP test.

10. The actual TCAP training session for the teachers at East Side Elementary School lasted about ten (10) or fifteen (15) minutes.

11. Teachers were told that they could sign-out overnight the TCAP teacher manuals to review instructions on administering the test, but neither the Respondents nor the two other teachers who testified at the hearing took the manuals home for review.

12. TCAP instructions specifically state, "Do not read test items or passages before, during, or after testing unless indicated in test instructions or accommodations. . . If reading is required due to instructions or accommodations, do not discuss test contents with anyone."

13. The Respondents acknowledge that they never read the instructions included in the individual folders given to them at the TCAP Training Session on April 8, 2008. Although they had an opportunity, they did not ask Ms Hudson any questions regarding testing instructions, materials, or other matters regarding TCAP testing.

14. The Respondents also admit that they did not read the TCAP Teacher Directions Manual that was provided them on the day of testing. The teacher directions included a citation to the State of Tennessee Test Security Law, and stated the prohibition on reading testing items

and the prohibition on reproducing or duplicating any test items. Respondents never read the security guidelines cited in the manual.

15. On the second day of TCAP testing, Ms. Lovett picked up her testing materials and, before her students arrived, looked ahead in the TCAP booklet at the Science and Social Studies tests that the students would be taking.

16. She noticed items like constitutional amendments, Tennessee history, John Sevier, and moon phases. Ms. Lovett wrote down some terms and information from the test booklet.

17. Some terms are made available to teachers as State Performance Indicators (SPIs) that the State Department of Education publishes in advance of the TCAP tests for the purpose of student preparation.

18. After the morning testing was completed on the second day, Ms. Lovett took her students to the lunchroom, then dropped by Ms. Davis' classroom and offered to share the information that she had copied. Both teachers then proceeded to Ms. Lovett's classroom where Ms. Davis took a blank post-it note and jotted down three of the terms she had heard Ms. Lovett mention. There were no students present during this time.

19. A third teacher, Maria Hart, stopped by Ms. Lovett's room during the lunch period. After Ms. Hart made a comment about an English reading question that her students had been tested on that morning, Ms. Lovett then shared with her the terms Ms. Lovett had seen on the Science and Social Studies TCAP tests. Ms. Hart stated that it was against the law to look ahead in the TCAP booklets.

20. Talking about TCAP tests among the teachers at East Side Elementary School appeared to be commonplace, particularly with regard to how well the teachers feel their students will handle the difficulty level of the tests.

21. On Wednesday, April 16, 2008, Ms. Hart reported what had occurred to other teachers and the assistant principal at East Side Elementary.

22. The Respondents completed the TCAP testing process with their students that week, by giving the tests each day, Monday through Thursday.

23. Director of Schools George Chapman began an investigation into the incident and conducted interviews with both the Respondents. Ms. Lovett admitted looking ahead at the questions on the TCAP test and Ms. Davis admitted writing down some of the terms that Ms. Lovett shared with her.

24. Ms. Lovett admitted that her actions on April 15, 2008 were the worst mistake of her teaching career. She later said she did not know what she did was a violation.

25. The TCAP security guidelines provided by the State Department of Education warn that the test questions should not be read or talked about before, during, or after testing. The Respondents blamed their failure to follow these guidelines on the “inadequacy” of TCAP training at East Side Elementary School.

26. The principal and two other teachers at East Side, who attended the April 8, 2008 TCAP training session and testified at the hearing, said they understood the directions from Ms. Hudson to read all instructions and materials and follow the instructions and rules, and also understood the instruction not to look at test questions.

27. The Director of the Haywood County Schools filed a Breach of Test Security Report with the Tennessee Department of Education. The Director recommended that all of the tests of the students in both Respondents’ classes be processed normally.

28. On April 17, 2008, Mr. Chapman sent the Respondents letters advising that he was immediately suspending them without pay from their teaching positions at East Side

Elementary School for “breach of TCAP test security.” On April 8, 2008, the Haywood County School Board had voted to give Ms. Davis tenure, effective the following school year.

29. On May 13, 2008, the Director filed written Charges for Dismissal against the Respondents, with the Haywood County Board of Education, on the grounds of inefficiency, neglect of duty, insubordination, and improper/unprofessional conduct or conduct unbecoming to a member of the teaching profession, for noncompliance with TCAP security guidelines.

MOTION TO DISMISS

1. The Respondents argue that the Director of Schools failed to provide them a timely hearing, as required by Tennessee Code Annotated § 49-5-512. Thus, this failure would prohibit dismissal from their positions as teachers.

2. Respondents note that the letter from the Director quotes TCA § 49-5-512 and informs them of their rights to have a hearing occur within thirty (30) days and for that hearing date to be announced within five (5) days of the request. The Respondents first requested a hearing on April 24, 2008 and made additional requests on April 29, 2008, May 14, 2008, May 20, 2008, and June 17, 2008, but the Director of Schools did not contact the Secretary of State to request the hearing until June 25, 2008, over two (2) months later. Therefore, they contend the Director of Schools did not make arrangements for a hearing date within five days as required, and the hearing date did not occur within the thirty day time limit required by statute.

3. At the time of their dismissal, both the Respondents were non-tenured teachers. Ms. Lovett had only been employed with the Haywood County Schools for a period of two years. And while the Haywood County School Board had voted to give Ms. Davis tenure, she was dismissed before tenure became effective, beginning the next school year.

4. Tennessee Code Annotated § 49-5-501 et seq. governs “Teachers’ Tenure.” The section relied on by the Respondents, 49-5-512, governs the dismissal or suspension of tenured teachers and is not applicable to non-tenured teachers such as the Respondents. Therefore, the motion to dismiss is denied.

CONCLUSIONS OF LAW AND ANALYSIS

1. Pursuant to T.C.A. §49-2-301(b)(1)(GG)(i), the director may dismiss any employee under the director’s jurisdiction, including the dismissal of non-tenured, licensed personnel, for incompetence, inefficiency, neglect of duty, insubordination, or improper conduct, after providing the employee due process.

2. T.C.A. §49-5-501 — lists definitions for the causes for dismissal, in pertinent part, as follows:

(3) “Conduct unbecoming to a member of the teaching profession” may consist of, but not be limited to, one (1) or more of the following:

- (B) Conviction of a felony...;
- (C) Dishonesty, unreliability...;
- (D) Disregard of the code of ethics of the Tennessee Education Association in such a manner as to make one obnoxious as a member of the profession; or

(6) “Inefficiency” means being below the standards of efficiency maintained by others currently employed by the board for similar work, or habitually tardy, inaccurate, or wanting in effective performance duties;

(7) “Insubordination” may consist of

- (A) Refusal or continued failure to obey the school laws of Tennessee, or to comply with the rules and regulations of the board, or to carry out specific assignments made by the board, the director of schools or the principal, each acting within its own jurisdiction, when such rules, regulations and assignments are reasonable and not discriminatory;

(B) Failure to participate in an in-service training program as set up by the local board of education and approved by the state board of education;

(8) “Neglect of duty” means gross or repeated failure to perform duties and responsibilities which reasonably can be expected of one in such capacity, or continued unexcused or unnecessary absence from duty;

3. T.C.A. § 49-1-607. Noncompliance with security guidelines for TCAP or successor test. – states:

Any person found to have not followed security guidelines for administration of the TCAP test, or a successor test, including making or distributing unauthorized copies of the test, altering a grade or answer sheet, providing copies of answers or test questions, or otherwise compromising the integrity of the testing process shall be placed on immediate suspension, and such actions will be grounds for dismissal, including dismissal of tenured employees. Such actions shall be grounds for revocation of state license. [Emphasis added.]

4. The Haywood County School Board seeks dismissal of the Respondents for inefficiency, insubordination, neglect of duty, and improper/unprofessional conduct, for an incident that occurred during the week of April 14, 2008, when the TCAP tests were administered at East Side Elementary School.

5. The Respondents are charged with violation of the security guidelines for TCAP testing after Ms. Lovett looked ahead in the TCAP testing booklet, copied information from the Science and Social Studies tests, and shared some of this information with Ms. Davis. Both Respondents blame their failure to follow TCAP security guidelines on inadequate training by East Side Elementary building test coordinator, Flodine Hudson. However, while the training session conducted by Ms. Hudson was clearly not extensive, the one area on which she placed particular emphasis was TCAP security and the serious nature of test security.

6. At least a month before the TCAP testing, the Respondents had access to testing instructions on-line, and TCAP teacher manuals were made available to sign-out overnight to review instructions prior to administering the test. The Respondents did not access the testing instructions on-line and did not take a teacher manual home to review before giving the test.

7. While Respondents argue that they were “inexperienced teachers,” the lack of experience is no excuse for the failure to read testing instructions, especially by those in the teaching profession. Arguably, “inexperienced teachers” may well have a higher duty to read directions, manuals, etc., because of their inexperience. Furthermore, it is noted that the other teachers who testified understood the instructions not to look ahead at questions. This was clearly evinced by Ms. Hart’s reporting the Respondents’ action to the assistant principal. Respondents cannot rely on their claim of inadequate training to justify their actions.

8. The Respondents also point out, apparently in their defense, that teachers at East Side Elementary School were not required to sign a Testing Code of Ethics. However, failing to sign a code of ethics does not absolve Respondents of their ethical duty to adhere to proper guidelines and procedures for administering the TCAP test.

9. It was Ms. Lovett who actually looked ahead in the TCAP testing booklet and copied information from the Science and Social Studies test. This is a clear violation of the TCAP security guidelines. Ms. Lovett’s action compromised the *integrity of the testing process*, and was improper conduct or conduct unbecoming to a member of the teaching profession.

10. It is noted that the Director of the Haywood County subsequently recommended that all the tests of students in the Respondents’ classes be processed normally, and there was no evidence that students benefited from the Respondents’ actions. However, neither of the foregoing obviates the fact that Ms. Lovett failed to comply with the TCAP security guidelines.

Ms. Lovett's violation of TCAP security guidelines and improper conduct are proper grounds for dismissal.

11. The evidence shows Ms. Davis copied three (3) of the terms that were shared by Ms. Lovett. While this was inappropriate, the Board has failed to show that the action of Ms. Davis rises to the level of a violation of either the TCAP security guidelines or T.C.A. §49-2-301(b)(1)(GG)(i), such as to warrant dismissal of her employment.

12. The Board carried its burden of proving, by a preponderance of the evidence, that Respondent Amelia Lovett should be dismissed from her teaching position. Therefore, it is **ORDERED** that the decision of the Director of Schools to dismiss Respondent Amelia Lovett from her teaching position with the Haywood County School System is **upheld**.

13. The Board failed to meet its burden of proving, by a preponderance of the evidence, that Respondent Kellie Davis should be dismissed from her teaching position. Therefore, it is **ORDERED** that the decision of the Director of Schools to dismiss Respondent Kellie Davis from her teaching position with the Haywood County School System is **overruled**.

This Initial Order entered and effective this 10th day of October, 2008.

Bettye Springfield
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 10th day of October, 2008.

Thomas G. Stovall, Director
Administrative Procedures Division