

INTRODUCTION

We, the members of the Thirty-Fifth Statewide Investigating Grand Jury, having received evidence pertaining to violations of the Crimes Code occurring in Philadelphia County pursuant to Notice of Submission of Investigation Number 78, do hereby make the following findings of fact and recommendation of charges:

FINDINGS OF FACT

The Grand Jury has heard evidence concerning an investigation being conducted by the Pennsylvania Office of Attorney General (OAG) into widespread and systemic cheating on the Pennsylvania System of School Assessment (PSSA) standardized testing from 2011 and years prior at schools within the School District of Philadelphia and elsewhere in the Commonwealth. The PSSA test is a statewide standardized test required to be administered to all Pennsylvania students in grades third through eighth and eleventh. PSSA testing is required to occur during a two-week window in the spring of each school year. The purpose of the PSSA test is to measure student achievement. The PSSA test is divided into different sections, such as math and reading, and is administered by the individual schools over several days within the two-week testing period and under strict guidelines and protocols as established by the Pennsylvania Department of Education (PDE). Specifically, teachers and administrators are directed that they are not to, among other things, coach or provide feedback to students, provide answers to students, alter, influence or interfere with a test response in any way or instruct a student to do so, possess secure test materials at any time other than during the administration of the test, or return a test booklet to a student after it has been turned in. Students are scored, in each respective section of the PSSA test, in one of four categories which are, from highest to lowest: advanced, proficient, basic, or below basic.

This investigation was commenced after a referral by PDE to OAG. PDE received statistical and forensic information from Data Recognition Corporation (DRC), which produces and grades the PSSA tests for PDE. This statistical and forensic information identified multiple schools in Philadelphia and elsewhere, including Alain Locke Elementary School (Locke), with statistically improbable test results and statistically improbable answer change patterns.

Specifically, DRC determined whether a student's answer to a multiple choice question had been erased and changed. DRC provided PDE with the statewide means (i.e., averages) for the number of wrong-to-right (WR) erasures per student answer sheet, categorized by year, grade, and subject. DRC further provided PDE with individual school erasure rates for comparison to the statewide mean. DRC also calculated for each school an "outlier score" which is a numerical representation of the statistical improbability of an individual school's answer change patterns. For example, an outlier score of 10 equates to a one-in-10,000 chance that the number of WR erasures at a particular school for a particular year, grade, and subject was a natural occurrence, as opposed to aberrant behavior. Higher outlier scores would indicate an even less likely probability that a school's WR erasure rate was a natural occurrence, as indicated in the chart below:

Outlier Score	Probability that erasure patterns occurred naturally
10	1 in 10,000
20	1 in 100,000,000
30	1 in 1,000,000,000,000
40	1 in 10,000,000,000,000,000
50	1 in 100,000,000,000,000,000,000

Lolamarie Davis-O'Rourke's first year as Principal at Locke was the 2009-2010 school year. Prior to becoming Principal at Locke, Davis-O'Rourke was an Assistant Principal at Tilden Middle School. The Grand Jury has heard that, once the evidence of PSSA testing

irregularities became public between the 2011 and 2012 PSSA testing periods, the School District of Philadelphia (SDP) instituted greater monitoring of various schools suspected of PSSA testing irregularities. The Grand Jury has further heard that the Pennsylvania Office of Inspector General (OIG) conducted investigations into several of these schools, including Locke, during the spring of 2012.

DRC assigned the following outlier scores to Locke:

<u>Grade</u>	<u>Subject</u>	<u>Outlier Score</u> <u>2009</u>	<u>Outlier Score</u> <u>2010</u>	<u>Outlier Score</u> <u>2011</u>	<u>Outlier Score</u> <u>2012</u>
3	Math	3.5	11.8	7.5	0.0
3	Reading	2.4	12.8	9.4	0.7
4	Math	0.0	7.8	22.8	2.2
4	Reading	0.0	8.8	24.1	0.9
5	Math	1.4	7.2	13.2	0.0
5	Reading	0.3	4.0	4.0	1.3
6	Math	2.8	10.1	15.3	5.3
6	Reading	1.5	10.7	10.2	2.0
7	Math	0.4	4.5	27.0	3.7
7	Reading	0.8	7.6	22.2	2.4
8	Math	0.0	5.8	3.5	0.0
8	Reading	2.4	8.6	3.3	3.4

As can be seen from the above chart, all of the DRC-calculated outlier scores for the 2009 PSSA testing period are in the low single-digits. For the 2010 PSSA testing period, the first such testing period for which Davis-O'Rourke was Principal at Locke, outlier scores increased across every grade and subject, and four of the above 2010 outlier scores were greater than 10, indicating a probability of less than 1 in 10,000 that the erasure patterns for those specific grades and subjects occurred naturally. In 2011, seven of the outlier scores exceeded 10, and four of those exceeded 20, indicating a probability of less than 1 in 100,000,000 that the erasure patterns for those four specific grades and subjects occurred naturally. In 2012, the year that the SDP increased its monitoring of several schools suspected of PSSA testing irregularities

and the year that the OIG began its investigations into these schools, the outlier scores at Locke in all but one of the above grades and subjects dropped dramatically, with all outlier scores reverting back to single digits.

The Grand Jury has further heard evidence as to the change in proficiency levels at Locke:

<u>Grade</u>	<u>Subject</u>	<u>Percentage of students scoring Advanced/ Proficient 2009</u>	<u>Percentage of students scoring Advanced/ Proficient 2010</u>	<u>Percentage of students scoring Advanced/ Proficient 2011</u>	<u>Percentage of students scoring Advanced/ Proficient 2012</u>
3	Math	26.1	73.1	85.4	16.7
3	Reading	36.6	58.8	90.2	27.0
4	Math	37.8	61.6	81.1	23.3
4	Reading	24.5	59.0	73.6	14.0
5	Math	19.0	35.3	53.5	20.9
5	Reading	21.4	23.5	25.6	11.6
6	Math	39.3	62.8	57.2	27.5
6	Reading	35.7	55.8	26.2	20.0
7	Math	30.6	62.9	81.4	42.9
7	Reading	30.6	66.6	86.1	31.0
8	Math	33.3	66.7	57.7	39.0
8	Reading	48.7	82.8	53.9	68.3

The above evidence shows the percentage of students at Locke scoring advanced or proficient increasing, in most cases substantially, among every grade and subject from 2009 to 2010, the first year of Davis-O'Rourke's tenure as Principal. With the exception of 8th grade reading, the evidence further shows the percentage of students at Locke scoring advanced or proficient decreasing, in most cases substantially, among every grade and subject from 2011 to 2012, the year that more stringent monitoring measures were instituted and the OIG conducted its investigation.

B.H. was a teacher at Locke from the 2004-2005 school year through and including the 2009-2010 school year, Davis-O'Rourke's first year as Principal. B.H. testified that, prior to

Davis-O'Rourke's arrival at Locke, the PSSA test booklets and answer sheets were stored in a secure room near the library to which only the building engineer had a key. Once Davis-O'Rourke became Principal, the tests were stored in a room adjoining her office. B.H. further testified that Davis-O'Rourke would call students down after they finished sections of the PSSA test to redo certain answers that they had either already completed or left blank.

B.W. is currently employed as a teacher at Locke and started working there in the 2006-2007 school year. B.W. also testified regarding Davis-O'Rourke's change in the location for storing the PSSA test booklets and answer sheets from a secure storage closet to the room adjoining Davis-O'Rourke's office. On each day of PSSA testing, she would collect her students' test booklet and answer sheets, place each answer sheet inside its respective test booklet, and place the booklets in a crate in reverse alphabetical order. On certain days, after receiving her crate of test booklets back for the subsequent day's testing session, B.W. would observe that the booklets were out of order and/or answer sheets would have been removed from their respective test booklet. On one day after PSSA testing had ended for the day, she observed special education students inside Davis-O'Rourke's office with their PSSA test booklets open, and they were taking the test. When Davis-O'Rourke saw B.W., she came out of her office and told B.W. that she believed the school would make AYP that year.¹ B.W. further testified that multiple students told her that Davis-O'Rourke had helped them with their answers on the PSSA test.

G.R. was a teacher at Locke for the 2009-2010 school year and the 2010-2011 school year. G.R. also testified that Davis-O'Rourke stored the PSSA test booklets in the room adjoining her office. However, in 2011, an individual from outside the school had come to

¹ AYP is an acronym for "Annual Yearly Progress," a measurement used to gauge whether a school's performance on the PSSA tests is improving at a satisfactory rate.

Locke to observe PSSA testing administration for a portion of the PSSA testing window. While this person was at Locke, Davis-O'Rourke said to G.R., in the presence of this observer, that the tests were kept in a storage closet outside of her office and not in the room adjoining her office. Davis-O'Rourke contacted G.R. directly during a PSSA testing period to inquire as to the expected proficiency levels of his students and whether he felt any of his students were capable of being bumped up to a higher proficiency level. G.R. found this odd because, if a student was capable of improving his PSSA proficiency level, it would normally be addressed well before the actual administration of the PSSA test to provide the student with the necessary instruction and assistance, and not during the testing when it would be too late to improve the student's performance through honest means. On multiple occasions when G.R. would receive his students' PSSA test booklets back for a subsequent day of testing, he would notice that the booklets were out of the order in which he had placed them the day before.

H.S. was the building engineer at Locke from 1995 to 2013. H.S. testified that Davis-O'Rourke stored the PSSA tests in Room 113, the room which adjoins her office. The doorway to room 113 from the hallway was locked. Most individuals at Locke had a master key to most of the locks on the first floor of the building. However, Davis-O'Rourke had the lock to the door from the hallway to room 113 changed, so that the only two people who had a key to the hallway door of room 113, to H.S.'s knowledge, were H.S. and Davis-O'Rourke. Therefore, the only way for other individuals to gain access to room 113 was to walk through Davis-O'Rourke's office. H.S. saw Davis-O'Rourke on a few occasions in her office or in room 113 with the PSSA test booklets spread out. On another occasion, H.S. recalled seeing Davis-O'Rourke in her office with the test booklets out and with two students in the office with her.

L.P. was a teacher at Locke from the 2008-2009 school year through and including the 2011-2012 school year. L.P. testified that, on one day in 2010 after a PSSA testing window was completed for that day, students who needed extra time to finish the test were sent to the library. On this occasion, one of her students returned to her classroom and asked for a whiteboard marker. When L.P. questioned the student as to why the student needed the marker, the student indicated that Davis-O'Rourke was giving them the answers. The day following this incident, she looked at her students' answer sheets and noticed that all of their answers on a particular constructive response (i.e., essay) question were "pretty much the same and were very, very correct." The constructive responses appeared to have been erased and rewritten. There appeared to be two different variations of the correct answer on this constructive response question, and that the sentences on the various students' answers were either "exactly the same or very similar."

On one morning during PSSA testing, Davis-O'Rourke told L.P. and two other teachers that the previous day's constructive responses were wrong. Davis-O'Rourke told L.P. and the other teachers that she wanted them to have their respective students redo the previous day's constructive responses after they completed the current day's section of the test. L.P. did not do as Davis-O'Rourke instructed. Davis-O'Rourke spoke with her at a later time to inquire as to why the constructive responses had not been changed. The only way Davis-O'Rourke could have known that the constructive responses were initially wrong, and subsequently had not been changed as requested, was if she was reviewing the answers.

While conducting a leadership meeting with some of her staff, Davis-O'Rourke would direct teachers to assist students on the PSSA by directing them to go back and redo answers that were wrong. Davis-O'Rourke indicated at this meeting that she used to engage in this type of

conduct when she was a teacher, and that she would tell her teachers to engage in this conduct when she was at Tilden Middle School. Davis-O'Rourke would also suggest at these leadership meetings that the teachers stay after school and review the test booklets. Davis-O'Rourke indicated that she also engaged in this conduct while at Tilden Middle School.

Davis-O'Rourke provided L.P. and another teacher with a PSSA test booklet and asked them to complete the answers on one of the sections of a question booklet so that Davis-O'Rourke could compare with the 5th graders' tests to assess how they were performing. During PSSA testing, the tests were stored in the room adjoining Davis-O'Rourke's office but, when monitors came to Locke to observe PSSA testing, Davis-O'Rourke would move the tests to a secure closet outside of her office and directed the teachers to tell the monitors that the tests were always stored there. All teachers were required to provide Davis-O'Rourke with a list of how each of their students were expected to perform on the PSSA test (advanced, proficient, basic, or below basic), and which students were considered "bubble students," that is, students who had the potential to increase their PSSA proficiency level.

During the 2011 PSSA testing period, L.P. was out of work for two days. When she returned, her students informed her that Davis-O'Rourke had proctored the PSSA test to them while L.P. was out. Her students also indicated that Davis-O'Rourke had helped them answer the questions. In addition, Davis-O'Rourke proctored the PSSA test to the higher grades (6th through 8th), special education students, and disciplinary problem students. Davis-O'Rourke would proctor these students in her office. On one occasion, Davis-O'Rourke showed her the answer sheets of two special education students she had proctored. Davis-O'Rourke indicated to L.P. how excited she was that these students were doing so well. When L.P. saw these two answer sheets, every answer appeared to be erased, and the constructive response answers on the

reading section of the PSSA test were very well done, which L.P. knew to be inconsistent with these two special education students' abilities. One of these two special education students was a child who will hereinafter be referred to as "D.P." In one year, D.P. was transferred to a nearby school that offered an emotional support classroom. During this same year, Davis-O'Rourke had D.P. come back to Locke for PSSA testing, even though D.P. could have taken the PSSA test at his new school, and his PSSA scores would have still been attributed to Locke. However, Davis-O'Rourke arranged for D.P. to take the PSSA test at Locke so that he would have "a favorable testing environment."

D.P.'s mother testified before the Grand Jury that D.P. was indeed transferred from Locke to another school for behavioral issues in the 2010-2011 school year. One evening, before PSSA testing in the spring of 2011, Davis-O'Rourke telephoned her and requested to have D.P. come to Locke for his PSSA testing, and said that she would inform D.P.'s other school of the change.

D.P. testified before the Grand Jury. During the year that he was transferred to his new school but sent back to Locke to take the PSSA test, Davis-O'Rourke would proctor the test to him and other students on each day of the test. After he completed a particular day's multiple choice section of the test, he would turn in his answer sheet to Davis-O'Rourke. Davis-O'Rourke would write on a separate sheet of paper the numbers to the questions he got wrong and would return the test to him to redo the wrong answers. After he did so, Davis-O'Rourke would return the test to him again if the answers were still wrong. With regard to constructive response questions, Davis-O'Rourke would write an answer out on the board in front of the room for the students to copy.

The Grand Jury heard evidence that, on April 12, 2012, Phillip Roberts from OIG and attorney Justin Weber from the law firm of Pepper Hamilton interviewed Davis-O'Rourke

regarding allegations of cheating on the PSSA tests during Davis-O'Rourke's tenure as Principal at Locke. Roberts testified as to the details of that interview. Davis-O'Rourke told investigators that she became Principal of Locke on July 1, 2009. When she began her position as Principal, her supervisors evaluated her performance based on how well her students performed on the PSSA tests. Davis-O'Rourke recalled that her supervisors at the School District gave her PSSA target scores for each school year. Davis-O'Rourke initially thought that the PSSA target scores set for Locke were not possible to achieve. Davis-O'Rourke stated that there was considerable pressure from her supervisors to reach the PSSA target scores. She explained that schools within the School District were rated on a performance scale, called the School Performance Index (SPI) and that, if a school received the worst rating on the SPI scale, the teachers and principals knew that the school would close or the administration would be replaced. Davis-O'Rourke told the investigators that, while there were no positive incentives for Locke to make AYP, there were significant negative consequences if the school failed to make AYP. Davis-O'Rourke recalled that while she was Principal at Locke, Locke reached the target PSSA scores for the 2009-2010 school year as well as the 2010-2011 school year.

Investigators showed Davis-O'Rourke a chart depicting erasure data as provided by DRC. In response to the chart, Davis-O'Rourke initially told investigators that she did not know how the erasures could have occurred. Davis-O'Rourke then implied that a substitute teacher may have modified the test results. When investigators told Davis-O'Rourke that it was likely that an answer key was used to change answers from wrong to right, Davis-O'Rourke claimed that she was not familiar with the term "key." Davis-O'Rourke admitted that she did in fact know what an answer key was, but continued to deny any knowledge about how the erasures occurred. Davis-O'Rourke then attempted to explain how the erasures occurred by telling

investigators that students were taught to mark several answers on the bubble sheet, and this is what could have contributed to the high erasure rate. Investigators told Davis-O'Rourke that they did not believe that she was being forthcoming about her knowledge of the erasures. Davis-O'Rourke explained that, during PSSA testing at Locke, she had testing coordinators who helped her with the PSSA tests. She stated that her testing coordinators were C.C. in 2010, W.W. in 2011, and T.B. in 2012. Davis-O'Rourke said that she and the testing coordinators would often stay late after school during the PSSA testing period. Specifically, Davis-O'Rourke indicated that she and W.W. previously taught together at another elementary school and that she and W.W. worked very hard at Locke and would often stay very late after school together.

Davis-O'Rourke said that, during the PSSA testing in 2010, while in Davis-O'Rourke's office, W.W. would go through the test booklets to determine whether students completed the tests. Davis-O'Rourke then admitted that she observed W.W. fill in the bubbles on the incomplete exams. Davis-O'Rourke said that W.W. would ask her for answers to certain questions and that Davis-O'Rourke would provide the answers to W.W. Davis-O'Rourke told investigators that W.W. took the test books home with her and brought them back the next day to ensure that the tests were correct. Davis-O'Rourke admitted that, not only did W.W. fill out answer sheets, but that Davis-O'Rourke personally filled out answers sheets for tests that were incomplete. Davis-O'Rourke confessed that she would also erase incorrect answers and fill in the correct answers. Davis-O'Rourke indicated that she, along with W.W., worked in Davis-O'Rourke's office correcting answers for two to three nights per week until 9:30 p.m. or 10:00 p.m.

Davis-O'Rourke stated that, in February 2011, her supervisor told her that, if she did not make AYP, then Davis-O'Rourke would not make tenure. Davis-O'Rourke explained that, for

the 2011 PSSA testing period, she went through the incomplete tests in the evening with W.W. It was in the 2011 PSSA testing period that W.W. asked Davis-O'Rourke for a list of "bubble students." Davis-O'Rourke explained that "bubble students" were students who were on the border between basic and proficient test scores. Davis-O'Rourke admitted to giving W.W. a list of bubble students. She admitted seeing W.W. then erase incorrect answers and fill in the correct answers on those PSSA exams. Davis-O'Rourke confessed that in 2011 she and W.W. became more sophisticated in the method of correcting tests than they were in 2010. Davis-O'Rourke and W.W. created three separate piles of tests consisting of bubble students, non-bubble students, and incomplete exams. The bubble students' incorrect answers were changed to correct answers and the students with incomplete exams were called in to finish the exams; however, if the students did not come in, W.W. completed their exams.

Although Davis-O'Rourke claimed that W.W. made most of the physical test corrections, Davis-O'Rourke confessed that she personally went through the PSSA exam booklets, erased incorrect answers, and bubbled in correct answers. She claimed that she erased incorrect answers and bubbled in correct answers for approximately ten to fifteen students. Davis-O'Rourke stated that in 2011, W.W. came to her office with an answer key to correct the exams and that, on some nights, W.W. would correct "crates" of exams.

In 2010 and 2011, Davis-O'Rourke signed an affidavit attesting that PSSA security protocol was followed at her school.