

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DARYL BRYANT,

Petitioner,

-vs-

CASE NO.:17-0424

PAM STEWART, AS COMMISSIONER OF
EDUCATION,

Respondent.

DIVISION OF ADMINISTRATIVE HEARINGS

Reported by Elaine Richbourg, a Court Reporter
and Notary Public, State of Florida at Large, taken
in the offices of the Judges of Compensation, 400
West Robinson Street, Orlando, Florida, on
Wednesday, June 14, 2017, commencing at
approximately 9:24 EST.

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DIVISION OF
ADMINISTRATIVE HEARINGS

ELAINE RICHBOURG

COURT REPORTER

2320 Brightview Place

Cantonment, Florida 32533

(850) 968-6465

elainerichbourg@cox.net

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APPEARANCES

For the Administrative Law Judge:

ELIZABETH W. MCARTHUR
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

For the Department of Education:

BONNIE ANN WILMOT, ESQUIRE
DARBY G. SHAW, ESQUIRE
Department of Education
325 West Gaines Street, Suite 1244
Tallahassee, FL 32399

For the Petitioner:

JENNIFER DIANE ROSE, ESQUIRE
Post Office Box 924
Melbourne, FL 32902

Agency Representative:

PHIL CANTO

COURT REPORTER:

ELAINE RICHBOURG

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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE MCARTHUR: All
3 right. We're ready to go on the record. Good
4 morning. This hearing will now be in order.
5 It is June 14th, 2017, at around 9:24 in the
6 morning. We're starting a little bit early
7 because everybody is here and we're ready to
8 go.

9 We are here for the hearing in Daryl
10 Bryant vs. Pam Stewart, as Commissioner of
11 Education, Division of Administrative Hearings,
12 case number 17-0424. My name is Elizabeth
13 McArthur. I'm the Administrative Law Judge
14 assigned to conduct this hearing. And we are
15 here in Orlando, Florida, on Petitioner's
16 challenge to Respondent's determination that
17 the scoring of Petitioner's essay in the
18 General Knowledge Subtest 1 of the Florida
19 Teacher Certification Examination, which will
20 be abbreviated throughout as FTCE, whether that
21 scoring was correct.

22 Procedurally, this proceeding is conducted
23 in accordance with Chapter 120 of the Florida
24 Statutes, as well as Florida Administrative
25 Code chapter 28-106 parts 1 and 2.

1 Substantively, the proceeding will be
2 determined in accordance with the laws
3 governing certification in Florida Statutes, as
4 well as implementing rules in Florida
5 Administrative Code, chapters 6A-4 and 6A-5.

6 At this time let me have counsel enter
7 their appearances for the record, starting with
8 the Petitioner.

9 MS. ROSE: Good morning, Your Honor,
10 attorney Jennifer Rose on behalf of Mr. Daryl
11 Bryant.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR: Very
13 good.

14 MS. WILMOT: Bonnie Wilmot representing
15 the Commissioner of Education.

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
17 you. The parties prepared a joint prehearing
18 stipulation, which I have reviewed and I wanted
19 to check and make sure that my impression that
20 there was one correction needed, whether I am
21 correct about that. The concise statement of
22 the nature of the controversy, it appears there
23 was an accidental borrowing of yesterday's case
24 statement with a reference to FELE and the date
25 on which that examination was -- I believe,

1 from the agreed facts that the statement should
2 read whether Petitioner's June 25th, 2016, FTCE
3 examination was accurately and validly graded.
4 So, I've corrected the date and the
5 identification of the exam.

6 MS. WILMOT: Thank you for that, Your
7 Honor.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: No
9 problem.

10 MS. ROSE: I thought that I had changed
11 that to FTCE when I sent it but I didn't change
12 the date. I had noticed it still said FELE.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: You
14 all were just trying to make me feel better
15 since I had made that mistake in the first
16 order I issued in this case. So, it's
17 understood, we've known all along that the two
18 cases are similar enough, but with a few
19 differences that weren't calling the
20 differences to everyone's attention.

21 There was one matter pending at the time
22 of the stipulation that you all prepared, which
23 has now been addressed, and that is the
24 issuance of a protective order, which will
25 govern the conduct of this hearing. As I

1 raised yesterday, I'll just double check with
2 both parties, particularly, Mr. Bryant and
3 Ms. Rose, whether there are any issues that
4 need to be discussed as in the aftermath of me
5 having issued that order since we haven't
6 gotten together to talk about it since.

7 MS. ROSE: No, Your Honor, we don't have
8 any issues with the protective order.

9 ADMINISTRATIVE LAW JUDGE MCARTHUR: Very
10 good.

11 MS. WILMOT: One thing that I did that I
12 just started to think about is the PRO's,
13 whether or not they should preclude any
14 confidential information.

15 ADMINISTRATIVE LAW JUDGE MCARTHUR: I had
16 that thought in the middle of the night,
17 tossing and turning, as I do. I worry about
18 things like this. And we can talk about that
19 some more when we wrap up and talk about
20 deadlines, but it would be my strong
21 preference, if it will be possible, to avoid
22 disclosing any of the confidential information
23 in the PRO filings because those are public
24 records, unless -- unless we take, kind of
25 difficult measures of separating out

1 confidential portion of a PRO and the public
2 portion and file a confidential portion under
3 seal. That will be difficult, from a number of
4 different logistical perspectives, but you all
5 can think about that and we will need -- I will
6 need to do something post hearing on
7 yesterday's case to address that.

8 MS. WILMOT: And my thought was that we
9 could agree to attempt to write the PRO's
10 without using confidential information. And if
11 it becomes impossible, then we could contact
12 the Court and get a further ruling on it.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: I
14 think that -- that sounds like the best way to
15 proceed. Much as we have during this hearing,
16 but hopefully there will be less of a need to
17 bail out of the attempt to speak in code. But,
18 I think, as I was thinking about it, it seems
19 that proposed findings can be made generally
20 and with specific citations to pinpoint the
21 confidential testimony. You can give me, not
22 only page numbers, but lines you want me to
23 look at, as well as specific portions of
24 confidential documents. It seems like that can
25 be done and, again, you will get my pledge that

1 I won't stop with a general statement of fact,
2 I will look behind it to see the support you
3 are calling -- pointing me to in the
4 confidential testimony and the confidential
5 documents.

6 MS. ROSE: Okay.

7 ADMINISTRATIVE LAW JUDGE MCARTHUR: So,
8 maybe that will give comfort to the parties
9 that their proposed findings can indeed be
10 general with a specific road map to me of
11 confidential information, and I will do that
12 digging.

13 All right. We have our reporter here
14 today back in her corner spot. And, again, I
15 appreciate you bearing with us yesterday as you
16 had to get -- come in and be occasionally asked
17 to leave the hearing room. And we will
18 continue the same procedure and I think
19 yesterday worked out well with no inadvertent
20 disclosures that were called to my attention.
21 So, we will do the same today, and I appreciate
22 it.

23 And as with yesterday, I understand a
24 transcript will be ordered. And before we
25 start taking testimony, we will have a

1 discussion on the record about what I
2 understand may be some stipulation for use of
3 portions of yesterday's testimony by
4 Respondent's witnesses and I will allow counsel
5 to be heard on what they propose and how we go
6 about doing that.

7 Are there any preliminary matters? We
8 have joint exhibits that -- do you all want to
9 offer those and have those admitted, at this
10 point?

11 MS. WILMOT: Yes, Your Honor.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR: I will
13 receive those and admit them. I've got one
14 notebook called Respondent's Exhibits that I
15 assume will come up during the hearing, and I
16 will have those by my side. And, at this time,
17 I will admit the Joint Exhibits 1 through 8
18 that will be filed under seal in accordance
19 with the protective order.

20 Does anyone intend to invoke the rule?
21 I'm not sure how that works with what you all
22 want to stipulate to in terms of admitting or
23 stipulating to admission of testimony from
24 yesterday, but out of caution I'll offer that.

25 MS. ROSE: Okay. Well, Your Honor,

1 you wanted to stipulate to, Ms. Wilmot,
2 regarding yesterday's testimony?

3 MS. WILMOT: I do want to get into
4 yesterday's testimony but I didn't think we
5 were to that point yet. Do we want to talk
6 about that?

7 ADMINISTRATIVE LAW JUDGE MCARTHUR: Well,
8 I had thrown out the question about whether any
9 party wants to invoke the rule. Do you want to
10 exclude witnesses, other than parties and party
11 representatives from the hearing?

12 MS. ROSE: No, we don't.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
14 you. And then the last thing on my list is
15 opening statements. So if you want to talk
16 about testimony from yesterday before we do
17 opening statements.

18 MS. WILMOT: I will.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR:
20 However you all prefer or want to.

21 MS. WILMOT: My understanding was that you
22 would be here to listen to the testimony of our
23 main witnesses, that would be Dr. Michael
24 Grogan, Phil Canto and Mary Jane Tappen.

25 MS. ROSE: Uh-huh.

1 MS. WILMOT: So we wouldn't have to repeat
2 the whole -- all that testimony, which included
3 the process and the policy of the Department
4 and things like that. We certainly can, if
5 that's your desire?

6 MS. ROSE: No. We were able to hear their
7 testimony.

8 MS. WILMOT: And, in turn, you will be
9 able to question them today on what they
10 testified to yesterday.

11 MS. ROSE: Yes.

12 MS. WILMOT: So that would be -- so what
13 we are asking, pretty much, is that the
14 testimony of our three main witnesses, be added
15 to, stipulated to this in this hearing, and we
16 will still use them as witnesses for the small
17 changes between the FELE and the General
18 Knowledge exams. And then, of course,
19 Petitioner will be allowed to ask questions
20 based on yesterday's testimony.

21 ADMINISTRATIVE LAW JUDGE MCARTHUR: All
22 right. I'm testing my memory about whether any
23 of those witnesses -- I don't believe Ms.
24 Tappen did, but I'm not sure if Dr. Grogan --
25 whether there was testimony directed to

1 Ms. McCue's exam or her essay answer, you know,
2 the confidential testimony specific to the
3 scoring of her exam.

4 MS. WILMOT: Right. So I would say that
5 would be excluded, because Petitioner's s
6 attorney would not have been in the room, at
7 the time.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR:
9 Correct.

10 MS. WILMOT: So we would --

11 ADMINISTRATIVE LAW JUDGE MCARTHUR: So,
12 we're talking about then just the public
13 portions?

14 MS. WILMOT: Correct.

15 ADMINISTRATIVE LAW JUDGE MCARTHUR: Then
16 that would be easier to identify.

17 MS. WILMOT: Yes.

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: So,
19 there may have been some confidential testimony
20 yesterday that would have been geared more to
21 possibly training material that -- I can't
22 recall.

23 MS. WILMOT: Yeah.

24 ADMINISTRATIVE LAW JUDGE MCARTHUR: That
25 you might need to repeat today because she

1 would not have been in the room. Ms. Rose
2 would not have been in the room for any of
3 that.

4 MS. WILMOT: Okay.

5 ADMINISTRATIVE LAW JUDGE MCARTHUR: And my
6 memory is fuzzy on the detail of what was, you
7 know, differentiation because I was here for
8 all of it.

9 MS. WILMOT: Correct.

10 ADMINISTRATIVE LAW JUDGE MCARTHUR: But I
11 will leave that up to you to sort out and --

12 MS. WILMOT: Okay.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: And
14 allow you to augment, as you need to and, at
15 worse, we have a little bit of repetition. I
16 appreciate the effort to keep repetition to a
17 minimum. So I accept the stipulation to
18 introduce yesterday's transcript for those
19 three witnesses, the public portion of that --
20 the transcript, from yesterday's hearing, case
21 number 17-0423.

22 And with that, Ms. Rose, do you care to
23 give an opening statement?

24 MS. ROSE: Oh, it will be very brief.
25 Yes, Your Honor.

1 Good morning everyone. I have the
2 pleasure of representing Mr. Bryant. He's been
3 a teacher for three years, currently at Emma
4 Jewel Charter School in Brevard County,
5 Florida. He serves as a physical education
6 coordinator, as well, as the IT technician. He
7 has taken the test three times. During this
8 period he sought out and utilized FTCE
9 preparation material. He's also had a tutor,
10 Ms. Martin, that may be available today to
11 speak with us. And he also conferred with
12 Mr. Gibbs pertaining to writing. Mr. Gibbs
13 helped him diagram essays. He's also utilized
14 testing material and did the challenge
15 procedure, as well, to try to identify what
16 specifically were the errors with his test.

17 Mr. Bryant feels that he is an above
18 adequate teacher and that his essay was well
19 organized, focused, grammatically correct. He
20 also feels that there was some error in the
21 rubric or the grading process, which rendered
22 him a score of a seven on the last exam. Thank
23 you.

24 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
25 you.

1 MS. WILMOT: We're here today because
2 Mr. Bryant is challenging the score on his
3 essay portion of the General Knowledge exam.
4 We're going to show, through evidence and
5 testimony, that the test exam was very
6 carefully put together by the Department,
7 including standards which have been risen in
8 recent years as a result of increased and
9 improved student standards that are required by
10 Statute and approved by the State Board of
11 Education.

12 The process itself takes place through a
13 contract, which was nationally advertised and
14 competitively procured. Went to the low bid,
15 but also the very best company to provide the
16 process that is sincere with the requirements
17 that were drafted by the Department of
18 Education, which includes holistic scoring.
19 Holistic scoring, as we'll show, is the main
20 and primary way that essays are graded on a
21 large scale basis, and it includes a process
22 that makes error almost impossible. It would
23 take a very high level of evidence to show that
24 an error had occurred. We'll show that the
25 integrity and the consistency of the graders is

1 verified and checked and there is a very good
2 process to be sure that these essays are graded
3 fairly and consistently and in a manner that is
4 fair to all involved. Thank you so much.

5 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
6 you. Ms. Rose, are you ready to call your
7 first witness?

8 MS. ROSE: Yes, Your Honor. Does he need
9 to spin around there?

10 ADMINISTRATIVE LAW JUDGE MCARTHUR:
11 Probably it would be best so you don't get
12 swivel neck.

13 MS. ROSE: Okay.

14 ADMINISTRATIVE LAW JUDGE MCARTHUR: Mr.
15 Bryant, would you raise your right hand,
16 please. Do you swear or affirm that the
17 testimony you're about to give today will be
18 the truth, the whole truth and nothing but the
19 truth?

20 THE WITNESS: I do.

21 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
22 you. You are soft spoken, you need to speak
23 up. Our court reporter is over here so she
24 needs to record all your good words.

25 THE WITNESS: Okay.

1 WHEREUPON,

2

DARYL BRYANT

3 having been duly sworn to tell the truth, the whole truth
4 and nothing but the truth, was examined and testified as
5 follows:

6

DIRECT EXAMINATION

7 BY MS. ROSE:

8 Q Good morning, Mr. Bryant?

9 A Good morning.

10 Q Can you tell us, how many years have you
11 been teaching?

12 A Three.

13 Q And currently, do you have your
14 certification?

15 A I have a temporary certificate and the
16 hinderance is my essay exam, which is in question
17 today.

18 Q How many times have you taken the FTCE?

19 A Three.

20 Q Do you recall your score on your first
21 FTCE exam?

22 A I do. It was a 4. I believe, that the
23 necessary points were 6, at that particular time.
24 It has since been raised to 8.

25 ADMINISTRATIVE LAW JUDGE MCARTHUR: Are

1 you taking about just the essay; right?

2 THE WITNESS: Ma'am?

3 ADMINISTRATIVE LAW JUDGE MCARTHUR: Your
4 score on just the essay?

5 THE WITNESS: Correct. That's the only
6 part I've taken.

7 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.

8 THE WITNESS: And that's because I was
9 exempt on that area of the test prior to
10 whatever rule was passed saying that if I
11 passed the class test, if I was exempt from any
12 portion of the class test before a specific
13 year, I'd have to retest to show that I was
14 competent in that area. So that's the only
15 reason why I've taken that portion, the essay
16 portion of the test.

17 A (By the Witness) So I got a 4 on my first
18 one due to a discrepancy about the time. There was
19 five minutes that elapsed before I started. And I
20 needed those five minutes to finish the essay. So I
21 got a 4 due to it not being complete.

22 Q (By Ms. Rose) And when did you take the
23 exam again?

24 A I don't remember the exact date, but it
25 was -- it was sometime later. Almost a year later.

1 Q What preparation did you do for the exam
2 on the second time?

3 A On the second time I focused mostly on the
4 time because -- because of the time elapsing before
5 I began the initial time. So I really didn't seek
6 any tutoring the first time or put a whole lot of
7 training into it, because I'm under the impression
8 that I can write an essay. I've written many. So I
9 just focused on making sure that the time did not
10 start before I began my essay. That's the first
11 time.

12 Q Do you have any previous experience
13 writing?

14 A Yes.

15 Q And what experience would that be?

16 A I worked for the Boys and Girls Club of
17 Central Florida from 2003 to 2007, end of 2006. And
18 I was the soul contributor -- well, I won't say
19 contributor, I but I was in charge of writing,
20 editing, everything that is involved with the
21 newsletter for the Boys and Girls Club of Central
22 Florida each month, each month. And so it had to
23 pass through our location branches and our corporate
24 office. And there were large percentage of my words
25 and my forming and my organization, and I did that

1 every single month.

2 Q So when you wrote the newsletter, there
3 was someone else to edit it or revise it before
4 publication?

5 A Absolutely. There was my immediate
6 supervisor, which was the program director of the
7 club. Then there was my site director, which was
8 our site supervisor at the particular branch the
9 Universal -- Universal Orlando Boys and Girls Club.
10 And then there was also, not every month the
11 corporate office didn't edit it every month, but the
12 first initial, first several of them, they
13 definitely kept a close eye on it until I gained
14 their trust. And then, I think, there were just
15 periodic checks, at that particular point. I don't
16 think, from the corporate standpoint, I don't think
17 they checked it each time before it was published.

18 Q Were there ever any issues or complaints
19 with the newsletter?

20 A Outside of saying, you know, we would
21 rather say this thing this way, so that it closely
22 or many more resembles our mission that we address
23 this particular issue this way, outside of things
24 like that, no. So what I want to clearly state is
25 that there was never a time, ever a time, when

1 someone spoke to me about needing to present my
2 writings in a more clear way. Never, ever. It was
3 never, ever stated that I needed help keeping the
4 focus of the newsletter, that it seemed scattered or
5 it was not easily understood. As a matter of fact,
6 it was the opposite. I got several compliments
7 about our newsletter.

8 Q During -- prior to taking the July, 2016
9 exam, did you seek out tutoring or guidance from a
10 professional on this occasion?

11 A Yes, I did. I sought two professionals.
12 One was Ms. Martin and she was -- she's a writing
13 coach. She's been a writing coach for several
14 years, I believe, seven or eight. And I know that
15 many educators reference her as relates to writings
16 or grammar and things like that. So I contacted her
17 and asked if she would tutor me for writing an
18 essay, and she was able to talk to me initially to
19 see what my weakness was, as writing the essay, and
20 I communicated to her that I don't know what it --
21 my weakness is, outside of being able to formulate
22 my plan faster, map out my essay faster.

23 So we did some techniques as relates to
24 that. She gave me some mapping, as relates to the
25 elements of a good essay, the introduction, the

1 transitional phrases, the points, three-points and
2 making sure that it all wraps up. Things like that.
3 And then she also gave me prompts. She would give
4 me a prompt. I would write an essay. It would be
5 timed. I would send her the response via e-mail.
6 She would look over it and say, okay, that was good.
7 Okay, now try this one. She would add a different
8 type of prompt. I would take that essay -- that
9 prompt, formulate an essay, an original essay and
10 send it back to her via e-mail. She'd look over
11 that. We did that a few times. And that was,
12 outside of her feedback, that was the extent of our
13 tutoring relationship.

14 I also sought Mr. Gibbs, Mr. Jordan Gibbs.
15 He is an educator. He's been teaching Language Arts
16 for over 20 years. He's our academy leader there
17 and he's, like Ms. Martin, has many adults,
18 educators that seek him out for his expertise. And
19 he was able to give me some mapping as relates to
20 writing an essay. First he wanted to know what I
21 knew about an essay and I told him some of the
22 things that I had learned, as relates to the formal
23 way to write an essay. And he just -- he wrote down
24 a map and gave me some pointers as relates to
25 writing an essay, which is letting me know that I

1 was on the right path, and that was about it.

2 ADMINISTRATIVE LAW JUDGE MCARTHUR: Do you
3 know how to spell his last name?

4 THE WITNESS: Gibbs, G-I-B, as in boy,
5 B-S.

6 Q (By Ms. Rose) And his first name was
7 Jordan?

8 A Jordan, yes, ma'am.

9 Q Both of these individuals gave you
10 feedback consistently regarding your essay writing?

11 A Yes. I'll say Mr. Gibbs, he gave me
12 feedback regarding my essay writing, but I never
13 sent him a -- an original essay that I formulated.

14 Q With Ms. Martin, what period of time did
15 you receive tutoring or training prior to the essay?

16 A The month before.

17 Q And you all communicated via
18 electronically and, also, telephonically?

19 A Yes. We communicated electronically,
20 telephonically, as well as in person.

21 Q Do you feel that her assistance prepared
22 you more accurately -- adequately for the July exam?

23 A Yes. Specifically, as relates to
24 timeliness. So, with her method of mapping, I was
25 able to gather my thoughts better and, also, be one

1 of the things was that I would have too many points,
2 trying to communicate too many points. And that's
3 how I would run out of time. So with her mapping, I
4 was able to narrow them down and I just say, you
5 know, you only need three or four-points for each --
6 three or four supporting things for each point that
7 you want to make. So I was able to narrow that
8 down. That helped me significantly as relates to
9 the timeliness of putting my essay together, which
10 directly affects whether you get close to finishing
11 it or not.

12 Q Did she give you any suggestions regarding
13 the focus of the essay or picking topics or
14 organization?

15 A Organization. Not picking the topics, but
16 organization. And it was just more so an
17 encouragement to be sure that whatever I state in
18 the introduction, that it is broad enough to include
19 where my -- my points will take the reader. So that
20 was -- that was helpful. And I actually saw the
21 same thing on the Department of Education website,
22 so that, you know, it made sense to me. So that was
23 a help.

24 Q So you did access the FTCE website. Did
25 you review any of the prep material?

1 I don't want to hamper how you present things.
2 So, if you are at a point where you believe
3 you're going to delve into confidential
4 information --

5 MS. ROSE: Yes, I do, Your Honor.

6 ADMINISTRATIVE LAW JUDGE MCARTHUR: We
7 will ask Ms. LaGrone to leave. Designate
8 confidential. Same procedure as yesterday.

9 (At this time the public portion turned
10 into confidential material on the record and
11 put in a separate envelope under seal for Judge
12 McArthur and not available to the public or to
13 anyone else other than those who have signed
14 the confidentiality agreement)

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1 (At this time the confidential portion of
2 the testimony was concluded and we went back
3 into the public portion of testimony for this
4 hearing.)

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1 Q (By Ms. Wilmot) So now we're going to go
2 back to your earlier testimony that was not part of
3 the confidential information. So your certificate
4 is temporary and it's in what? What is your
5 temporary certificate in?

6 A Physical education.

7 Q Physical education. And when does it
8 expire?

9 A Technically, it is expired.

10 Q It's expired now?

11 A Yes.

12 Q I know that there are ways that it can be
13 extended. Are you familiar with that or do you have
14 an opportunity to extend it?

15 A I'm not familiar with those ways.

16 Q Okay.

17 A Outside of --

18 Q I think three years might be the limit.
19 I'm not positive on that. I think it's two years to
20 start with, but I really don't know. So you had
21 Ms. Martin was a tutor for you and she gave you a
22 mapping method?

23 A Yes.

24 Q And what did that entail?

25 A It entailed the introduction, making sure

1 that you don't restate the prompt verbatim, that you
2 reference the prompt, but don't restate the prompt.
3 Being sure that you speak vaguely about what you're
4 going to cover without giving away the details.
5 Save the details for the body of the essay and make
6 sure you distinguish, at least, 3 points that you
7 want to touch on and those 3 points could very
8 easily be your three paragraphs. And make sure that
9 in those three paragraphs you use transitional
10 phrasing and make sure you don't use the same
11 transitional phrase. Not that it will be wrong, but
12 it's just distasteful. And that you have a
13 conclusion that summarizes everything that has been
14 stated before.

15 Q Okay. Did she actually say vague, to be
16 vague in the beginning or is that just --

17 A She may not have used the word vague, but
18 that is the meaning that I got from what she said.

19 Q Okay?

20 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.
21 Mr. Bryant -- Mr. Bryant, you started to answer
22 Mr. Wilmot before she completely finished her
23 question.

24 THE WITNESS: I apologize.

25 ADMINISTRATIVE LAW JUDGE MCARTHUR: So try

1 to be patient and wait for the very last word
2 to come out before you start to answer.

3 THE WITNESS: Yes, ma'am.

4 Q (By Ms. Wilmot) So did this mapping
5 method, did it include making an outline?

6 A That was the outline.

7 Q Okay. Did you do that, either mentally or
8 -- did you have scrap paper in these?

9 A Yes.

10 Q When you were -- did you have scrap paper?

11 A Yes. You're referring to when I actually
12 took the essay or when I --

13 Q Yes.

14 A Yes. Yes.

15 Q So did you outline your essay before you
16 wrote -- started to write it?

17 A Yes.

18 Q Using her mapping method?

19 A Yes.

20 Q Okay. Was part of her mapping method to
21 include specifics?

22 A Yes.

23 Q Okay. So, you went to the challenge?

24 A Yes.

25 Q And you were required to go through the

1 score verification session?

2 A Yes.

3 Q In order to get to this -- to challenge
4 the scoring on your essay?

5 A Yes. Ultimately, but I was inquiring
6 about -- I wasn't -- I wasn't initially inquiring
7 about challenging the score. I wanted more
8 information.

9 Q Okay.

10 A And then I was told about the verification
11 and that I could see my essay there and challenge it
12 based on the rubric there. So that's how I began to
13 learn about the challenge.

14 Q So did you understand at the time that the
15 score verification session gave you an opportunity
16 to look at your essay and review it and provide
17 feedback, but not to get feedback from the
18 Department with regard to what went wrong?

19 A Yes.

20 Q Okay. So, you said that you felt that you
21 should have been able to see the ranked essays and
22 compare them to yours to see that they were better
23 or worse on the same level. Am I remembering that
24 incorrectly?

25 A I think you are remembering that

1 incorrectly. I don't recall saying that.

2 Q Okay.

3 A Referring to the challenge, I remember
4 saying that I was told that I would be able to
5 reference the rubric, and I would be able to write
6 my challenge based on the rubric. I would be able
7 to see what was required for an 8 or be required for
8 each point designation, and I would be able to see
9 my essay and write my challenge based on the rubric
10 saying I think my essay has this because it's in
11 paragraph 1 or sentence 5 or whatever.

12 Q Okay.

13 A That's what I was intending to
14 communicate.

15 Q Okay. And what did you have at the score
16 verification session? You had your essay?

17 A Yes.

18 Q And anything else?

19 A I had my essay and scrap paper.

20 Q Okay. You had your directions?

21 A Yes.

22 Q And your score was a 7?

23 A Yes. On the third essay my score was a 7.

24 Q What was your score on the second essay?

25 A I don't remember.

1 Q Okay. Was it higher than the first?

2 A Was it harder?

3 Q Higher?

4 A Higher, yes.

5 Q Okay. So the first essay -- the first
6 attempt you scored a 4?

7 A Yes.

8 Q Second attempt was higher than that?

9 A Yes.

10 Q But do you think it was a 7?

11 A It wasn't a 7.

12 Q Okay. So progressively you've gone higher
13 and higher?

14 A (Witness nods head).

15 Q You've gotten to a 7. Do you realize that
16 you're really close to passing?

17 A I do.

18 Q Do you recognize that you've improved over
19 time, that you've -- since you've accessed the help
20 and the tutoring and so forth, do you recognize an
21 improvement?

22 A I do as relates to getting the essay done
23 faster.

24 Q Okay. So are you saying you don't think
25 you're writing better, you're just writing faster?

1 A Yes. That's exactly what I'm saying.

2 That is exactly what I'm saying.

3 Q Oh. And could that result in being able
4 to write faster and write more, could that result in
5 providing more specifics than maybe you did in the
6 first two?

7 A The first one, specifically, I think that
8 those five minutes elapsing before I actually
9 clicked next, I think that had a huge deal with me
10 not being able to provide enough specifics for it to
11 make any sense at all where I was going with the
12 essay. But the second essay, I don't think that it
13 made a difference.

14 Q Okay. So, I know that you said with the
15 third essay that, and correct me if I'm wrong, but
16 what I understood you to say was that your essay was
17 prejudged by the fact that it was shorter than most?

18 A I believe that, yes.

19 Q What about the other two? Do you feel the
20 same way about the other two?

21 A To be honest, I hadn't really thought
22 about that because I haven't been able to see the
23 other two.

24 Q Okay.

25 A When I -- and in looking at this third

1 essay, because, obviously, we've gotten to this
2 point, where at a hearing about it, and then seeing
3 what was stated about it, I was able to make the
4 comparison to see that, okay, it is not two pages,
5 whereas, before on the other two essays, I haven't
6 seen them printed out. So I would assume that -- I
7 would assume they're no longer than the third essay,
8 but I haven't really thought about that at all,
9 because I haven't seen them.

10 Q Okay.

11 MS. WILMOT: All right. I have no further
12 questions.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: Any
14 redirect?

15 MS. ROSE: Yes, Your Honor. I will be
16 very brief.

17 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.

18 **REDIRECT EXAMINATION**

19 BY MS. ROSE:

20 Q Your second essay was -- am I able --
21 that's not confidential, is if, if I give out the
22 score before the reporter? It's not considered
23 confidential, is it?

24 MS. WILMOT: No.

25 MS. ROSE: Okay. Just checking. I didn't

1 want her to have to leave.

2 Q (By Ms. Rose) So your second score on your
3 February, 2016, and I'm referring to Respondent's
4 Exhibit 6, which is just the scoring of the
5 examinee's scoring history, we had referred to the
6 February, 2016 score. And that score was a 6 and it
7 appears that the raters both agreed -- they were
8 consistent with the scores of 3. And as you
9 indicated, you're not too familiar with all of the
10 information you put on the second essay because we
11 haven't been privy to that, but what do you feel
12 made your score increase from a 6 to a 7?

13 A I have thought about that, and I'm not
14 exactly sure. I can say that there is one clear
15 difference that I know -- that I know, is the use of
16 a transitional phrase -- a traditional transitional
17 phrase -- I was clear to say that -- a traditional
18 transitional phrase in each paragraph. I'm not
19 certain that I did that in the second, or the first,
20 and I know that I made 100 percent sure that I did
21 it in the third one. So I believe that that could
22 have been a possibility as to something that, you
23 know, reflected better in the essay.

24 Q When you went to the challenge session,
25 you were under the indication that you were going to

1 be able to use the rubric --

2 A Yes.

3 Q Where did you get that information from or
4 who did you speak with regarding what would be
5 provided for you during the challenge session?

6 A So, I got the information from the
7 Department of Education via phone, but the
8 gentleman's name who I was speaking with initially,
9 I used to know it. I used to say it all the time
10 when I was referring to my conversations with the
11 Department, but I don't recall his name. I believe
12 his name might have been Robbie or Robert or
13 something like that, but I don't remember his name.
14 And then when he couldn't answer my questions, he
15 would transfer me to a female and she provided me
16 some answers. Then both of them basically said the
17 same thing. I was -- I was asking about the
18 challenge and the \$75, and if I could ask certain
19 questions without paying the \$75. And that was most
20 of the reason why -- and, also, the date because
21 there was a large discrepancy about what date we
22 were counting by because it very vague. And so he
23 transferred me to her. So I'm saying that to say
24 that I spoke to both of those individuals about this
25 specifically, and I don't remember exactly which

1 one, but they both -- because I was persistent about
2 asking, and they both agreed, indicated that I would
3 be able to reference the rubric while I'm writing my
4 challenge. And I can -- I can strongly say that I
5 got that statement from the gentleman, because what
6 I made sure that I did is when he transferred me, I
7 wanted to quote him verbatim, and she just agreed.
8 She agreed, yes, you'll be able to reference it.
9 But I got that from those two individuals.

10 Q Were you -- oh, I'm sorry.

11 A No, I was going to say, I have referenced
12 it to -- I have referenced that to every individual
13 that I've spoken to, from the Department of
14 Education. Every time that I've spoken to someone
15 since I got ready to take the challenge, I've
16 referenced that. Mainly because I was looking for
17 it and I couldn't find it, because I was told I
18 could find it, so I was trying to be directed to the
19 spot on the website where it was. And then after I
20 took -- after I did the challenge, and it still
21 wasn't there, because one representative said that
22 it could be that once you're there, you know you can
23 see this. There's all these possibilities. So when
24 I got there, I remember immediately making --
25 bringing it to the attention of the people that were

1 there, because that was my last hope in seeing the
2 rubric before I wrote the challenge and it just
3 wasn't there.

4 Q So when you went to do the challenge
5 session, you were under the impression that you
6 would be given more information? But you were given
7 what was provided the essay -- well, the prompt, so
8 you were able to -- were you able to remember the
9 specifics of the essay?

10 A I was actually -- while I was writing the
11 challenge, I had the essay on the screen. So I was
12 able to reference the essay and write my challenge
13 simultaneously.

14 Q And you still had disagreement with the
15 rating of the challenge?

16 A Yes.

17 Q And how long did it take for you to
18 receive the scores from the challenge? Not the
19 scores, but the evaluation of the challenge, the
20 determination, do you remember?

21 A The evaluation -- so, in other words, the
22 Department's response to my challenge?

23 Q Uh-huh.

24 A It took a long time. I didn't get that
25 until we got these disclosed documents, these

1 confidential documents.

2 Q Okay.

3 MS. ROSE: No further questions, Your
4 Honor.

5 ADMINISTRATIVE LAW JUDGE MCARTHUR: I'm
6 looking puzzled because I assume that you would
7 have gotten notice of the Department's
8 determination on your challenge before you got
9 the confidential documents in this case because
10 it was that determination that gave you the
11 right to ask for the Administrative Hearing.
12 And you requested the Administrative Hearing,
13 which is why, in this proceeding, you received
14 the confidential documents. So are you sure
15 that you didn't get the determination until you
16 got the confidential documents in this case
17 after asking for the hearing?

18 THE WITNESS: Yes, Your Honor. Yes and
19 yes. Yes, you're correct and, yes, I'm sure.
20 Because what I understood the question from my
21 attorney to be was the Department's response to
22 my challenge. So I did get the official
23 ruling, I guess, for lack of a better term,
24 that the score stands and informing me of my
25 next step, but I did not get the response to my

1 essay as relates to --

2 ADMINISTRATIVE LAW JUDGE MCARTHUR: The
3 rationale for the scores from the scorers.

4 THE WITNESS: Anything about my challenge.
5 I got a letter saying that the grade stands,
6 did not change or something to that degree.
7 And then informing me of my next steps.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.
9 So going back to Ms. Rose's question, I thought
10 you were asking --

11 MS. ROSE: I think I might need it clarify
12 it?

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yes.
14 Please.

15 Q (By Ms. Rose) You did receive, from your
16 challenge, after you -- well, maybe I'll just do it
17 chronologically. After you took the challenge, you
18 received notification from the Department of
19 Education on their determination of the challenge,
20 if they felt that the test was passing or if it was
21 scored accurately; correct?

22 A Yes. Correct.

23 Q Just to clarify. That's what I was
24 indicating that after the challenge you received
25 notification from the Department of Education that

1 they didn't change the score?

2 A Yes. Correct.

3 Q And how long was that; do you remember?

4 A I don't remember exactly, but it says
5 right around, maybe a little less than a month.

6 Q And then what did you do after that,
7 that's when you contacted the Department of
8 Education again to see what your recourse was?

9 A Yes.

10 Q And what were you told that you needed to
11 do?

12 A I was told that I could do -- I was asked
13 did I want to do another challenge or if I wanted to
14 do an informal hearing. I was informed about the
15 informal hearing and what else -- oh, that was it.
16 That was it.

17 Q And why did you decide -- I apologize --
18 why did you decide to take it to the next level, the
19 hearing level, the informal hearing and then to get
20 to this stage today?

21 A Well, I was extremely frustrated for a
22 number of reasons, because it appeared that whatever
23 question I asked the Department of Education, and
24 the answer that I got back from the Department of
25 Education while I was speaking to them, and then I

1 got off the phone to either look for what I was told
2 by the Department or tried to explore the next step
3 that I was told or try to find exactly what I was
4 told, each time, every single solitary time, up
5 until we got to the place where we were getting
6 ready to do a formal hearing, every time, there was
7 something either missing or not told, or some kind
8 of way I didn't find -- it didn't go the way that I
9 was told it was going to go, every single solitary
10 time. And when I called back to get more
11 information, my only recourse became pay more money.
12 That was the conclusion of every conversation when I
13 called back, every single solitary time. And, you
14 know, I wasn't certain of my essay. I wasn't
15 certain that -- I couldn't quote verbatim what I
16 wrote in my third essay, but I know because of my
17 experience, because of my background, because I've
18 written, because I've been a form of editor for
19 several of my previous bosses, I know that I have a
20 certain level of aptitude as relates to writing and
21 communicating. And though I may not know all the
22 conventions of what they may be looking for for
23 essays on a State level, I was certain that after
24 the third time taking it, I could pass an essay. I
25 can write an essay to get the lowest minimum score.

1 I was frustrated by that. Those two things. I was
2 also frustrated that when I called and asked
3 questions about specifics about, okay, well, why is
4 this, why is that, there was no answer. The
5 Department did not have an answer for my question.
6 How I do know that, because I would be put on hold
7 for 15 to 20 minutes at a time and then they would
8 come back and say, let me get back to you. And I
9 would get a call back. I don't see any of that in
10 the -- in the -- the testimony, the written
11 testimony about my interactions with the Department.
12 I don't see those things there. But I would get
13 calls back because they didn't have an answer to my
14 questions several times.

15 ADMINISTRATIVE LAW JUDGE MCARTHUR: But
16 we're here for the hearing. I'm not sure I
17 understand what you're saying. You talked
18 about you had to pay money. No one has made
19 you pay money for your hearing today. There's
20 no filing fee. You didn't pay a filing fee for
21 today's hearing.

22 THE WITNESS: No, so I wasn't including
23 today.

24 ADMINISTRATIVE LAW JUDGE MCARTHUR: So I'm
25 not sure I understood --

1 THE WITNESS: What I said was, each time I
2 talked to the Department. I didn't talk to the
3 Department about today. I just got mailings
4 and we showed up with representation. I
5 specifically said that when I talked to the
6 Department each time -- each time, in order for
7 me to get more information or to --

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.
9 Let me just stop you there and make an
10 observation about what evidence I'm allowed to
11 consider and not and, in particular, I feel
12 compelled to just warn Ms. Rose in your post
13 hearing submittals, 120.57(1)(c) provides a
14 pretty strict limitation on the use of hearsay
15 to support findings of fact. And I'm concerned
16 about the testimony. I understand what you're
17 saying, Mr. Bryant, but even if you could
18 identify a name of someone you had telephone
19 conversation with, that's hearsay --

20 THE WITNESS: Okay.

21 ADMINISTRATIVE LAW JUDGE MCARTHUR: -- and
22 I can't rely on hearsay as the sole basis for a
23 finding of fact. So, it's background, and I
24 accept it as background that got us into this
25 hearing today. But just a warning for counsel

1 to not be proposing findings of fact that are
2 based solely on the hearsay.

3 MS. ROSE: Okay. Your Honor, we were just
4 concluding that this was his last step of
5 recourse after speaking with the Department to
6 have this proceeding here today.

7 ADMINISTRATIVE LAW JUDGE MCARTHUR:
8 Understood. Thank you.

9 MS. ROSE: No further questions.

10 ADMINISTRATIVE LAW JUDGE MCARTHUR: All
11 right. Mr. Bryant, you can return to your
12 party seat instead of the witness seat.

13 THE WITNESS: All right.

14 ADMINISTRATIVE LAW JUDGE MCARTHUR: And do
15 we need to take -- well, I need to take a break
16 regardless, so we're going to take about 10
17 minutes.

18 MS. ROSE: Okay.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: And
20 if, Ms. Rose, if you are able to check on
21 whether you are having your witness call in.

22 MS. ROSE: Yes, Your Honor. Thank you.

23 (WHEREUPON, a brief recess was
24 taken, after which the hearing
25 continued.)

1 ADMINISTRATIVE LAW JUDGE MCARTHUR: Back
2 on the record.

3 MS. ROSE: Yes, Your Honor.

4 ADMINISTRATIVE LAW JUDGE MCARTHUR: What's
5 up, Ms. Rose?

6 MS. ROSE: Our witness will not be able to
7 appear telephonically. We apologize if it
8 caused any issue. I spoke with Ms. Wilmot and
9 Ms. Shaw regarding the test, and we're going to
10 ensure on both of our ends that -- it hasn't
11 been picked up. We're going to make sure that
12 no one gets access to any of the confidential
13 documentation.

14 ADMINISTRATIVE LAW JUDGE MCARTHUR: I'll
15 trust all of you will --

16 MS. ROSE: We're safeguarding it.

17 ADMINISTRATIVE LAW JUDGE MCARTHUR: -- do
18 what's called for by the protective order.

19 MS. ROSE: Exactly.

20 ADMINISTRATIVE LAW JUDGE MCARTHUR: And I
21 will leave it to you. Then does Petitioner
22 rest? I don't recall you having any proposed
23 exhibits?

24 MS. ROSE: No, Your Honor.

25 ADMINISTRATIVE LAW JUDGE MCARTHUR: We've

1 got the Joint Exhibits.

2 MS. ROSE: Yes, Your Honor, we rest, at
3 this time.

4 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
5 you.

6 MS. ROSE: Thank you. Ms. Wilmot, are you
7 ready to call your first witness?

8 MS. WILMOT: I am, Your Honor. I call
9 Dr. Michael Grogan. Good morning, Dr. Grogan.

10 THE WITNESS: Good morning.

11 ADMINISTRATIVE LAW JUDGE MCARTHUR: Let me
12 go ahead and re-swear him in so I don't have to
13 test whether he's been telling the truth, the
14 whole truth and nothing but the truth since
15 yesterday.

16 Sir, do you swear or affirm that the
17 testimony you are about to give today will be
18 the truth, the whole truth and nothing but the
19 truth?

20 THE WITNESS: I do.

21 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
22 you.

23 WHEREUPON,

24 MICHAEL GROGAN

25 having been duly sworn to tell the truth, the whole truth

1 and nothing but the truth, was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MS. WILMOT:

5 Q Thank you, Dr. Grogan. This is going to
6 be very short. Do you remember the testimony that
7 you gave yesterday with regard to the process and
8 the contract and everything else?

9 A I do.

10 Q Everything except a couple of little
11 things we're going to cover apply to the General
12 Knowledge exam; is that correct?

13 A That's correct.

14 Q We have the same raters -- the same --
15 they're calibrated for this prompt?

16 A Yes.

17 Q And they have -- they go through the same
18 training?

19 A Yes, they do.

20 Q And you also have the chief raters?

21 A Correct.

22 Q Overseeing the same way?

23 A Yes.

24 Q And the review process is the same?

25 A That's correct.

1 Q One thing about the oversight is in the
2 review, or not the review, but the oversight for the
3 raters that are rating the FELE, they have ghost
4 papers and we talked about that yesterday?

5 A That's right.

6 Q Are those ghost papers available, are they
7 used with the raters for the General Knowledge exam?

8 A They were not used for General Knowledge.

9 Q Okay. So we just wanted to clear up and
10 make sure that we didn't have that misunderstanding.
11 I think that's all that I have.

12 **CROSS-EXAMINATION**

13 BY MS. ROSE:

14 Q Good after -- I apologize. Good morning.
15 Attorney Jennifer Rose on behalf of Mr. Daryl
16 Bryant.

17 A Good morning.

18 Q Are you able to tell us --

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: I just
20 wanted to clarify, Ms. Rose, that based on the
21 agreement, you can ask any questions you have
22 from yesterday's testimony that he's just
23 adopted by reference.

24 MS. ROSE: Thank you, Your Honor.

25 Q (By Ms. Rose) Are you able to tell us,

1 compensation wise, how much the raters get paid?

2 A No.

3 Q Are you able to tell us how many essays or
4 is this a quota or minimum essays that the raters
5 grade, on a daily basis or a weekly basis?

6 A There is no quota.

7 Q And how much time, typically, is allocated
8 for the raters to review an essay? Does it vary?

9 A For an individual essay?

10 Q Yes.

11 A There is no time limit.

12 Q And you all indicated that the raters are
13 in the same room when they grade the essay?

14 A Correct.

15 Q Do they communicate while grading the
16 essays to other raters or is there -- is
17 communication banned, at this time?

18 A Raters cannot communicate with each other,
19 correct, while they are scoring.

20 (At this time the public portion turned
21 into confidential material on the record and put in
22 a separate envelope under seal for Judge McArthur
23 and not available to the public or to anyone else
24 other than those who have signed the confidentiality
25 agreement)

1 MS. WILMOT: I call Phil Canto.

2 ADMINISTRATIVE LAW JUDGE MCARTHUR: Slowly.

3 THE WITNESS: I will be a slow talker
4 today.

5 MS. WILMOT: Good morning, Mr. Canto. I
6 think it's still morning.

7 THE WITNESS: It is.

8 MS. WILMOT: Could you state your name,
9 for the record?

10 THE WITNESS: Sure.

11 ADMINISTRATIVE LAW JUDGE MCARTHUR: Raise
12 your right hand. Do you swear or affirm that
13 the testimony you're about to give today will
14 be the truth, the whole truth and nothing but
15 the truth?

16 THE WITNESS: Yes.

17 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
18 you.

19 WHEREUPON,

20 PHILIP CANTO

21 having been duly sworn to tell the truth, the whole truth
22 and nothing but the truth, was examined and testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MS. WILMOT:

1 Q Please state your name, for the record?

2 A Sure. Philip, P-H-I-L-I-P, Canto,
3 C-A-N-T-O.

4 Q So yesterday we talked about the process,
5 we talked about the ITN and how it was competitively
6 procured. We talked about the higher standards for
7 students and, therefore, higher standards for
8 teachers, holistic scoring, the raters, the
9 reviewers, Florida's part in the process with regard
10 to developing the prompts, Florida's review of the
11 raters and approval of the hiring of the raters and
12 the Chief Raters. So do you agree that all of that
13 pretty much, except a couple of things we'll cover
14 this morning, are pertinent to the General Knowledge
15 exam?

16 A Yes.

17 Q Okay. So we have the same raters, we have
18 the same -- not the same, but the same process,
19 where we have raters and Chief Reviewers and Chief
20 Raters?

21 A Correct. The process is the same.

22 Q Okay. What are the prerequisites to take
23 the General Knowledge exam?

24 A There are no prerequisites to take the
25 General Knowledge test.

1 Q And how many times can an individual take
2 it?

3 A As many times as they need to pass.

4 Q Is there a period of time they have to
5 wait before, if they take it one, let's say July
6 1st, do they have to wait a period of time before
7 they take it again?

8 A July 2nd would be the first time they
9 could actually take the test. Thirty days.

10 Q I'm sorry, did you say 30 days?

11 A Thirty days. July 1st.

12 Q If you took to July 1st --

13 A July 1st, a full 30 days have to elapse.
14 So, technically speaking, July or August 2nd.

15 Q There we go.

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: Try to
17 speak one at a time.

18 THE WITNESS: Yes. Is that clear?

19 Q (By Ms. Wilmot) It is.

20 A August 2nd.

21 Q Do you -- are you aware of the passage,
22 the recent passage rate for the General Knowledge
23 essay?

24 A I don't have those number off of the top
25 of my head. If there's an exhibit that I can

1 review, I could --

2 Q Let's look at the -- let's look at the
3 Respondent's Exhibits. So the first -- Exhibit 1 is
4 the ITN. Do you recognize that as the procurement
5 document for the contract between the Department of
6 Education and Pearson?

7 A Yes.

8 Q And this goes through the FTCE exam, also?

9 A Correct.

10 MS. WILMOT: I'd like to enter this into
11 evidence, Your Honor, Exhibit 1.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR: Any
13 objection?

14 MS. ROSE: No.

15 ADMINISTRATIVE LAW JUDGE MCARTHUR:
16 Without objection, Respondent's 1 is admitted.

17 Q (By Ms. Wilmot) Okay. So let's go to
18 Exhibit 2. This is the General Knowledge -- the
19 test information guide for then General Knowledge
20 test. Is this an accurate copy of the Department's
21 document?

22 A Yes, it is.

23 MS. WILMOT: I'd like to enter this into
24 evidence, Your Honor, Exhibit 2 for Respondent?

25 MS. ROSE: No objection, Your Honor.

1 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
2 you. And this is a public document -- this is
3 a public document.

4 MS. WILMOT: Yes, it is.

5 ADMINISTRATIVE LAW JUDGE MCARTHUR:
6 Without objection, Respondent's 2 is admitted.

7 Q (By Ms. Wilmot) Okay. If we turn to
8 Exhibit 3. This is -- is this, Mr. Canto, is this a
9 Department document? It's the FTCE/FELE maximum
10 percentages of correct questions needed to achieve a
11 minimum passing score?

12 A Yes, it is.

13 MS. WILMOT: I'd like to enter this into
14 evidence, Your Honor, Exhibit 3.

15 ADMINISTRATIVE LAW JUDGE MCARTHUR: Any
16 objection?

17 MS. ROSE: No objection, Your Honor.

18 ADMINISTRATIVE LAW JUDGE MCARTHUR:
19 Respondent's 3 is admitted.

20 MS. WILMOT: Okay.

21 Q (By Ms. Wilmot) Exhibit 4. Mr. Canto,
22 this is the Florida Certification Examination and
23 Florida Education Leadership Examination, first time
24 examinees and present passing report by the field
25 for 2013 through 2016. Is this an accurate copy of

1 that?

2 A Yes.

3 MS. WILMOT: We'd like to enter this into
4 evidence, Your Honor, Exhibit 4?

5 MS. ROSE: No objections, Your Honor.

6 ADMINISTRATIVE LAW JUDGE MCARTHUR:
7 Respondent's 4 is admitted and I think this was
8 the document Mr. Canto was looking for.

9 THE WITNESS: Yes, it is.

10 Q (By Ms. Wilmot) So can you refer to this
11 and tell us what the most recent passage rate is for
12 the essay of the General Knowledge?

13 A According to the table, this is the 2016
14 calendar year, cumulative, first time tested and
15 first time percent passed, General Knowledge essay
16 indicates a 69 percent first time pass rate.

17 Q So most people who take it, pass it the
18 first time?

19 A With 69 percent.

20 Q All right. So let's move to Exhibit 5.

21 ADMINISTRATIVE LAW JUDGE MCARTHUR: Just
22 to clarify --

23 MS. WILMOT: Yes.

24 ADMINISTRATIVE LAW JUDGE MCARTHUR: I
25 think you said the GQ -- GK, GK exam, but

1 that's just the essay part; right?

2 THE WITNESS: Just the essay.

3 ADMINISTRATIVE LAW JUDGE MCARTHUR:

4 Because there are other parts?

5 THE WITNESS: There are four total tests
6 or subtests, as we call them.

7 ADMINISTRATIVE LAW JUDGE MCARTHUR: Right.
8 But we're just talking about the essay. Thank
9 you.

10 THE WITNESS: Yes.

11 Q (By Ms. Wilmot) Okay. If we can turn to
12 Exhibit 5. And this is the certification history,
13 the registration history for the examinee. Is this
14 a correct document, Mr. Canto?

15 A Yes, it appears to be.

16 Q And this includes Department notes on
17 phone calls; is that correct?

18 A This would be Pearson's customer service
19 phone call notes.

20 Q Okay. And those are kept as a matter of
21 business practice?

22 A Yes.

23 Q They're required to keep these?

24 A They are required and they are recorded
25 calls.

1 Q They do it on a regular basis?

2 A Every call.

3 Q Whenever anybody calls?

4 A Yes.

5 MS. WILMOT: We'd like to enter this
6 exhibit into evidence, Your Honor.

7 MS. ROSE: No objection, Your Honor.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR:
9 Without objection, Respondent's Exhibit 5 is
10 admitted.

11 Q (By Ms. Wilmot) Looking at Exhibit 6, this
12 is the examinee's scoring history. And I looked at
13 it earlier and it appears to also include the
14 registration history. I think there's a little
15 duplication between 5 and 6, but is this an accurate
16 copy of the Department's documents?

17 A Yes. It appears to be an accurate
18 examinee's score and history document.

19 MS. WILMOT: Your Honor, we recognize that
20 this may be a duplicate, but on the possibility
21 that it contains additional information, we'd
22 like to enter it into evidence.

23 ADMINISTRATIVE LAW JUDGE MCARTHUR: Any
24 objection?

25 MS. ROSE: No objection, Your Honor.

1 ADMINISTRATIVE LAW JUDGE MCARTHUR: I'll
2 allow it, notwithstanding potential duplication
3 because of the possibility that there might be
4 some additional information admitting
5 Respondent's 6.

6 Q (By Ms. Wilmot) All right. And,
7 Mr. Canto, now we're going back to the General
8 Knowledge essays. Do you know how many were
9 reviewed at the essay for the General Knowledge in
10 2016?

11 A Are you referring to score verification or
12 are you referring to overall how many tests were
13 given?

14 Q The score verification.

15 A The score verification, 133 examinees
16 completed a score verification session in 2016.
17 Actually, that includes January 1st of '16 through
18 February -- end of February '17. So about 13 full
19 months.

20 Q Okay.

21 A Fourteen months, actually.

22 COURT REPORTER: What did you say?

23 THE WITNESS: January 1st of 2016 through
24 February of 2017.

25 Q (By Ms. Wilmot) Do you know how many of

1 those resulted in a change in the score?

2 A Two. Two had a scoring change that
3 resulted in a passing score. So two examinees had
4 their score changed and their status changed from
5 not passed to pass.

6 Q Okay. And the only change that could be
7 made would be passed -- I mean, not passed to pass?

8 A Correct.

9 Q How many times did the Petitioner take the
10 General Knowledge exam?

11 A According to the records, three.

12 Q Three. And do you have his scores?

13 A They would be in the exhibit list.

14 Q Okay. We'll refer to those.

15 A Number -- that will be tab 7, R-6.

16 Q So this is his -- that's his scoring
17 history, is that what we would go off of to see how
18 many times he took it?

19 A Yes.

20 Q So three times?

21 A Yes.

22 Q Did he take anything else?

23 A There are no other FTCE examinations
24 listed in the score history.

25 Q Okay.

1 MS. WILMOT: This is Exhibit 6 that we're
2 referring to.

3 Q (By Ms. Wilmot) And did Mr. Bryant request
4 a score verification session?

5 A Yes.

6 Q And what was the result of that?

7 A The result was no status change.

8 Q Okay. Was it reviewed by just one
9 reviewer?

10 A I know it was reviewed by at least a
11 single Chief Reviewer.

12 Q Okay. Is that the normal process?

13 A It would be. Under normal circumstances,
14 yes.

15 Q And did you request comments on -- the
16 raters don't usually give justification; is that
17 right?

18 A Yes. The Department would have requested
19 comments.

20 Q So you requested the comments from
21 Pearson?

22 A Yes.

23 Q And those are part of the confidential
24 record?

25 A They are.

1 Q Okay. The preparation materials that are
2 provided by the Department on the website. There
3 are sample prompts provided; is that correct?

4 A That is correct.

5 Q Are those prompts retired?

6 A Those are either retired prompts or
7 prompts that we develop specifically for the purpose
8 of public dissemination.

9 Q And do you also provide the rubric --

10 A Yes.

11 Q -- that the scorers use?

12 A Yes.

13 Q That the raters use. And that would be
14 the supplemental writing criteria?

15 A General Knowledge essay does not have
16 supplemental writing criteria. It has a single
17 rubric that's public facing and available to anyone.

18 Q So there's only one rubric. So is that
19 the general one that people see when they first
20 start the process?

21 A Exactly. It's embedded within the test
22 information guide is the rubric that is actually
23 used by raters at the live rater scoring session.

24 Q Okay. So if a person were to access these
25 prompts online through the Department's website,

1 they would see prompts that were actually used in
2 the past, at least some of them?

3 A Correct.

4 Q And then they would also see the actual
5 rubric used by the scorers when they scored those
6 essays?

7 A Yes.

8 MS. WILMOT: That's the end of my
9 questions. Thank you.

10 ADMINISTRATIVE LAW JUDGE MCARTHUR: Cross.

11 MS. ROSE: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MS. ROSE:

14 Q How often do you all see the challenge
15 score change? I know you indicated that you saw the
16 two individuals had a change in score from January,
17 2016, that wasn't with the challenge, that was with
18 the overall -- that was with that initial challenge
19 or did they go through this process, as well, or on
20 what level was their scores changed?

21 A Can you define "this process"? Are you
22 referring --

23 Q Oh, no, when you indicated that you all
24 did see two change in scores, that was from the
25 challenge process?

1 A The score verification process.

2 Q The score verification process?

3 A Uh-huh.

4 Q And you also indicated that the prompts on
5 FTCE website are retired. What are some -- when do
6 you all decide to retire a prompt?

7 A That's really a good question. If you
8 look at the test counts for General Knowledge,
9 they're into the 10's of thousands. And so what we
10 try to do is take a look at a prompt that's
11 representative of what a candidate would actually
12 see, and a prompt that's simply ready to be retired.
13 It's been used so many times over the years that
14 it's simply used up, if that makes sense.

15 Q And did the FTCE always have the writing
16 component on it?

17 A Since the late 80's, there's been a
18 writing component for General Knowledge.

19 Q And how many years has Pearson been
20 grading the FTCE or you all been contracted with
21 DOE?

22 A Since 2007.

23 Q Okay. When you all see that -- I noticed
24 that the scores increased significantly -- I'm
25 sorry, decreased in the passing score significantly

1 since the last two years. Let me refer to that.
2 Does that give FTCE or DO -- I mean, does that give
3 Pearson or DOE an indication that maybe the prompt
4 needs to be changed when you all see that
5 individuals aren't passing at such a high rate?

6 A Well, the prompts are aligned to the K-12
7 student standards, and they work themselves through
8 the standards based development process that we
9 talked about yesterday. And as such, they're
10 administered accordingly. So the prompts are
11 aligned, the process is valid and we move.

12 Q And what is the possibility -- we may have
13 spoke of it yesterday, but I didn't recall -- the
14 probability of error within the scoring process? I
15 believe yesterday we said that it was 2 percent, is
16 that accurate?

17 A We were talking about different tests. So
18 I wouldn't be able to speak to General Knowledge in
19 particular, in that regard.

20 Q You're not able to -- so that's a
21 difference with the FTCE and the FELE, the numbers
22 indicated yesterday were different with the --

23 A Well, different tests, if you will, would
24 have the same process. We're going to go to the
25 same type of process or reliability checks, if you

1 will, but I don't have the GK numbers or statistics
2 to be able to speak to. Yesterday's, they're
3 specific to that particular assessment.

4 Q Yeah, that's what I was wondering if
5 that -- when we were talking yesterday regarding
6 that. So you're not able to give me any
7 information?

8 A Not for GK.

9 Q Okay. Thank you.

10 MS. ROSE: No further questions.

11 ADMINISTRATIVE LAW JUDGE MCARTHUR:

12 Redirect?

13 MS. WILMOT: Just a couple of questions.

14 **REDIRECT EXAMINATION**

15 BY MS. WILMOT:

16 Q Mr. Canto, we talked about the prompts and
17 whether we change them, because they're too hard,
18 the passage rate is not high enough. Would the
19 Department have any discretion in that? The
20 Department develops the prompts, but determining
21 whether or not they are too hard or the scores
22 should be changed, is that in the hands of the
23 Department?

24 A It's in the hands of our subject matter
25 experts. As we talked about yesterday, the

1 individuals in the field. So, in the case of
2 General Knowledge, it's classroom teachers, K-12
3 classroom teachers, it's college and university
4 faculty and it's District personnel, District
5 leadership. They reviewed all these prompts and
6 they made recommendations as it relates to the
7 passing score.

8 Q And, ultimately, would it be with the
9 State Board of Education?

10 A Yes.

11 Q After -- I'm sorry.

12 A Those recommendations are forwarded to the
13 State Board of Education as part of the rule
14 development process. And the State Board of
15 Education makes the determination or ruling, if you
16 will, on those scores.

17 Q Okay. And talking about the reliability,
18 I know we don't have the figures for the State
19 standards, but do you know that they are higher than
20 what is normal for the industry?

21 A They're consistent with industry
22 standards.

23 Q Okay.

24 A There's reliability indices that --
25 results that we get that we monitor, they're

1 consistent with industry standards.

2 Q Do you know what those are?

3 A It varies. I've seen numbers from .80 and
4 higher and .90 and higher and I know that we're
5 definitely in the game if they were within that
6 range.

7 Q Okay. Eighties to, somewhere between 80
8 and a hundred?

9 A And a hundred, yes, would be acceptable.
10 And I know that we're well within that range.

11 MS. WILMOT: Okay. Thank you. Nothing
12 further.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: I just
14 wanted to say, as I had said yesterday with
15 Mr. Canto, mentioning the rules, that I do take
16 official recognition of the substantive Florida
17 Statutes regarding teacher certification and
18 the implementing rules, and I have found what I
19 think is the primary rule at issue 6A-4.0021
20 Florida Teacher Certification Examinations,
21 somewhere in here is the current passing score.
22 And there's also the competency and skills
23 document that's incorporated by reference, so
24 that's part of the rule. And I bring this up
25 only because what I found with this

1 examination, is that the rule was recently
2 amended, I think, after the exam. But as I
3 read the rule, it contains the different
4 standards and the effective date of changes so
5 you can actually look at the current version
6 and find out what the appropriate standards and
7 tests cut off score was as of the date we have
8 in stipulation.

9 So I actually had pulled the version --
10 the prior version of the rule to make sure that
11 nothing in the current version has changed. So
12 I think we are safe, referring to the current
13 version. But if it gives folks more comfort, I
14 also have the prior version from the Florida
15 Administrative Code website that was in effect
16 October 26th, 2015, which would have been the
17 version in effect when the test was taken. So
18 both counsel should feel free to refer to the
19 Rules or Statutes in their PRO's, as necessary.
20 I think that's a legal framework we all have to
21 fit under.

22 MS. WILMOT: Great. I understand. Thank
23 you.

24 ADMINISTRATIVE LAW JUDGE MCARTHUR: You
25 are done and you may return to your

1 representative seat. Do we think we're within
2 range here at 12:15 that we should plow ahead
3 and try to finish up without taking a lunch
4 break?

5 MS. WILMOT: That would be my personal
6 preference. I believe we can do it
7 sufficiently.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: Ms.
9 Rose, Mr. Bryant? Are you okay with that? Are
10 you starving? We can take a quick break.

11 MR. BRYANT: I want to take a break.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR: We're
13 going to take a quick break?

14 MR. BRYANT: Yes, ma'am.

15 ADMINISTRATIVE LAW JUDGE MCARTHUR: Speak
16 up.

17 MR. BRYANT: Yes.

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.
19 Take five minutes, 10 minutes.

20 MR. BRYANT: Five minutes.

21 ADMINISTRATIVE LAW JUDGE MCARTHUR: Five
22 minutes it is.

23 (WHEREUPON, a brief recess was
24 taken, after which the hearing
25 continued.)

1 ADMINISTRATIVE LAW JUDGE MCARTHUR: Back
2 on the record. And, Ms. Wilmot, you may call
3 your next witness.

4 MS. WILMOT: Thank you, Your Honor. I
5 call Betsy Griffey.

6 ADMINISTRATIVE LAW JUDGE MCARTHUR: Ms.
7 Griffey, would you raise your right hand? Do
8 you swear or affirm that the testimony you're
9 about to give today will be the truth, the
10 whole truth and nothing but the truth?

11 THE WITNESS: Yes, I do.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
13 you. You're going to need to speak up. You're
14 soft spoken.

15 THE WITNESS: I will speak up.

16 WHEREUPON,

17 BETSY GRIFFEY

18 having been duly sworn to tell the truth, the whole truth
19 and nothing but the truth, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MS. WILMOT:

23 Q Ms. Griffey, could you state your name for
24 the court reporter?

25 A Betsy Griffey.

1 Q Now, you are a Chief Reviewer; is that
2 correct?

3 A Yes, I am.

4 Q Okay. Can we talk a little bit about your
5 position now with Pearson and, I believe, are you
6 retired?

7 A I am retired.

8 Q And your academic history, but what you've
9 taken, what education you've had and what your
10 academic history is with regard to the teaching
11 profession?

12 A I taught at Florida State College for 36
13 years and my field was English, teaching writing.
14 In 1983, I began reading class, college level
15 academics skills tests. And I read the essay
16 portion of it. I read that until the test was
17 deleted from requirements for graduation. And
18 during that time, I was a reader, as well, as a
19 table leader. At that time I had been trained to
20 read the teacher exam, the Florida teacher
21 certification exam and FELE and I read those as a
22 reader and a table leader. When Pearson became the
23 assessment evaluation agency for the State of
24 Florida, I was trained in the method that they
25 taught, and I worked for them as, again, a rater and

1 a Chief Rater for Pearson.

2 Q And where did you go to school?

3 A I went to Florida State and I went to
4 Arizona State for my Master's Degree.

5 Q And what did you receive your Master's
6 Degree in?

7 A English. English.

8 Q And you mentioned that you scored for the
9 CLAST, was that holistic scoring?

10 A Yes.

11 Q The scoring that you did for the CLAST,
12 was it holistic scoring?

13 A It was holistic scoring.

14 Q Thank you. Now, were you trained for the
15 scoring that you're doing now as a Chief Reviewer?

16 A Extensively.

17 Q Okay. How did that start?

18 A It began -- as a Chief --

19 Q Yes.

20 A -- training for Chief --

21 Q Chief Reviewer?

22 A I was, first of all, I had been trained to
23 read holistically in the method. And then I was
24 asked to be a Chief Reader, but I was sent to
25 Austin, Texas, where Pearson had an office, at that

1 time, to be trained there, and I was there for a day
2 or two being trained. And the training though, of
3 course, occurs every single time I score anything,
4 the training recurs.

5 Q Okay. So, let me be clear now: Were you
6 originally a rater?

7 A Uh-huh. I was.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: Is
9 that a yes?

10 THE WITNESS: Yes.

11 Q (By Ms. Wilmot) You started from kind of
12 the bottom up?

13 A Yes.

14 Q Then you became a Chief Rater?

15 A Yes.

16 Q So you oversaw the other raters?

17 A Yes.

18 Q And now you are a Chief Reviewer?

19 A Yes.

20 Q So you review essays that have asked for
21 score verification?

22 A Right. Yes.

23 Q Okay. And did you go to training in
24 Hadley, Massachusetts?

25 A No.

1 Q Okay. The training that you went to in
2 Houston, what did that encompass?

3 A It was in Austin. And it was a regular
4 scoring session was going on that day, and I
5 observed, along with Stan Thompson, who was -- I'm
6 not certain what his position was, but he's the one
7 that was sent to Tampa to train all of us from
8 Pearson.

9 Q Okay.

10 A And he is the one who met me in Austin and
11 he -- he helped me observe and told me what I was
12 looking for. He had me observe the procedures. He
13 had me score some papers and I watched and observed
14 and worked with him that day, day and a half.

15 Q Okay. And you scored papers during that
16 time?

17 A Uh-huh. Yes.

18 Q Did you reach a proficiency in scoring
19 where your score was the same as or within one of
20 the pre-scored essays?

21 A Absolutely yes.

22 Q So, now, let's go through what happens
23 when you get a challenge to review. How do you
24 receive that?

25 A I get an e-mail question, would I be

1 willing to score a challenge paper. And if I agree,
2 then I send back an agreement with my signature on
3 it. I am then sent access to education reports,
4 which is the system on -- through which I'm given
5 access to the materials. And the procedure for
6 scoring a paper -- shall I tell that?

7 Q Well, let me ask you first: How many --
8 how many essays would you be asked to score at a
9 time?

10 A Typically one, but as many as -- I've done
11 as many as three at a time.

12 Q And how much time would be allotted in
13 order to score those?

14 A Anywhere from 10 days to two weeks.

15 Q Did you ever feel pressure to complete
16 your review in a timely manner?

17 A No pressure at all. I have as much time
18 as I need within that given 10 day or two week
19 period.

20 Q Okay. So, now if you could tell us when
21 you access this protected website, what happens
22 then, what happens when you open it up?

23 A When I open it up, there is a set of
24 instructions that I am to follow. And I go through,
25 after I read the instructions, I follow a series of

1 maybe 10 or 12 steps. For example, one step is read
2 the rubric, which I reread every single time.
3 Another step is to read the prompts that are
4 appropriate for the particular paper that is a
5 challenge. I read the -- oh, the essay directions
6 that the writer receives. I read the essay
7 directions. So these are all separate steps in the
8 process. I then read the historic anchor set, which
9 are the six papers representing the standards for a
10 6, 5, 4, 3, 2, 1 paper, all of which have the score
11 on them. So the 6 paper has a 6 at the top.

12 After that, I read what's called the
13 ranking anchor set. And the ranking anchor set are
14 the six papers that are the anchors for the
15 particular prompt on which the challenge papers or
16 paper was written. The anchor papers are not --
17 they're arranged in a random order. They do not
18 have scores on them, and I read them and take notes
19 and write down what I think is the 5 or whatever.

20 And then the next thing I look at is the
21 scores for those papers, and I compare my scores to
22 the given scores. And were I to have a discrepancy,
23 obviously, I'd have to go study that paper on which
24 if I had one discrepancy, I'd have two, because
25 there's only six papers and I would have to study

1 those papers and try to determine, compared to the
2 rubric and compared to the historic anchor set, why
3 the discrepancy.

4 Then the next set I read are 10
5 calibration papers. And these papers, again, are on
6 the same prompts as are the -- as is the challenge
7 paper. I read the 10 papers without scores given to
8 me in advance. I put down my own scores and then,
9 after that, I open up the folder that has the scores
10 in it and I compare my scores to those. And I --
11 this is the calibration process to get me ready to
12 read. After I look at the scores that are given for
13 the papers, compare them to mine. Again, if there's
14 a discrepancy, I am instructed to look back at the
15 rubric, the ranking anchor set, and the historic
16 anchor set. Only at that point would I be ready to
17 score the challenge paper. And then the challenge
18 paper is provided to me and, I guess, in its
19 original form. It's an electronically produced
20 paper and I read that paper, and it has no scores on
21 it. It has no marks whatsoever on it. And then I
22 read that and, from there, I make a determination of
23 what my score would be. Then I look at what the two
24 original raters scored the paper as, and I then have
25 to agree or disagree with those two scores.

1 Q Okay. So have you ever changed a score?

2 A The original -- from the original scores,
3 I think the -- say if, in this case, if we had say
4 if we had two 3's, I could suggest that my score
5 could be, I suppose, anything. But typically I
6 would -- I'm asked to determine whether those two
7 3's represent a reasonable and justifiable
8 application of the standards of our process. And if
9 I -- if I were to think that, no, they did not, then
10 I would have to -- then I would certainly justify
11 that.

12 Have I ever changed one, I have -- I have
13 checked yes that -- I have checked that the score
14 does not stand. I have two options. The score
15 stands; the score does not stand. And, yes, I have
16 checked the score does not stand.

17 Q Okay. Is that unusual?

18 A I don't know statistically if it's
19 unusual. I find myself doing it, yes, but not every
20 time.

21 Q Okay. When you get to the end of your
22 reading prompt, you see the scores?

23 A When I get to the end of reading the paper
24 I see the scores.

25 Q Okay. Do you know anything about the

1 individual, the examinee, the gender, their race,
2 where they came from, their age, any information
3 whatsoever?

4 A None.

5 Q Do you know who scored it originally, who
6 the raters were, what their ID was, where they came
7 from? I assume they all come from Massachusetts,
8 but do you know anything, other than --

9 A No.

10 Q -- anything to pinpoint?

11 A No. Nothing.

12 Q And once you have determined that it
13 stands or not stands, then you write comments to
14 justify that finding?

15 A Yes, I do.

16 Q And how do you write those comments?

17 A Well, it's done electronically and there's
18 a form provided. And the beginning of the form is
19 where I check rating stands, rating does not stand.
20 If the rating does not stand, there's a column where
21 I put the score I would have, like for example, if
22 it's a 3/4, that can stand, that score can stand.
23 Or if it's a 3/3 and I would say, perhaps, this
24 should be a 4, then would I write in 4. And then I
25 make a justification. And my justification is

1 written, because this is what I'm told to do, to
2 justify my score against the rubric and against the
3 historic anchor set and against the ranking anchor
4 set. Those are the standards on which I would then
5 justify my score. So I would perhaps cite a segment
6 of the rubric or a cite of particular anchor paper
7 that seem to correspond with the writer's paper.

8 Q Okay.

9 MS. WILMOT: Thank you. And that's all
10 that I have.

11 CROSS-EXAMINATION

12 BY MS. ROSE:

13 Q Good afternoon. Attorney Jennifer Rose on
14 behalf of Mr. Bryant. How long have you been
15 trained materially with the holistic learning and
16 scoring?

17 A 1983. A long time.

18 Q And with all those years and knowledge of
19 experience, you feel confident that this takes away
20 the whole aspect of everything being so subjective;
21 correct?

22 A Yes, indeed.

23 Q Do you know who specifically develops the
24 rubric?

25 A The rubric has been developed by -- well,

1 people like me. I was once on a committee to help
2 develop -- to revise a rubric. So it's done -- and
3 this is not something that I can really speak to.
4 This is the purview of the Department of Education,
5 but certainly classroom teachers, like me, have been
6 involved.

7 Q And as a Chief Reviewer, do you feel that
8 the training you received is adequate?

9 A Yes, indeed.

10 Q For a Chief Reviewer, what's the minimum
11 -- is it three years administrative experience would
12 be the training -- the minimum amount of training to
13 be a Chief Reviewer?

14 A I don't have an answer for that.

15 Q Were you given the opportunity to read Mr.
16 Bryant's challenge?

17 A Do you mean his essay?

18 Q His essay or his challenge?

19 A I was -- I'm assuming I was the Chief
20 Reader for his essay but beyond that I've read
21 nothing.

22 Q Okay. And how many challenges do you
23 typically do within a week or a month? I know you
24 said it varies, they send you --

25 A It does vary. It does vary. Last week I

1 did one and some weeks I do none. It just depends
2 on what the Department of Education needs and needs
3 me to do.

4 Q And how often do you change the challenge
5 score? I know you indicated earlier you're not
6 specific of how many times you've had to change it
7 in the process, but in your line of work is it
8 something done on a regular basis or it's rare?

9 A I just -- I just don't really know the
10 answer to that. I've done it, but how many times or
11 what percentage, I don't know. I would not call it
12 rare, but I wouldn't say that this is common way I
13 do it is to change a score. It just so depends on
14 that paper in front of me, the rubric beside me, the
15 anchor papers here. It just depends that, you know,
16 it's a unique piece, so I don't know.

17 Q Do you feel that or do you look at the
18 length of the essay to -- prior to grading it to see
19 if it even meets those standards? Is there a
20 certain length that you all are looking for?

21 A There is no standard on length.

22 Q Okay. So you were able to review
23 Mr. Bryant's essay, as well, correct, you were the
24 Chief Reviewer for his essay?

25 A Yes, I was.

1 Q And are you able to provide any further
2 indication of your proof reading techniques or tell
3 us specifically any issues with his essay that just
4 rung out to?

5 MS. WILMOT: Your Honor, I'd like to
6 object. It's going beyond the scope of the
7 original --

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: There
9 was no direct exam about Mr. Bryant's essay at
10 all.

11 MS. ROSE: Thank you, Your Honor.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR: So
13 sustained.

14 Q (By Ms. Rose) Typically, when you all say
15 that you all are looking at grammar, is there a
16 certain or misspellings, is there a certain number
17 of misspellings that you all consider, like is it 3
18 to 5, maybe considered too many?

19 A No. No. There's no number.

20 Q So spelling is something that you all --
21 as long as it's not too far off, when we look at a
22 word, it doesn't play a major factor in the score?

23 A I think the rubric says it best, and that
24 is that, does it interfere with communication. And,
25 also, a variety of errors. So you're dealing with a

1 variety and number of errors that interfere. And if
2 you look at the rubric, say, for the 6, they are few
3 and insignificant. But when you get down to, say,
4 the number 1, there are many errors and they are
5 significant. So it has to do with significance
6 versus insignificance, it has to do with -- it's not
7 number, like 10 mistakes and that does you in. It's
8 not that. It has to do with the kind of errors they
9 are, the -- and I'm going to contradict myself, not
10 how many they are, it's not that we count, but just
11 are they constant throughout the paper.

12 Q Okay. Now, when you as a Chief Reviewer
13 disagree with some of the aspects of raters
14 assessments, does the raters comments still have
15 validity to it or how do you all deal with
16 disagreements with the comments after you do your --
17 after you review it and you see that you don't agree
18 with the score that the rater had, and at comments.
19 Like, for instance, things pertaining to saying that
20 they really looked at grammar and, in your opinion,
21 you may say that there was only 2 or 3 misspelled
22 words, how do you all reconcile that?

23 A I don't see any comments at all. All I
24 see is a score.

25 Q Okay.

1 MS. ROSE: No further questions.

2 ADMINISTRATIVE LAW JUDGE MCARTHUR: Any
3 redirect?

4 MS. WILMOT: I don't think so, no. We're
5 good.

6 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
7 you, ma'am. You may take your other seat.

8 MS. WILMOT: I'd like to call Mary Jane
9 Tappen.

10 ADMINISTRATIVE LAW JUDGE MCARTHUR: Ms.
11 Tappen, raise your right hand. Do you swear or
12 affirm that the testimony you're about to give
13 today will be the truth, the whole truth and
14 nothing but the truth?

15 THE WITNESS: I do.

16 WHEREUPON,

17 MARY JANE TAPPEN

18 having been duly sworn to tell the truth, the whole truth
19 and nothing but the truth, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MS. WILMOT:

23 Q Good afternoon, Ms. Tappen. Could you
24 please state your name for the record?

25 A I'm Mary Jane Tappen.

1 Q Okay. So yesterday we had testimony
2 that's going to be part of this proceeding, also.
3 So, everything that we talked about, except for a
4 few things that we'll point out is applicable to the
5 General Knowledge essay; is that right?

6 A Correct.

7 Q And we talked about Department policy and
8 set scores, how they're done, the standards for the
9 students and how they were increased for test
10 takers, examinees, the essays and so forth, so all
11 of that applies, also, to the General Knowledge?

12 A Yes.

13 Q Okay. So, what is the General Knowledge
14 essay testing for?

15 A It's testing for a candidate who does not
16 yet have a teacher certification to enter the system
17 and to show evidence of being able to communicate
18 and respond to an issue at a beginning professional
19 level.

20 Q Okay. So, would the Department want the
21 individual who's writing this essay, applying for
22 the General Knowledge, or the teacher certification,
23 to have good grammar and spelling and communication
24 in that manner?

25 A Yes.

1 Q But is that the primary goal of the test?

2 A It includes, in addition to the grammar
3 and the spelling, it's to be able to communicate
4 using precise language in a logical way that makes
5 sense, and is specific to whatever prompt is
6 provided, that it responds to the prompt. It's not
7 simply a narrative.

8 Q Okay. So would you -- would it be fair to
9 say that contrary to the FELE exam, which we talked
10 about yesterday, testing also for their ability to
11 be an administrator and whether they have those
12 skills or not, that this General Knowledge exam more
13 addresses their ability to write in a coherent
14 manner, to write well, and to communicate their
15 ideas to students, parents and the public?

16 A That's correct. I would say that.

17 Q Okay. Once the individual obtains passage
18 rate and gets the certificate, and that requires the
19 Subtest, as well as the General Knowledge?

20 A Correct.

21 Q Once they do that, what doors does that
22 open with regard to teacher certification?

23 A That enables them to move on to get an
24 area certification, in addition. So it enters them
25 into being a candidate for a teacher. And then,

1 from that, they have to have some evidence in a
2 subject area.

3 Q So the Petitioner has a temporary
4 certificate or, at least he did, in physical
5 education. If he were to pass the General
6 Knowledge, Subtest and the essay, would he be
7 precluded from anything but physical education or
8 could he go ahead and take the test for any subject
9 area?

10 A He could take a test, in this case, he
11 could take a test for any subject area. So it opens
12 up as an eligible candidate in any education
13 certification area, he could then take a test in
14 biology and become a biology teacher.

15 Q Okay.

16 MS. WILMOT: That completes my questions.

17 Thank you.

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: Cross-
19 examination?

20 **CROSS-EXAMINATION**

21 BY MS. ROSE:

22 Q Good afternoon. Attorney Jennifer Rose
23 for Mr. Daryl Bryant. Can you tell us specifically,
24 what is an emergent essay or are you familiar with
25 that terminology?

1 A The terminology is within the rubric, but
2 I don't have the rubric memorized, so I can't answer
3 it precisely.

4 COURT REPORTER: You said emergent?

5 MS. ROSE: Uh-huh, emergent.

6 THE WITNESS: It's a term in the rubric.

7 Q (By Ms. Rose) In your opinion, why do you
8 feel that teachers are experiencing such
9 difficulties and receiving lower passing scores in
10 2016 and '15, as opposed to 2013 and '14?

11 A First, I don't believe the percent is
12 terribly low. Similar to raising standards for
13 students, we would be probably -- we would have to
14 re-evaluate if too high a percent. We would have to
15 evaluate the appropriate level of rigor. So I would
16 disagree that the percent that are not passing is
17 too high, if that's what you're asking me.

18 Q Do you feel that there needs to be other
19 ways to measure a teacher's writing proficiency or
20 standards for certification purposes, or do you feel
21 that this is the best way, the FTCE?

22 A I have confidence based on the process and
23 the amount of testing that takes place before the
24 final products and the rubrics are written, and the
25 number of stakeholders who are involved in the

1 process. It's not someone in the Department that is
2 putting together these tools, it's stakeholders out
3 in the field, experts in the field, teachers sit at
4 the table, and all of these tools go through several
5 vetting processes prior to finalizing the proposal
6 that goes to the State Board, including public
7 hearings where educators have an opportunity to
8 report or to question the scores going forward. So
9 I have much confidence that this is a quality tool
10 to identify candidates to be teachers.

11 MS. ROSE: No further questions, at this
12 time.

13 MS. WILMOT: We're done. Thank you. The
14 Department rests.

15 ADMINISTRATIVE LAW JUDGE MCARTHUR: All
16 right. The next issue to talk about is post
17 hearing submittals. In keeping with the
18 history of in tandem with the prior case, I
19 know that we have, at least, part of the post
20 hearing process dependent on the filing of the
21 transcript, not only for what we've -- what's
22 been transcribed for today, but portions of the
23 testimony from yesterday. So, the deadline for
24 proposed recommended orders is -- the clock
25 begins to run from when I will say the

1 transcripts in both cases are filed. Maybe we
2 just ask the court reporter to do a
3 simultaneous filing since parts of it are going
4 to have to be duplicated or borrowed from the
5 other case. And I wonder if I ought to -- I
6 will suggest that the deadline for proposed
7 recommended orders also be the same. I don't
8 want to give either -- any parties in either
9 case an advantage or disadvantage. Our
10 proposed recommended orders are simultaneous
11 filings by both parties, so I think it makes
12 sense. Yesterday the request by the
13 Petitioner's counsel was that the deadline be
14 30 days.

15 MS. ROSE: Yes, Your Honor.

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: And if
17 that's acceptable, it will 30 days after the
18 original transcript is filed at the Division of
19 Administrative Hearings. And as we discussed
20 earlier, I don't remember if it was on the
21 record or not, I think it was, the effort will
22 be -- unless you all -- you tell me you want to
23 proceed differently, I will ask both parties to
24 try to not have any confidential information
25 identified in their proposed recommended orders

1 so that the document can be received in tact as
2 a public record as they normally are.

3 As part of that, I know we have a lot of
4 confidential testimony and documentary evidence
5 that is under seal. If you can, I ask that
6 both of you try to propose, unlike in essay
7 responses, a very general finding of fact
8 without specifics, but give me very specific
9 citations to either testimony or exhibits or
10 both, that are confidential and go further than
11 just giving me page numbers, if you can and
12 hone in on the transcripts, line by line, you
13 know, page blank line blank through page blank
14 line blank. And the same thing with a citation
15 to the confidential exhibits. You know, give
16 me not only a page reference, but if possible,
17 give me a line count or paragraph count, so
18 I'll be able to look at exactly what supports
19 your general finding. And I'm going to have to
20 do the same thing in my recommended order. And
21 that is, be general, and if I feel the need to,
22 I may include some code for those of you with
23 the confidential transcripts and exhibits so
24 that you'll know what I'm relying on for my
25 general statement. I would probably fail a

1 scoring because it will have to be general, but
2 I have a good reason. Just a little scoring
3 humor to conclude our hearing, and I don't mean
4 to say I take it lightly, but I do take very
5 seriously the protective order obligations.

6 If either party has difficulty preparing
7 this sort of the proposed recommended order
8 that completely stays away from confidential
9 information, you can file a motion and we can
10 have a telephonic hearing to hash out how we
11 proceed. It will be difficult to try to
12 segment the filings at DOAH and keep them from
13 public record, but we'll come up with -- we'll
14 come up with a way, if we absolutely have to.
15 Know that I will track down every citation you
16 give me, so you can have confidence that you
17 don't need to lay it out, if you give me the
18 road map to what you're relying on in the
19 confidential information. I will promise to do
20 that, that work.

21 Is there anything further, anything else
22 we need to discuss?

23 MS. WILMOT: I don't believe so, Your
24 Honor.

25 ADMINISTRATIVE LAW JUDGE MCARTHUR: All

1 right then. With that, good presentations all
2 around and we are adjourned and off the record.

3 (WHEREUPON: The hearing was concluded.)
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REPORTER'S CERTIFICATE

I, ELAINE RICHBOURG, Court Reporter, certify that I was authorized to and did stenographically report the foregoing hearing; and that a review of the transcript was not requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 26th day of June, 2017.

Elaine Richbourg

ELAINE RICHBOURG, COURT REPORTER

