IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

GLORIA J ROUTSON-GIM-BELLUARDO,

Appellant,

-vs-

OHIO DEPARTMENT OF EDUCATION,

Appellee.

CASE NO.: 2016 CV 01264

JUDGE DENNIS J. LANGER

FINAL AND APPEALABLE DECISION AND ENTRY OVERRULING ADMINISTRATIVE APPEAL AND AFFIRMING THE FEBRUARY 9, 2016 RESOLUTION OF THE OHIO STATE BOARD OF EDUCATION

DECISION AND ENTRY OVERRULING APPELLANT'S MOTION FOR STAY

There are two matters before the Court. First, on March 7, 2016, Appellant Gloria J. Routson-Gim-Belluardo (hereinafter "Appellant") filed her *Notice of Appeal* of the Resolution of the Ohio State Board of Education dated February 9, 2016. *See* Docket. The Certification of the Record of Administrative Proceedings (hereinafter "Record"), including the transcript, was thereafter filed by Appellee on March 16, 2016. *Id.* Second, Appellant filed her *Motion for Stay and Request for Immediate Hearing* (hereinafter "Motion for Stay") on April 7, 2016. *Id.* Pursuant to a telephonic conference with the parties on April 8, 2016, the Court filed its *Order and Entry Amending Submission Dates on Administrative Appeal Briefs and Appellant's Motion for Stay* (hereinafter "Order") on April 11, 2016, which amended the deadlines as stated in Mont. Co. C.P.R. 2.37(B) for the submission of administrative appeal briefs. *See Order* at 1. The Court further instructed the parties to address the merits of the appeal in addition to Appellant's *Motion for Stay* in their respective briefs, and the Court extended the twenty-page limitation as stated in Mont. Co. C.P.R. 2.05(B)(4) so that the parties could sufficiently address both matters. *Id.* Thereafter, in accordance with the

Court's *Order*, Appellant filed her *Appellant's Brief on the Merits* on April 14, 2016. *See* Docket. Appellee Ohio Department of Education (hereinafter "Appellee") filed its *Appellee Ohio Department of Education's Answer Brief and Objections to Motion for Stay* on April 28, 2016. *Id.* Appellant subsequently filed her *Appellant's Reply Brief* on May 6, 2016. *Id.* This matter is now properly before the Court.

I. FACTS AND PROCEDURAL HISTORY

The underlying facts of the instant action are summarized in the decision of the Second District Court of Appeals in *Routson-Gim-Belluardo v. Jefferson Township Local School District Board of Education*, which provides as follows:

> Plaintiff-appellant Gloria Routson-Gim-Belluardo (hereinafter "Belluardo") appeals a decision of the Montgomery County Court of Common Pleas affirming defendant-appellee Jefferson Township Local School District Board of Education's (hereinafter "the Board") Resolution and Order of Termination (hereinafter "the Order"). The Board's Order resulted in the termination of Belluardo's position as an intervention specialist for Jefferson Township elementary students with special needs. Belluardo filed a timely notice of appeal with this Court on August 5, 2015.
>
> In 1999, Belluardo was hired as intervention specialist by Jefferson Township at Blairwood Elementary School for students in kindergarten through third grade. Belluardo's duties included creating individualized education plans (IEPs) for the special needs students assigned to her. An IEP is a document which lays out an intervention specialist's plan for achieving one year of academic growth for each special needs student assigned to his or her caseload. In addition to preparing annual IEPs, Belluardo was tasked with preparing quarterly progress reports for her special needs students in order to chart their progress in relation to the goals in their IEPs. The reports were sent home to the student's parents or guardians in order to inform them of the student's progress.
>
> In order to create an IEP for a particular group of students, Belluardo utilized various diagnostic tools to assess their reading level and general comprehension. Since approximately 2012, Belluardo utilized a test called the San Diego Quick Assessment (SDQA) to determine the reading and comprehension level of her students.
>
> In the 2013/2014 school year, the Board, in conjunction with the teacher's union (JTEA), adopted Ohio Teacher Evaluation System (OTES), a teacher assessment model created by the Ohio Department of Education. Under the OTES model, 50% of a teacher's annual evaluation score would be comprised of evidence of student academic growth. In order to satisfy the evaluation component for each teacher, the Ohio Department of Education created Student Learning Objectives (SLOs). SLOs allow each teacher to develop and administer assessments in order to establish an academic growth target for their students and then determine their progress toward that target over the course of a school year. SLOs are used to calculate student growth for purposes of scoring teacher evaluations.
>
> The teacher was required to utilize the assessment (test) indicated in his or her SLO as a pre-test in order to determine the student's knowledge at the beginning of the school year before the subject matter was taught. Then, in April, the teacher was required to administer the assessment again in order to determine the student's progress in the subject matter over the course of the school year. The Ohio Department of Education established a template for teachers to use when creating their SLOs. The 2013-2014 school year was the first year that

teachers in Jefferson Township were to be evaluated under the OTES model, and the first year that the teachers would be required to create SLOs. In order to insure compliance with the Ohio Department of Education's mandates, the Board created the Jefferson Township Local School District SLO Committee.

On September 30, 2013, Belluardo attended a six-hour training session regarding the OTES model and the creation of SLOs. Thereafter, Belluardo decided to utilize the SDQA in her SLO in order to determine the extent of her students' vocabulary and reading level at the beginning of the school year and at the end of the school year. Specifically, Belluardo's approved SLO provided that she would administer the SDQA at the beginning of the year in order to document each student's baseline reading level. The SLO also provided that Belluardo would administer the SDQA once more at the end of the year in order to determine how far each of her students' reading levels had progressed.

The record establishes that Belluardo created two SLOs, one for her seventh grade language arts class and one for her special needs students in the English resource room. Belluardo had approximately five special needs students in her seventh grade language arts class, and all of the students in the English resource room were classified as special needs. Belluardo's SLOs were approved by the SLO Committee on November 21, 2013. Both of Belluardo's SLOs used the SDQA as the pre- and post-assessment. The approved SLOs for Belluardo included the pre-test SDQA reading scores for her students in her language arts class and those students in her English resource room.

The SDQA is a nationally recognized test that is used to assess a student's reading level at a specific point in time. The actual test provides the teacher with brief instructions on how to implement it. Significantly, the words on the test are standardized and do not change. Simply put, the words on the pre-test are the exact same words that are on the student's post-test at the end of the year. It is undisputed that Belluardo had a great deal of experience regarding how to administer the SDQA. Belluardo acknowledged that she was aware that she could not provide her students with the words prior to administering the test.

On April 11, 2014, Belluardo submitted her post-test results to the SLO Committee. Upon reviewing her final submission, the SLO committee immediately became concerned regarding the significant advancement in the reading levels of several of her students. Specifically, several special needs students in Belluardo's resource room were reported as exhibiting four to five school years of growth in their reading ability in only six months. * * * The SLO Committee concluded that the results were invalid and contacted the state SLO support team for advice on how to handle the situation.

On the morning of May 9, 2014, Belluardo met with Kimberly Heiligenberg, another volunteer teacher on the SLO Committee, and reported that she had turned over her student assessments to Blairwood Principal Walter Sledge. Belluardo further stated that she could not locate the assessment of one of the students. Heiligenberg testified that during the meeting, Belluardo admitted that she had given her students word lists directly from the SDQA to study over winter and spring breaks. Later that same day, Belluardo met with the SLO Committee including Principal Sledge. The committee informed Belluardo that it was very skeptical regarding her students' significant reading level advancement. Belluardo again acknowledged that she had provided her students with a list of words from the SDQA to study over winter and spring breaks. When asked why she gave the students the list of words, Belluardo stated that she did not think it was prohibited.

During the May 9, 2014, meeting, the SLO Committee provided Belluardo with an agreement which states as follows:

> Per our conversation regarding the invalid data on the finalized copy of the SLO for Mrs. Belluardo, as a committee we decided that the rating for Mrs. Belluardo will consist of Shared Attribution. This was after several phone

> calls to the SLO representative for our region. As a committee we met with Mrs. Belluardo and explained the situation after comparing her results to practice OAA[] scores. Upon discussion we learned that Mrs. Belluardo practiced the results of the standardized test (San Diego quick reading assessment) specifically by providing a list of tested words to the students, which provided an advantage to the test results.

Hearing Exhibit 18. Although she would later claim that she did so under duress, Belluardo signed the agreement. Principal Sledge forwarded the signed agreement to School Superintendent Robert Gates. Dr. Gates directed Principal Sledge to conduct an investigation into whether Belluardo had committed academic fraud by providing the list of words to her students, thereby artificially inflating their scores on the SDQA. Belluardo went on sick leave beginning the following Monday of school.

While she was on sick leave, Belluardo submitted a partial retraction of her signature on the May 9, 2014, agreement. In her submission, Belluardo stated that she wanted to retract the words "invalid data" and "standardized test" from the agreement. Significantly, Belluardo did not retract the statement that she had practiced the results of the SDQA with her students by providing them a list of the tested words to study.

On May 19, 2014, Dr. Gates suspended Belluardo's teaching contract due to the allegations and evidence of academic fraud. On May 19, 2014, Belluardo was provided the opportunity to challenge her suspension in a meeting with Dr. Gates and her union representative. Dr. Gates testified that during the meeting, Belluardo acknowledged that she had provided her list of the words used in the SDQA to her students for them to study. Dr. Gates, therefore, recommended to the Board that Belluardo's teaching contract be terminated.

After learning of Dr. Gates recommendation, Belluardo requested a hearing before an impartial referee pursuant to R.C. 3319.16. The hearing was subsequently held on September 22, 23, and 25, 2014. During the hearing, Belluardo testified that she never provided her students with a list of words from the SDQA. Rather, Belluardo testified that she typed all of the words from the SDQA list onto a large "Word" document, printed the finished document, and cut out only the word(s) that a student missed during the test. Belluardo testified that she would then place the strips of paper with the missed words into a plastic baggie with some candy and give the baggies to her students for them to take home and study. Belluardo acknowledged that she had never told the SLO Committee about the plastic baggies prior to the hearing.

During the hearing, Belluardo testified that she practiced the SDQA with her students on two additional occasions between the pre-test and the post-test. In fact, Belluardo testified that she administered the SDQA a total of four times to all of her students. Belluardo testified that she was unaware the she could not administer the test an additional two times. Belluardo, however, testified that she *was* aware that the more times she showed her students the SDQA, the more likely it would be that they would memorize the words and do better on the test.

Evidence was also adduced at the hearing that Belluardo made several mistakes when scoring and recording the students' results on the SDQA. Belluardo testified that she recorded some students as having higher scores than those which they should have received. Belluardo recorded some students as having lower scores than they actually should have received. The evidence established that one student who she admitted "could barely read at all" was incorrectly recorded by her as reading at a second grade level at the beginning of the year. Six months later, Belluardo recorded the same student as being able to read at a third grade level. Belluardo further testified that she raised one student's score on the SDQA because that student "had self-esteem issues."

> In her English resource room class, every student was on an IEP due to some type of learning disability. Nevertheless, the evidence established that by virtue of their score on the post-test SDQA administered by Belluardo, every student in that class met his or her growth target regarding their reading level. Notably, with the exception of three students in the resource room class, the students exceeded their reading level growth target for a full academic year. Two students advanced five grade levels in reading in only six months. The evidence established that another student in the resource room who required a great deal of accommodation for his learning disabilities, advanced from the first grade to a fifth grade reading level in only six months.
>
> In a decision issued on December 3, 2014, the impartial referee found that the Board had failed to establish that Belluardo committed academic fraud regarding her implementation and scoring of the SDQA portion of her SLO. Accordingly, the referee recommended against terminating Belluardo's teaching contract. The Board convened on December 8, 2014, and rejected the referee's recommendation, concluding that his findings were manifestly against the greater weight of the evidence. Finding that there was "good and just cause" to terminate Belluardo's teaching contract, the Board specifically noted evidence adduced at the hearing which the referee failed to address and/or consider.
>
> On January 5, 2015, Belluardo appealed the Board's decision to the Montgomery County Court of Common Pleas pursuant to R.C. 3319.16. In a decision issued on July 10, 2015, the trial court denied Belluardo's administrative appeal and affirmed the Board's decision terminating her teaching contract. The trial court essentially concluded that Belluardo's manner of administration of the SDQA to measure her students' growth in word comprehension and reading ability constituted good and just cause for Belluardo's termination as her conduct led to the students not being properly assessed and taught. This conduct also influenced her evaluation as a teacher.

Routson-Gim-Belluardo v. Jefferson Twp. Local School Dist. Bd. of Edn., 2d Dist. Montgomery No. 26789, 2016-Ohio-1265, ¶¶ 1-19. The Second District Court of Appeals ultimately affirmed the trial court's decision upholding the Board's termination of Appellant's teaching contract. *Id.* at ¶ 31. The Court notes that Appellant's administrative appeal of the decision of the Jefferson Township Local School District Board of Ohio is a separate and distinct appeal from the matter sub judice.

In the present matter, the Ohio State Board of Education (hereinafter "State Board") conducted an investigation of Appellant's conduct based upon her termination from the Jefferson Township Local School District. *See Appellee's Answer Br. and Objections* at 7. Based upon its investigation, the State Board notified Appellant that she was being charged with violating R.C. 3319.31(B)(1), which authorizes the State Board to revoke an educator's license where the educator is found to have engaged in "conduct that is unbecoming to the * * * person's position." *Appellant's Br. Merits* at 1; *see also* R.C. 3319.31(B). The State Board specifically referenced two instances of conduct that were deemed to be unbecoming to Appellant's profession: (1) that Appellant inappropriately administered a Student Learning Objective (hereinafter "SLO") test to her seventh grade students by giving the students an advantage on the SLO test by providing them

with the word lists in advance of the test and/or practiced the test with the students; and (2) that Appellant falsified a final SLO report/score for a student when the student had taken only the initial SLO test and not the final SLO test.[1] *Id.* at 1-2. A hearing was held before Hearing Officer Marcie M. Scholl (hereinafter "Hearing Officer") on August 25 and August 26, 2015. *Id.* at 2; *see also Record* at Admin Appeal A, Bates Stamp 1.[2]

Subsequently, on December 17, 2015, the Hearing Officer submitted her Report and Recommendation, wherein she found that "the Department proved that Ms. Belluardo engaged in conduct unbecoming an educator when she gave words to her students to study prior to being tested on some of those same words on the SLO test she administered to her students. Her actions in doing so support a revocation of her current license." *See Record* at Admin Appeal O p. 20, Bates Stamp 468. However, the Hearing Office found that the State Board failed to prove the second count of conduct unbecoming, as the State Board failed to demonstrate that Appellant falsified a final SLO score for the student in question. *Id.* The Hearing Officer ultimately recommended that "Gloria J. Routson-Gim-Belluardo's five-year professional education of the handicapped (K-12) teaching license, issued in 2014, be revoked pursuant to section 3319.31(B)(1) of the Ohio Revised Code and that pursuant to administrative rule 3301-73-22(A)(2)(a) of the Ohio Administrative Code, Ms. Belluardo be ineligible to apply for a license for a period of two (2) years prospective from the date of the Board's resolution[.]" *Id.* at p. 22-23, Bates Stamp 470-471. The Hearing Officer further recommended that Appellant attend and complete twelve (12) hours of training on the administration of student assessments. *Id.* at p. 23, Bates Stamp 471. Thereafter, Appellant submitted her *Objections of Gloria Routson-Gim-Belluardo to Hearing Officer's Report and Recommendation* on December 31, 2015. *See Record* at Admin Appeal Q, Bates Stamp 475-490. On February 8, 2016, during the State Board's monthly meeting, the State Board voted to adopt the Report and Recommendation of the Hearing Officer. *See Recors* at Admin Appeal R p. 33-35, Bates Stamp 523-525. On February 9, 2016, the State Board issued its

[1] In its *Appellee Ohio Department of Education's Answer Brief and Objections to Motion for Stay*, the Appellee states that "[w]hile there were two counts against [Appellant], the State Board's discipline of [Appellant] is based solely on what was alleged in Count 1. Count 2 is irrelevant to these proceedings." *See Appelle's Br. and Objections* at 9.

[2] As noted by the Appellee, "Admin Appeal" refers to separate documents (including transcripts) filed with the Certification of the Record of Administrative Proceedings. *See Appelle's Br. and Objections* at 2. For example, "Admin Appeal A" is the Hearing Officer's First Pre-Hearing Entry, whereas Admin Appeal "H" and "I" are the transcripts of the hearing that was held on August 25-August 26, 2015. For further clarification, see pages 1-3 of the *Record* filed on March 16, 2016 (index of all filings). The Court will also include the Bates stamp number of each referenced document, which is located on the bottom right corner of each page contained in the *Record*.

Resolution, formally adopting the Hearing Officer's Report and Recommendation. *See Record* at Admin Appeal S, Bates Stamp 533-534. In its Resolution, the State Board formally revoked Appellant's teaching license and found her to be ineligible to reapply for her license until February 9, 2018, and that prior to reapplication she must complete at least twelve (12) hours of training in the administration of student assessments. *Id.* Appellant timely appealed the State Board's Resolution with the filing of her *Notice of Appeal* to this Court on March 7, 2016. *See* Docket.

A. *Appellant's Brief on the Merits*

In her *Appellant's Brief on the Merits*, Appellant first cites to R.C. 119.12, which sets forth the standard of review of this Court in reviewing an administrative appeal. *Appellant's Br. Merits* at 11. In her first argument, Appellant asserts that the State Board's Resolution is not supported by reliable, probative, and substantial evidence and is not in accordance with the law, as she did not engage in conduct unbecoming an educator when she administered the SLO test to her students. *Id.* Appellant contends that the State Board may revoke a teacher's license where the teacher has engaged in conduct that is unbecoming to the teaching profession. *Id.* at 12, quoting R.C. 3319.31(B)(1). However, Appellant contends that "[w]hile not explicitly expressed in Ohio Revised Code § 3319.31(B)(1), several Ohio appellate courts have determined that when evaluating when conduct is 'unbecoming,' the Board must show some nexus between the conduct that the individual is accused of and the individual's performance as a teacher." *Id.*, citing *Freisthler v. State Bd. of Edn.*, 3d Dist. Allen No. 1-02-36, 2002-Ohio-4941, ¶ 20. Appellant cites to several appellate cases where courts have found an educator's conduct to be "unbecoming" where the conduct "includes harm to a student, inappropriate materials on and/or use of a school computer, inappropriate behavior with colleagues, and forging and falsifying documents related to licensing and education." *Id.* at 12-13, citing *Kellough v. Ohio State Bd. of Edn.*, 10th Dist. Franklin No. 10AP-419, 2011-Ohio-431, ¶ 22; *Williams v. Ohio Dept. of Edn.*, 4th Dist. Jackson No. 10CA17, 2011-Ohio-6615, ¶¶ 3, 8-9; *Haynam v. Ohio State Bd. of Edn.*, 6th Dist. Lucas No. L-11-1100, 2011-Ohio-6499, ¶¶ 4-6. Appellant argues that her conduct did not rise to the level of conduct unbecoming to the teaching profession under R.C. 3319.31(B)(1), and cites to specific portions of the record to support her proposition that she was "essentially put in a position by the District's SLO committee to fail when she was required to administer an SLO test that was contrary to the Department's

recommendations for SLO testing" and that the District "failed to follow ODE recommendations in the creation of its SLO committee and SLO approval and administration process," including:

- Contrary to ODE recommendations, the District *neither* asked the local ESC to review the SLOs, *nor* had content experts or assessment experts review the SLOs. (Tr. at 116). Instead of following the recommendations of ODE, the District's SLO committee, the individuals who reviewed and approved teacher SLOs, was made up of Principal Walter Sledge, Sandra Santos (a physical education teacher), and Kim Heiligenberg (a math teacher), none of whom were content experts or assessment experts in special education. (Tr. at 123).

- Ms. Routson-Gim-Belluardo sought out assistance for developing her SLO but she received none. Ms. Routson-Gim-Belluardo was referred to Shannon Cox, Executive Director of Instructional Services at Montgomery County Educational Service Center, but Ms. Cox was unable to provide assistance. (Exh. 18 at 109-111; 614-616). Ms. Routson-Gim-Belluardo also reached out to a district supervisor, Pay Hoyle, who was also unable to assist. (Exh. 18, at 617).

- On October 27, 2013 Ms. Routson-Gim-Belluardo submitted a draft SLO to Principal Sledge which was not approved. (Tr. 238; Exh. 18 at Exh. Q and Exh. R). The draft outlined several assessments to be used for the SLO including the San Diego Quick Assessment, fluency, and comprehension checks, and the OAA and districtwide assessments just as the ESC trainers had recommended. (Tr. 238; Exh. 18 at Exh. Q).

- Contrary to ODE recommendations, District SLO committee member, Ms. Heiligenberg told Ms. Routson-Gim-Belluardo that she could not use multiple assessments and that she should only use the San Diego Quick Assessment. (Tr. at 240-241). Therefore, at the direction of the District's SLO committee, the reading comprehension and fluency components of Ms. Routson-Gim-Belluardo's SLO were removed.

- Contrary to ODE recommendations, District SLO committee member Ms. Heiligenberg testified that when the SLO committee approved Ms. Routson-Gim-Belluardo's SLO it was understood that it contained the San Diego Quick Assessment as *both* the pre-test assessment and final assessment, and it was understood that the words on the San Diego Quick Assessment *never* change. (Tr. at 154).

- Contrary to ODE's recommendations, there was no mid-year review of the SLOs. (Tr. at 244).

- For Ms. Routson-Gim-Belluardo's special needs students on IEPs, they would receive the San Diego Quick Assessment twice each year as part of the SLO and an additional two times as part of the IEP quarterly reports. (Tr. 231-232).

Id. at 13-15. Appellant asserts that the District's conduct put her in a position where it was impossible for her to properly administer the SLO test, and she argues that the State Board's Resolution is not supported by probative, reliable, and substantial evidence "because the facts do not support the conclusion that the invalid results on [Appellant's] SLO assessment were due to her actions, but rather were due to the fact that the

District created a system of SLO review, approval, and administration that was contrary to ODE recommendations." *Id.* at 16.

In her second argument, Appellant contends that the State Board's resolution is not supported by probative, reliable, and substantial evidence as she did not intend to give her students an advantage on the SLO test, and therefore she did not engage in conduct that was unbecoming to the teaching profession. *Appellant's Br. Merits* at 16-17. Appellant maintains that while she did cut out the words that her students missed and placed them in bags with pieces of candy so that her students could study those words over their winter and spring breaks, these actions were "not done to try and give the students any advantage or improve her evaluation score, but was done so that the students with IEPs could learn the words they missed." *Id.* at 17. Appellant asserts that this practice was a common technique that she utilized to help her IEP students. *Id.* Appellant argues that the Hearing Officer found that the State Board "did not prove that [Appellant] intended to send the words home to improve her own evaluation score." *Id.*, quoting *Record* at Admin Appeal O p. 22, Bates Stamp 470. Appellant argues that such conduct does not rise to the level of conduct unbecoming to the teaching profession, and further argues that there is no nexus between her conduct and her performance as a teacher. *Id.* Therefore, Appellant asserts that the Board's Resolution should be reversed, as it is not supported by probative, reliable, and substantial evidence. *Id.* at 18.

In its *Appellee Ohio Department of Education's Answer Brief and Objections to Motion for Stay* (hereinafter "Appellee's Response Brief"), Appellee initially discusses the Court's limited standard of review and avows that the Court must not substitute its judgment for that of the administrative agency, "regardless of whether it may have come to a different conclusion." *Appellee's Resp. Br.* at 10, citing *In re Watkins*, 2d Dist. Montgomery No. 17723, 2000 Ohio App. LEXIS 551, 4 (Feb. 18, 2000). In its first argument, Appellee contends that Appellant engaged in conduct unbecoming an educator when she gave her students the answers to the SLO test prior to administering the test. *Id.* With respect to Appellant's argument that the State Board failed to show that there was a nexus between her conduct and her performance as an educator, Appellee argues that the Second District Court of Appeals has specifically held that it is "not a nexus district and has declined to adopt the nexus rule." *Id.* at 11, quoting *Robinson v. Ohio Dept. of Edn.*, 2012-Ohio-1982, 971 N.E.2d 977, ¶ 38 (2d Dist.). Appellee further argues that "even if there were a nexus requirement, Belluardo's conduct took place at school, during school hours, and involved giving students a test. There is

clearly a nexus." *Id.* Regarding Appellant's recitation of case law regarding specific instances of conduct unbecoming to the teaching profession and her argument that her level of conduct did not rise to the particular level of those cases, Appellee contends that "[j]ust because Belluardo's misconduct is not a[s] severe as others misconduct, does not mean that she had done nothing wrong." *Id.* Appellee further argues as follows:

> O.A.C. 3301-73-21 provides several factors for the State Board to consider when deciding if an educator engaged in conduct unbecoming. The Board shall consider, but is not limited to considering:
>
> - if the misconduct involved minors;
> - if the misconduct involved students;
> - if the misconduct involved academic fraud; and
> - if the educator made false or misleading statements in a matter pertaining to an educational matter; and
> - if the misconduct negatively reflects upon the teaching profession.
>
> Here, Belluardo's seventh grade students were both minors and school children. O.A.C. 3301-73-21(A)(1)&(2). The misconduct involved academic fraud because Belluardo provided the students the answers to the SLO test before administering it. There was testimony from Ms. Evenridge-Frey explaining that this changed the nature of the SDQA test from a decoding test to a memorization test. (Admin. Appeal H at 203.) Testimony from Belluardo admitted that providing all the answers would be wrong. She failed to rationalize how providing some of the answers was better. (*Id*. at 48-49.) Here, by providing the students the answers to the test, they all "exceeded" the unrealistic expectations set for them by Belluardo. (*Id*. at 210.) However, in reality, these students were not exceeding expectations, they simply had memorized the answers to the test. By giving the students the answers before the test, Belluardo engaged in academic fraud and falsely inflated her OTES evaluation.
>
> Similarly, by submitting the SLO test results to her principal and claiming her students exceeded expectations, when it reality she has provided them the answers before the test, Belluardo has made a misleading statement in an educational matter. O.A.C. 3301-73-21(A)(4).
>
> Finally, her misconduct reflects negatively on the education profession. O.A.C. 3301-73-21(A)(8). Educators are role models for their students. When Belluardo taught her students it was appropriate to study the answers before a test, she has taught them that cheating is acceptable. Further, by displaying the inability to assess students and provide appropriate growth targets Belluardo has failed to perform the most basic functions of an intervention specialist. Both of these actions reflect negatively on the education profession.
>
> It is also necessary to review the Licensure Code of Professional Conduct for Ohio Educators (the Code). The State Board of Education adopted this Code in 2008 in response to the passage of Am.Sub.H.B.190 by the 127th General Assembly. Licensure Code of Professional Conduct for Ohio Educators, http://education.ohio.gov/Topics/Teaching/Educator-Conduct/Licensure-Code-of-

> Professional-Conduct-for-Ohio-Ed (accessed April 25, 2016). It is consistent with applicable law and provides a guide for conduct in situations that have professional implications for all individuals licensed by the State Board of Education. (*Id*.)
>
> The Code has seven broad categories. Among those categories is "Accurate Reporting." (*Id*.) One of the examples enumerated in this category is, "Falsifying, intentionally misrepresenting, willfully omitting or being negligent in reporting information regarding the evaluation of students and/or personnel." Here, by providing students with the answers to the SLO test prior to administering the test, Belluardo at least has negligently misreported information from the SLO test which is used to evaluate herself and her students.
>
> For Belluardo to cite a few cases at random and then claim she did not engage in the specific misconduct in those cases fails to properly review the State Board of Education's prior declarations of what constitutes conduct unbecoming. Belluardo's actions are misconduct, and those actions have been publically proclaimed to be misconduct on the State Board of Education's website – the same website Belluaro admitted she used to learn how to make SLOs.

Id. at 12-14. Appellee thus argues that "Belluardo's choice to give her students lists of words in baggies, prior to the test, is grounds for her discipline." *Id.* at 14. Appellee next argues that Appellant mischaracterized her actions when she claims that she administered an approved test, as her approved SLO form contains "no mention of providing the students the answers of that test prior to taking it. Presumably because that is not how the test should be administered." *Id.*, citing *Record* at Admin Appeal H p. 52, Bates Stamp 70. Lastly, Appellee argues that Appellant's criticism of the district's SLO testing process is misplaced, as the district did not violate any of the rules of the Ohio Department of Education, and Appellee further argues that "[w]hile the district could have done things differently, * * * this is irrelevant. The district and the SLO committee approved the valid SLO created by Belluardo. Belluardo alone is at fault and being disciplined for providing her students the answers to that test prior to them taking the test." *Id.* at 15.

In its final argument, Appellee asserts that the Appellant's intent in providing the answers to her students is irrelevant, as the Resolution was based solely on her actions and not on her intentions, and "Belluardo gives no citation to support her assertions that the Board must prove intent – and she cannot because the Board can take action for negligence and incompetence." *Id.* at 15-16, citing R.C. 3319.31(B)(1). With respect to Appellant's references to the Hearing Officer's finding that the State Board did not prove that she intended to improve her own evaluation score, Appellee asserts that Appellant "takes the hearing officer's words out of context," and Appellee quotes verbatim from the Hearing Officer's Report and Recommendation. *Id.* at 16-17, quoting *Record* at Admin Appeal O p. 21-22, Bates Stamp 469-470. Appellee

reasserts that "[Appellant's] actions – not her intentions – were conduct unbecoming to the teaching profession. Overall, Belluardo lacked credibility, changed her story, showed incompetence at her job, and disparaged her students by calling them names." *Id.* at 17. Therefore, Appellee maintains that the State Board's Resolution is supported by reliable, probative, and substantial evidence that Appellant engaged in conduct unbecoming to an educator, and Appellee thus requests the Court affirm the State Board's Resolution. *Id.* at 18, 22.

In her *Appellant's Reply Brief*, the Appellant first argues that the State Board's Resolution is not supported by reliable, probative, and substantial evidence, as "there was no determination that student test scores improved when students were given words from the test to study or because the same test was given to students in the fall and in the spring." *Appellant's Reply Br.* at 1 (Emphasis deleted). Appellant contends that although the performance of all of her students improved in their spring SLO assessment, "the evidence was not clear that providing the IEP students with words to study specifically resulted in the improvement of the score[,]" and Appellant references the scores of two particular students who missed the same words in both the fall and spring assessments. *Id.* at 2-3.[3] Appellant argues that there was no evidence demonstrating that her students' scores improved as a result of her actions, and Appellant further argues that the improvement in her students' scores "could have resulted from the fact that the students were given the same SLO test as both the pre-assessment and final assessment as directed and approved by the District." *Id.* at 3-4. Appellant thus contends that her conduct "cannot be determined to be unbecoming of a teacher if no evidence was introduced that providing the students with words to study actually lead to them performing better than their skills may have allowed." *Id.* at 4.

Appellant next asserts that Appellee failed to demonstrate that she intended to improve her own evaluation score by giving her students the list of words prior to administering the SLO test. *Id.* at 4. Appellant argues that "[a]bsent evidence that [Appellant] benefitted by receiving a pay raise or a promotion or other form of award or remuneration by having her students score well on the SLO, [Appellee] has failed to show * * * that [Appellant's] conduct was unbecoming that of a teacher." *Id.* at 5. In her final argument, Appellant contends that Appellee referenced certain other conduct of Appellant in its *Appellee's Response*

[3] Appellant argues that although Appellee maintains that all students were given a list of words that they missed, "the evidence showed that [Appellant] only sent home missed words to her IEP students." *See Appellant's Reply Br.* at fn. 1, quoting *Record* at Admin Appeal O p. 3, Bates Stamp 451.

Brief that is unrelated to the instant matter, and Appellant argues that she was not given the notice and opportunity to address these charges:

> In the instant case, ODE argues that " . . . Bellardo lacked credibility, changed her story, showed incompetence at her job and disparaged her students by calling them names." (Brief of Appellee at p.17)[.]
>
> * * *
>
> ODE is authorized under R.C. 3319.31(B)(1) to charge a teacher with conduct that is "negligent or incompetent" . However, under R.C. 119.07, due process requires that ODE must first provide a teacher with notice of those allegations and an opportunity to present a defense. Failure to do so bars ODE from raising those allegations after the fact as a basis to impose discipline on Ms. Routson-Gim-Belluardo.
>
> ODE did not charge Ms. Routson-Gim-Belluardo with incompetence in her job, or with making disparaging comments about her students. * * *
>
> However, despite not being charged with conduct that was negligent or incompetent as it relates to allegations that Ms. Routson-Gim-Belluardo made disparaging comments about students and despite the finding that the Department failed to prove that Ms. Routson-Gim-Belluardo provided false information to the District as it related to Student 1, the Hearing Examiner in the R&R and ODE made sweeping generalized assertions that Ms. Routson-Gim-Belluardo's conduct was negligent and incompetent when she referenced students as "juvenile delinquents". ODE also makes conclusory statements about Ms. Routson-Gim-Belluardo's veracity even though Count 2 that relates to veracity was found to be unsubstantiated.
>
> ODE did not charge Ms. Routson-Gim-Belluardo with incompetent or negligence for making disparaging comments about students. Therefore, she was not provided with notice or an opportunity to defend herself on this allegation. Similarly, ODE cannot simply reference conclusory, unsubstantiated statements about Ms. Routson-Gim-Belluardo in a way to "pile on" allegations cloaked as "aggravating factors" if Ms. Routson-Gim-Belluardo was not given notice of these concerns, had no opportunity to rebut these charges, and especially so where Ms. Routson-Gim-Belluardo was actually exonerated of these charges.

Id. at 5-7. Appellant therefore argues that the State Board's Resolution is not supported by reliable, probative, and substantial evidence, and Appellant requests this Court reverse the Resolution. *Id.* at 7-8.

B. Appellant's *Motion for Stay*[4]

In her *Motion for Stay*,[5] the Appellant asserts that although administrative orders are not automatically stayed when an appeal is filed, R.C. 119.12(E) provides that "[i]f it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination

[4] Although this Court asked the parties to address the merits of the appeal in addition to Appellant's *Motion for Stay* in their respective briefs, for purposes of clarity, the Court will address these arguments separately.

[5] In her *Motion for Stay*, Appellant addressed the merits of her administrative appeal and restated the arguments contained in her *Appellant's Brief on the Merits* and discussed above. *See Mot. Stay* at 1-11; *see also Appellant's Br. Merits* at 1-10. As these arguments have been addressed above, the Court will not restate these arguments.

of the appeal, the court may grant a suspension and fix its terms." *Mot. for Stay* at 11-12. Appellant avers that the Court may consider several factors in determining whether it is appropriate to stay an administrative order, including: "(1) whether appellant has shown a strong or substantial likelihood or probability of success on the merits; (2) whether appellant has shown that [she] will suffer irreparable injury; (3) whether the issuance of a stay will cause harm to others; and (4) whether the public interest would be served by granting a stay." *Id.* at 12, quoting *Bob Krihwan Pontiac-GMC Truck, Inc. v. General Motors Corp.*, 141 Ohio App.3d 777, 783, 753 N.E.2d 864 (10th Dist. 2001).

With respect to the first factor, Appellant argues that she has a substantial likelihood to succeed on the merits of her appeal, as the State Board's Resolution is "not supported by reliable, probative, and substantial evidence, and was not rendered in accordance with the law." *Id.* Appellant refers to Ohio Adm. Code 3301-73-21(A), which lists the factors that the Court may conduct in evaluating whether conduct is unbecoming under R.C. 3391.31(B)(1), and Appellant refers to several appellate cases cited in her *Appellant's Brief on the Merits* wherein the courts held that certain conduct constituted conduct unbecoming to the teaching profession. *Id.* at 13-14, citing *Kellough v. Ohio State Bd. of Edn.*, 10th Dist. Franklin No. 10AP-419, 2011-Ohio-431, ¶ 22 (conduct deemed to be unbecoming where a teacher inappropriately supervised students and a student sustained an injury as a result); *Williams v. Ohio Dept. of Edn.*, 4th Dist. Jackson No. 10CA17, 2011-Ohio-6615, ¶¶ 3, 8-9 (conduct deemed to be unbecoming where a teacher sent and accessed inappropriate materials on school computer, misused time, and engaged in inappropriate interactions with parents and teachers); *Haynam v. Ohio State Bd. of Edn.*, 6th Dist. Lucas No. L-11-1100, 2011-Ohio-6499, ¶¶ 4-6 (conduct deemed to be unbecoming where the teacher forged a teaching license, falsified background and academic information, and forged university official's signature); *Contini v. Ohio State Bd. of Edn.*, 5th Dist. Licking No. 2007CA0136, 2008-Ohio-5710, ¶ 3 (conduct deemed to be unbecoming where teacher attended a school dance smelling of alcohol and "engaged in inappropriate physical contact with a female student"). Appellant additionally cites to several portions of the hearing transcript and restates her argument that the District placed her in a position to fail with respect to her administration of the SLO test. *Id.* at 15-18. Appellant argues that it cannot be proven whether her students' high scores were attributable to her actions in giving the words to her students to study over their breaks, or whether the high scores were due to the fact that the same test was administered several times throughout the

year. *Id.* at 18. Appellant argues that her conduct does not rise to the level of conduct unbecoming to the teaching profession, and further argues that the State Board failed to prove that she intended to improve her evaluation score by sending the words home with her students. *Id.* Therefore, Appellant argues that the State Board's Resolution is not supported by probative, reliable, and substantial evidence, and she is therefore likely to succeed on the merits of her appeal. *Id.*

With respect to the remaining factors as stated in *Bob Krihwan Pontiac-GMC Truck, Inc. v. General Motors Corp.*, Appellant asserts that she will suffer irreparable injury if the requested stay is not granted, as her license has been revoked and she "will suffer the irreparable loss of income, professional status and reputation." *Id.* at 19. Appellant argues that the denial of her requested stay would effectively render her appeal moot, given that "the appellate process is generally one and a half years" and her license was revoked for a two-year period beginning on February 9, 2016. *Id.* Regarding the third factor, Appellant argues that a stay will not harm others, as her conduct "did not result in any student's physical injury, inappropriate sexual behavior, or any other type of crime." *Id.* Lastly, Appellant asserts that the public interest is served by granting her requested stay, as she is "an accomplished teacher and educator." *Id.* Thus, Appellant requests the Court grant her requested stay of the State Board's Resolution pending appeal. *Id.* at 20.

In its *Appellee's Response Brief*, Appellee initially contends that the Court may stay an administrative order pursuant to R.C. 119.12(E), and Appellee lists the factors that the Court may consider in its determination of whether to stay the administrative order pending appeal. *Appellee's Resp. Br.* at 18-19, quoting *Bob Krihwan Pontiac-GMC Truck, Inc. v. General Motors Corp.*, 141 Ohio App.3d 777, 783, 753 N.E.2d 864 (10th Dist. 2001). With respect to the first factor, Appellee argues that Appellant does not have a strong or substantial likelihood of success on the merits of her administrative appeal, as the State Board's Resolution is supported by reliable, probative, and substantial evidence and is in accordance with the law. *Id.* at 19. Appellee summarizes the testimony of Appellant and other witnesses who appeared at the hearing, and asserts that Appellant admitted that she provided her students with the words prior to taking the exam. *Id.* at 19-20. Appellee argues that "Belluardo tries to obscure the issue by giving a detailed analysis of the SLO creation process. However, at issue is whether or not Belluardo cheated on her SLO evaluation. Belluardo has admitted she did provide the students with answers prior to taking the test. * * * It is axiomatic that you cannot give students the answers to a test before they take the test." *Id.* at 20. Appellee therefore argues that

based upon the evidence, Appellant is not likely to succeed on the merits of her administrative appeal, and therefore the first factor of the *Krihwan* test is not met. *Id.*

Appellee next argues that Appellant will not suffer irreparable harm if her stay is not granted. *Id.* at 20-21. Appellant contends that "Belluardo claims that she is now unable to find employment in the education field and has suffered loss of income, professional status and reputation. There are precisely the types of consequences that occur from a license revocation. * * * Belluardo must show some type of unusual hardship and she has not done this." *Id.* at 20-21. With respect to the third *Krihwan* factor, Appellee asserts that the requested stay will cause harm to others. *Id.* at 21.

> Belluardo has undermined the evaluation system for Ohio educators. While this may seem minor to those outside the profession, it is in fact critical that teachers administer these tests with honesty and according to the rules. These evaluations show which teachers need to improve so that their students get the best education. Belluardo has lied to her students by making them believe they understand material they do not. She has acted as a poor role model and taught students it is okay to cheat. She has caused harm. The fact that she has made no effort to obtain the training required by the State Board further shows that she has learned nothing from what has happened, and if she were allowed to return to a classroom she would repeat her past mistakes and further harm her students.

Id. With respect to the final *Krihwan* factor, Appellee argues that the public interest is not served by granting Appellant's requested stay, as "[t]he only interest served by granting the stay is Belluardo's – certainly not the public's interest." *Id.* at 22. Appellee therefore requests the Court overrule Appellant's *Motion for Stay*. *Id.*

II. LAW AND ANALYSIS

The procedure and standard of review of administrative appeals of agency orders is governed by R.C. 119.12(M), which provides as follows:

> The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

Thus, when reviewing an order of an administrative agency, the Court of Common Pleas "acts in a limited appellate capacity." *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Employment Relations Bd.*, 63 Ohio St.3d 339, 343, 587 N.E.2d 835 (1992). The Ohio Supreme Court further explained the standard of review:

> [T]he Court of Common Pleas must give due deference to the administrative resolution of evidentiary conflicts. For example, when the evidence before the court consists of conflicting testimony of approximately equal weight, the court should defer to the determination of the administrative body, which, as the fact-finder, had the opportunity to observe the demeanor of the witnesses and weigh their credibility. However, the findings of the agency are by no means conclusive.
>
> Where the court, in its appraisal of the evidence, determines that there exist legally significant reasons for discrediting certain evidence relied upon by the administrative body, and necessary to its determination, the court may reverse, vacate or modify the administrative order.

Univ. of Cincinnati v. Conrad, 63 Ohio St.2d 108, 111, 407 N.E.2d 1265 (1980). The Ohio Supreme Court has further defined what constitutes reliable, probative, and substantial evidence for purposes of R.C. 119.12: "(1) 'Reliable' evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) 'Probative' evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) 'Substantial' evidence is evidence with some weight; it must have importance and value." *Bartchy v. State Bd. of Educ.*, 120 Ohio St.3d 205, 2008-Ohio-4826, 897 N.E. 2d 1096, ¶ 39 (citation omitted).

Pursuant to R.C. 3319.31(B)(1), the State Board of Education may revoke an educator's license where the educator is found to have "engage[ed] in an immoral act, incompetence, negligence, or conduct that is unbecoming to the * * * persons' position[.]" The Ohio Administrative Code lists the factors that the State Board may consider in evaluating whether conduct can be deemed "conduct unbecoming," and the Administrative Code further provides a list of mitigating and aggravating factors:

> **(A)** The state board of education shall consider, but not be limited to, the following factors when evaluating conduct unbecoming under division (B)(1) of section 3319.31 of the Revised Code:
>
> **(1)** Crimes or misconduct involving minors;
>
> **(2)** Crimes or misconduct involving school children;
>
> **(3)** Crimes or misconduct involving academic fraud;
>
> **(4)** Making, or causing to make, any false or misleading statement, or concealing a material fact in a matter pertaining to facts concerning qualifications for professional practice and other educational matters, or providing false, inaccurate, or incomplete information about criminal history or prior disciplinary actions by the state board or another professional licensing board or entity;
>
> **(5)** Crimes or misconduct involving the school community, school funds, or school equipment/property, which may include, but are not limited to, unresolved findings for recovery by the state auditor;

(6) A plea of guilty to, or finding of guilt, of a conviction, granting of treatment in lieu of conviction, or a pre-trial diversion program to any offense in violation of federal, state, or local laws and/or statutes regarding criminal activity;

(7) A violation of the terms and conditions of a consent agreement; and

(8) Any other crimes or misconduct that negatively reflect upon the teaching profession, including sanctions and/or disciplinary action by another state educational entity or another professional licensing board or entity.

(B) If the state board finds that a person has engaged in conduct unbecoming as described in paragraph (A) of this rule, then the state board may take the following mitigating and aggravating factors, as applicable and appropriate, into consideration when determining a final action under division (B)(1) of section 3319.31 of the Revised Code:

(1) The nature and seriousness of the crime or misconduct;

(2) The extent of the person's past criminal activity or misconduct;

(3) The age of the person when the crime or misconduct was committed;

(4) The amount of time that has elapsed since the person's last criminal activity or misconduct;

(5) The conduct and work activity of the person before and after the criminal activity or misconduct;

(6) Whether the educator has completed the terms of his/her probation or deferred adjudication;

(7) Evidence of rehabilitation and evidence of whether the educator is amenable to rehabilitation as defined by paragraph (E) of rule 3301-20-01 of the Administrative Code;

(8) Whether the applicant is eligible for licensure pursuant to rule 3301-20-01 of the Administrative Code;

(9) Whether the person fully disclosed the crime or misconduct to the state board or the employing school district;

(10) Whether licensure will negatively impact the health, safety, or welfare of the school community and/or statewide education community;

(11) Whether the educator has previously been disciplined by the state board of education or any other licensing entity, including, but not limited to, out-of-state licensing entities;

(12) Whether the school district or educational entity imposed any penalties, sanctions, or other conditions addressing the educator's professional conduct;

(13) Whether the educator has been employed in any capacity within a school district or educational entity after having a license, certificate, or permit revoked; and

(14) Any other relevant factor.

Ohio Adm. Code 3301-73-21.

The State Board's Resolution of February 9, 2016 was based upon the Hearing Officer's Report and Recommendation issued on December 17, 2015. *See Record* at Admin Appeal O p. 1-23, Bates Stamp 449-471. During the hearing before the Hearing Officer, sworn testimony was given by: Student 1, Richard Gates (superintendent of the Jefferson Township Local School District); Walter Sledge (principal of the Jefferson Township Local School District), Kimberly Heiligenberg (math teacher at Jefferson Township High School); Carolyn Everidge-Frey (director of the Office of Educator Effectiveness with the Ohio Department of Education); and Appellant, and the Hearing Officer reviewed several exhibits presented by both Appellant and the State Board. *Id.* at 2, Bates Stamp 450. In her Report and Recommendation, the Hearing Officer recounted and summarized the relevant portions of the sworn testimony. *Id.* at 3-14, Bates Stamp 451-462. Upon review, the Court finds this summary to be an accurate representation of the testimony given and evidence presented during the hearing. *See Record* at Admin Appeal H p. 16-161, Bates Stamp 34-179; *see also Record* at Admin Appeal I p. 168-288, Bates Stamp 186-306. In her Findings of Fact, the Hearing Officer determined that "[p]rior to winter and spring breaks, [Appellant] enlarged the words her students with special needs missed on the Assessment and sent those words home with them to study." *See Record* at Admin Appeal O p. 15, Bates Stamp 463. The Hearing Officer found that Appellant's special needs students were assessed on some of the same words in both the October 2013 and April 2014 assessments. *Id.* Additionally, based on the evidence presented during the hearing, the Hearing Officer found that all of Appellant's students "exceeded the expectation of one full grade level worth of academic growth or progress." *Id.* In her Conclusions of Law section, the Hearing Officer considered the factors listed in Ohio Adm. Code 3301-73-21(A) in evaluating whether Appellant's conduct constituted conduct unbecoming to her position. *Id.* at 16-17, Bates Stamp 464-465. The Hearing Officer also considered Ohio Adm. Code 3301-73-21(B), which lists the mitigating and aggravating factors that the State Board may take into consideration in determining the appropriate final action. *Id.* at 17-19, Bates Stamp 465-467. The Hearing Officer concluded that "the Department proved that Ms. Belluardo engaged in conduct unbecoming an educator when she gave words to her students to study prior to being tested on some of those same words on the SLO

test she administered to her students. Her actions in doing so support a revocation of her current license." *Id.* at 20, Bates Stamp 468. In her Rationale section, the Hearing Officer stated, verbatim, the following:

> The Department proved Gloria J. Routson-Gim-Belluardo engaged in conduct unbecoming an educator pursuant to section 3319.31(B)(1) of the Ohio Revised Code when she provided to her students words to study over winter and spring breaks and then included some of those same words on the SLO test she administered to them. All of Ms. Belluardo's students received a rating of "met or exceeded" the expectation of one full grade level worth of academic growth or progress. The Department alleged Ms. Belluardo provided the students with the words ahead of time in order to give them an advantage, thereby ultimately improving her own OTES score, since fifty (50) percent of her score depended on the scores of her students. While the Department failed to prove that was the intent of Ms. Belluardo, the Department did prove that her actions resulted in conduct unbecoming an educator.
>
> Ms. Belluardo was not forthcoming in her testimony. She contradicted herself several times about whether or not she sent home a word "list" or words with her students and she first stated the students were not tested on the words sent home, but later testified they were tested on "some" of the words sent home, She also stated at first that she sent words home with all of her students, but later contradicted herself again when she stated she sent words home with only her students on IEPs. Her lack of credibility indicated she had been caught doing something she knew she should not have and she was trying to "back pedal" to make it seem that she had done nothing wrong.
>
> The SLO test is an assessment of a student's growth throughout the year and as an Intervention Specialist for her entire teaching career, Ms. Belluardo should have been well-aware of how to assess students. She testified she was used to completing quarterly reports for her students with IEPs and that she used the same test for those quarterly reports that she used for the SLO. With multiple assessments at her disposa[l], there was no explanation given by Ms. Belluardo as to why she did not use different assessments for the quarterly reports from the one she used for the SLO. She testified she wanted to use multiple assessments on the SLO but was told by the committee that she should choose just one assessment tool. While that advice was contrary to what the Department recommends, Belluardo could have complied by choosing any other assessment other than the one her students with IEPs had already seen numerous times. She gave no explanation as to why she did not choose another assessment, but instead, offered as an excuse that she did not receive proper training in completing the SLO. However, the trainers of SLO held the Intervention Specialists up as experts in the assessment area since those teachers assess students for their IEPs on a quarterly basis and should be quite familiar with administering and documenting assessment and growths. Also, it is just common sense that in order to obtain a true reflection of a student's growth over a year, the student should not be given the exact words on a test to study prior to the test.
>
> Ms. Belluardo either did not understand how to administer a SLO or she understood and was trying to improve her own scores. Regardless of the reason, the fact that Ms. Belluardo provided what amounted to be the answers to a test to her students points out that she does not have the best interest of her students at the forefront. As a teacher of students with special needs for approximately fifteen (15) years, it was surprising to hear her describe some of her past students as "juvenile delinquents". This does not show the respect to her students that they deserve, or that she as a teacher, should be role modeling. If she truly did not understand the consequences of what she did, then she is in need of additional training to ensure that she understands how to provide her students with the best education she can give them. If, on the other hand, she knew exactly what she was doing and had the goal of improving her own score, then she needs time off to re-evaluate her teaching career and to reflect on her actions. While the Department recommended a five (5) year period before

> being able to reapply for her license, this Hearing Officer, in weighing Ms. Belluardo's age in five (5) years and that fact that it cannot be conclusively determined that he actions were a result of her intention to improve her own score on the OTES, a two (2) year period seems more reasonable.

Id. at 21-22, Bates Stamp 469-470.

In its Resolution, the State Board agreed with the findings of fact and conclusions of law of the Hearing Officer, and the State Board formally adopted the Resolution, which revoked Appellant's teaching license and found her to be ineligible to reapply for her license until February 9, 2018. *See Record* at Admin Appeal S, Bates Stamp 533-534. Upon review, the Court finds that the State Board's Resolution is supported by reliable, probative, and substantial evidence, and is in accordance with the law. *See* R.C. 119.12(M). Given the evidence in the record, the State Board acted reasonably in finding that Appellant's conduct was unbecoming to her profession. During the hearing, Appellant testified that she cut out the words that her students missed and placed them in baggies with candy, which were then given to her students to study over their winter and spring breaks. *See Record* at Admin Appeal H p. 21-26, Bates Stamp 39-44. Appellant further admitted that some of the words that appeared on the final SLO assessment were sent home with her students to study prior to taking the assessment. *Id.* at 29, Bates Stamp 47. Although Appellant testified that sending the entire word list home with her students would have been inappropriate, she failed to justify her actions in giving the students a partial list, and the State Board could have reasonably determined that her conduct was unbecoming to an educator. *Id.* at 31, Bates Stamp 49. Although Appellant argues that her conduct does not rise to the level of conduct unbecoming, the Court finds that the State Board is entitled to deference in its determination of "conduct unbecoming" under R.C. 3319.31(B)(1), and the Court finds the Board's interpretation of "conduct unbecoming" to be reasonable with respect to Appellant's actions. *See Orth v. State*, 10th Dist. Franklin No. 14AP-19, 2014-Ohio-5353, ¶ 17, citing *Frisch's Restaurants, Inc. v. Conrad*, 170 Ohio App.3d 578, 2007-Ohio-545, 868 N.E.2d 689, ¶ 21 (10th Dist.) ("'regardless of whether alternative interpretations more satisfactory' to a party, the reviewing court must apply 'the principle of administrative deference * * *, and consider only the reasonableness' of the agency's interpretation.").

Additionally, the Court finds unpersuasive Appellant's argument that the State Board failed to show a nexus between her conduct and her performance as a teacher. Although the Second District Court of Appeals has held that the State Board is not required to show such a nexus in order to take action with

respect to an educator's license, it is clear that Appellant was being reprimanded for activities directly related to her duties as an educator, as her conduct occurred during school hours and involved giving her students the answers to a test prior to administering the test. *See Robinson v. Ohio Dept. of Edn.*, 2012-Ohio-1982, 971 N.E.2d 977, ¶ 38 (2d Dist.). Therefore, the Court finds that a nexus existed between Appellant's conduct and her performance as a teacher.

Additionally, with respect to Appellant's arguments regarding the school district's allegedly deficient implementation of the SLO assessment tests, the Court finds that Appellant is attempting to "obscure" the issue. *See Appellee's Resp. Br.* at 20. The Court is persuaded by the Appellee's argument that "[w]hile the district could have done things differently if it had more resources, this is irrelevant. The district and the SLO committee approved the valid SLO created by Belluardo. Belluardo alone is at fault and being disciplined for providing her students the answers to the test prior to them taking the test." *Id.* at 15. The sole issue before the Board, and therefore the sole issue before the Court, was whether Appellant's conduct supported the revocation of her teaching license, and the District's SLO creation and administration processes are irrelevant to this determination. Moreover, it was clear from the testimony presented that although her SLO assessment was approved by the district, Appellant failed to comply with the proper procedures in administering the assessment, and the Court agrees with the Hearing Officer that Appellant "either did not understand how to administer a SLO or she understood and was trying to improve her own scores." *See Record* at Admin Appeal O p. 22, Bates Stamp 470. Therefore, the Court is not persuaded by the Appellant's argument that her conduct is attributable to the school district's allegedly deficient implementation of the SLO tests during the 2013-2014 academic year.

Furthermore, with respect to Appellant's argument that the State Board failed to prove that she intended to give her students an advantage on the SLO test, the Court finds this argument to be without merit. R.C. 3319.31(B)(1) provides that the State Board may revoke a person's license where the person has "[e]ngag[ed] in * * * conduct that is unbecoming to the * * * person's position," and there is no mention of the educator's intent as being relevant to this inquiry. Moreover, Appellant has not cited any statutes or case law to support the proposition that the State Board must prove an educator's intent before taking action under R.C. 3319.31(B). Although the Hearing Officer took into consideration the fact that "it cannot be conclusively determined that her actions were a result of her intention to improve her own score on the

OTES," the Hearing Officer appropriately deemed this to be a "mitigating factor" in reducing the recommended suspension from five years to two years. *See Record* at Admin Appeal O p. 22, Bates Stamp 470; *see also* Ohio Adm. Code 3301-73-21(B)(14) (in considering mitigating and aggravating factors in determining the action to take with respect to an educator's license, the State Board may consider "[a]ny other relevant factor"). Thus, the Court finds unpersuasive Appellant's argument that the State Board must prove her underlying intent, nor is the Court persuaded by Appellant's argument that the State Board must show that she directly benefitted from her actions in order for the State Board to find that her actions constitute conduct unbecoming to the education profession.

Therefore, the Court finds that it was reasonable for the State Board to conclude that Appellant's actions constituted conduct unbecoming to the teaching profession. Upon review of the entire record, the Court finds that the State Board's Resolution is supported by reliable, probative, and substantial evidence, and is in accordance with the law. Accordingly, the Court hereby affirms the February 9, 2016 Resolution of the State Board.

Lastly, with respect to Appellant's *Motion for Stay*, the Court finds that Appellant failed to demonstrate that an unusual hardship will result from the execution of the State Board's Resolution. In making its determination, the Court considered the four factors as stated in *Bob Krihwan Pontiac-GMC Truck, Inc. v. General Motors Corp.*: "(1) whether appellant has shown a strong or substantial likelihood or probability of success on the merits; (2) whether appellant has shown that [she] will suffer irreparable injury; (3) whether the issuance of a stay will cause harm to others; and (4) whether the public interest would be served by granting a stay." *Bob Krihwan Pontiac-GMC Truck, Inc. v. General Motors Corp.*, 141 Ohio App.3d 777, 783, 753 N.E.2d 864 (10th Dist. 2001). With respect to the first factor, the Court finds that Appellant has not shown a strong or substantial likelihood of success on the merits of her administrative appeal, as this Court has determined that the State Board's Resolution is supported by reliable, probative, and substantial evidence, and is in accordance with law. Additionally, the Court finds that Appellant has not shown that she will suffer irreparable injury if her requested stay is denied. Although Appellant argued that she will suffer "the irreparable loss of income, professional status, and reputation," these are the types of "inherent results" of the revocation of one's license, and therefore cannot constitute an unusual hardship. *See Osei-Bonsu v. Ohio Bd. of Nursing*, Franklin C.P. No. 14CV-06708, 2014 Ohio Misc. LEXIS 17537, 7 (Aug.

1, 2014); *see also Bob Krihwan Pontiac-GMC Truck, Inc. v. General Motors Corp.*, *supra*, at 753 ("virtually all license suspension or terminations involve some degree of 'hardship,' but only those involving 'unusual hardship' are candidates for a stay."). Lastly, the Court finds that Appellant has not demonstrated that the public interest would be served by granting her requested stay. Although Appellant argues that she is "an accomplished teacher and educator," her license was revoked by the State Board for conduct directly related to her ability and performance as an educator. Therefore, having considered Appellant's *Motion for Stay*, in addition to her *Appellant's Brief on the Merits*, the Court finds that the Appellant failed to demonstrate that an unusual hardship will result from the execution of the State Board's Resolution, and the Court accordingly overrules Appellant's *Motion for Stay*. In making this determination, the Court has given significant weight to the expertise of the State Board, as well as to the "public interest served by the proper operation of the regulatory scheme." *See Bob Krihwan Pontiac-GMC Truck, Inc. v. General Motors Corp.*, *supra*, at 782.

III. CONCLUSION

For the foregoing reasons, the Court hereby affirms the February 9, 2016 Resolution of the State Board, which revoked Appellant's teaching license for a period of two (2) years and required Appellant to complete at least twelve (12) hours of training in the administration of student assessments prior to reapplication. Additionally, the Court hereby overrules Appellant's *Motion for Stay*.

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST REASON FOR DELAY FOR PURPOSES OF CIV.R. 54. PURSUANT TO APP.R. 4. THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

To the Clerk of Courts:
Pursuant to Civ.R. 58(B), please serve the attorney for each party and each party <u>not</u> represented by counsel with Notice of Judgment and its date of entry upon the journal.

SO ORDERED:

JUDGE DENNIS J. LANGER

This document is electronically filed by using the Clerk of Courts e-Filing system. The system will post a record of the filing to the e-Filing account "Notifications" tab of the following case participants:

ELIZABETH Y COLLIS
(614) 486-3909
Attorney for Plaintiff, Gloria J Routson-Gim-Belluardo

ADAM P BESSLER
(614) 644-7250
Attorney for Defendant, Ohio Department Of Education

JULENE POWERS, Bailiff (937) 225-4055 powersj@montcourt.org

General Divison

Montgomery County Common Pleas Court

41 N. Perry Street, Dayton, Ohio 45422

Type: Decision

Case Number: 2016 CV 01264

Case Title: GLORIA J ROUTSON-GIM-BELLUARDO vs OHIO DEPARTMENT OF EDUCATION

So Ordered