STATE OF NEW JERSEY

In the Matter of Joseph Vasbinder, *et al.*, Police Lieutenant, various jurisdictions	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket Nos. 2023-870, *et al.*	:	Examination Appeal

ISSUED: February 22, 2023

Joseph Vasbinder (PM4758D), Delran; Jorge Cabral, Jose Escaleira, Jason Luis and Luciano Porto (PM4761D), Elizabeth; Bryan Yannuzzi (PM4762D), Fairview; Nathaniel Montgomery and Justin Pederson (PM4772D), Lakewood; Francisco Munoz, Anthony Petrazzuolo and Michael Urena (PM4785D), Paterson; Luigi Violante (PM4786D), Seaside Heights; Lloyd McNelly (PM4790D), South Plainfield; Brian Foster (PM4796D), Voorhees; and Antonia Gonzalez, a make-up candidate for (PM4130C), Long Branch; appeal the promotional examination for Police Lieutenant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject exam was administered on October 6, 2022 and consisted of 80 multiple choice questions.

Cabral and Munoz present that they were only provided with 30 minutes for review and they were not permitted to review their test booklets and scored answer sheets. In addition, they contend that their ability to take notes on exam items was severely curtailed. As such, they request that any appealed item in which they selected the correct response be disregarded and that if they misidentified an item number in their appeals, their arguments be addressed.

Regarding review, it is noted that the time allotted for candidates to review is a percentage of the time allotted to take the examination. The review procedure is not designed to allow candidates to retake the examination, but rather to allow candidates to recognize flawed questions. First, it is presumed that most of the questions are not flawed and would not require more than a cursory reading. Second, the review procedure is not designed to facilitate perfection of a candidate's test score, but rather to facilitate perfection of the scoring key. To that end, knowledge of what

choice a particular appellant made is not required to properly evaluate the correctness of the official scoring key. Appeals of questions for which the appellant selected the correct answer are not improvident if the question or keyed answer is flawed.

With respect to misidentified items, to the extent that it is possible to identify the items in question, they are reviewed. It is noted that it is the responsibility of the appellant to accurately describe appealed items.

An independent review of the issues presented under appeal has resulted in the following findings:

For question 1, since Munoz selected the correct response, his appeal of this item is moot.

Question 15 indicates that you are ensuring that your subordinates are aware of the proper notifications to make when a suspected bias incident occurs. Candidates were presented with four statements and asked, based on the N.J. Attorney General's Bias Incident Investigation Standards, for the situations in which a law enforcement agency should immediately notify the Bias Crimes Unit at the Division of Criminal Justice (DCJ). The keyed response, option c, did not include statement III, aggravated criminal sexual contact. It is noted that Gonzalez, who misidentified this item as question 14, selected option d which included all four statements. Gonzalez maintains that "the tiered choices listed sexual offense which is listed in the definitions as part of the offenses. I chose all the choices, but [the keyed response] did not list that offense as a bias incident." The Bias Incident Investigation Standards provide, under the section, "Requirement to Report All Bias Incidents," "In cases of suspected or confirmed bias incidents involving: (1) homicide, aggravated sexual assault, sexual assault, aggravated assault, or arson; (2) a law enforcement officer as the alleged perpetrator; (3) an organized hate group as the perpetrator; or (4) a potential to generate large-scale public unrest, the local law enforcement agency shall also **immediately** notify the Bias Crimes Unit at DCJ." Given that aggravated criminal sexual contact is not included, statement III is clearly incorrect.

Question 17 indicates that a 10-year-old child has been abducted from your jurisdiction but the situation does not meet the criteria for the activation of the AMBER Alert system. Candidates are presented with four statements and are required to determine, "based on the N.J. Attorney General's Directive Revising New Jersey's AMBER Alert Plan, which of the actions is/are still available to your department despite the situation not meeting the criteria for the activation of an AMBER Alert." The keyed response, option d, includes all four statements: I. Conduct a missing child investigation pursuant to N.J. Attorney General Directive No. 2008-4 (Missing Persons); II. Prepare and distribute flyers or use other means to enlist public assistance in locating the missing child; III. Enter into an agreement with local media to publicize missing person reports; and IV. Contact the N.J. State Police Missing Persons Unit for assistance. Violante contends that option a, I only,

is the best response. In this regard, he presents that pursuant to Directive No. 2008-4, under the section, "Child Abduction Response Team Leaders," "Each county prosecutor shall designate two (2) individuals to serve as child abduction response team (CART) leaders. CART leaders, exercising the authority of the county prosecutor, shall over oversee all missing child investigations in the county. CART leaders shall also receive standardized child abduction training and oversee CART-related training for law enforcement in the county." Violante argues that "this standardized training would cover [statements] II, III and IV already during the activation/implement[ation] of [D]irective [No.] 2008-4." He also notes that Directive No. 2008-4, under the section, "Missing Child Investigations," provides, "The State Police shall disseminate and periodically re-issue guidelines, protocols, and/or best practices for investigation missing child cases. Each county prosecutor shall ensure that all missing child investigations in his or her county are conducted in accordance with the guidelines, protocols, and/or best practices disseminated and periodically re-issued by the State Police." Violante presents that "based on a review of 'Missing Persons Investigation Best Practices Protocol Unidentified Deceased Persons Investigation Guideline[']established by New Jersey State Police,[1] as directed to have/mention [*sic*] in [the above-noted 'Missing Child Investigations' section,] . . . it is advised several times throughout this guideline/protocol, for the lead agency to obtain photographs of the missing person . . . [and] to contact the 'Missing Person and Child Exploitation Unit[']within the Division of State Police. It also says . . . to utiliz[e] media outlets to assist in the search efforts . . . [A]gain, the above would touch base upon [statements] II, III and IV already during the activation of [D]irective [No.] 2008-4, option [a, I only]." The Directive Revising New Jersey's AMBER Alert Plan[2] provides, in pertinent part:

> AMBER Alerts are only one part of a comprehensive law enforcement response to reports of abducted/missing children. Even when the circumstances of an abduction or missing child case do not meet the criteria for activation of an AMBER Alert, the law enforcement agency responding to the incident should immediately contact the New Jersey State Police Missing Persons Unit for assistance, and must conduct the missing child investigation in accordance with guidelines, protocols, and/or best practices disseminated by the State Police pursuant to Attorney General Law Enforcement Directive No. 2008-4. The decision not to activate an AMBER Alert to interrupt radio and television programs with an emergency broadcast should in no way preclude a law enforcement agency from preparing and distributing flyers or using other means to enlist public assistance in locating the missing child. Nor does the statewide AMBER Alert Plan in any way preclude a law enforcement agency from entering into an agreement with local media to publicize missing persons reports. The AMBER Alert program is

[1] *See* https://nj.gov/njsp/divorg/invest/pdf/mpi-best-practices-protocol.pdf.

[2] Directive No. 2010-3 (April 28, 2010).

> intended to supplement, not supplant, other techniques and methods for soliciting the public's assistance in locating missing persons.

The question specifically refers to the Directive Revising New Jersey's AMBER Alert Plan which provides that the actions listed in statements I through IV are still available to a law enforcement agency even when the situation does not meet the criteria for the activation of the AMBER Alert. In other words, the Directive does not limit a law enforcement agency to only conducting a missing child investigation pursuant to N.J. Attorney General Directive No. 2008-4 (statement I) under these circumstances. Furthermore, Violante assumes that all of the actions indicated in statements II through IV are included during an investigation pursuant to Directive No. 2008-4. As such, the question is correct as keyed.

Question 19 indicates that an officer observes a juvenile commit a petty disorderly persons offense. However, the officer is unsure about the use of a curbside warning in this situation. The question asks, based on the N.J. Attorney General Directive Establishing Policies, Practices, and Procedures to Promote Juvenile Justice Reform (Directive No. 2020-12), for the true statement. The keyed response is option c, when a petty disorderly persons offense is committed, "an officer may engage in a curbside warning at the officer's discretion, provided that the conduct did not cause serious or significant bodily injury to another." Escaleira and Yannuzzi argue that option b, when a petty disorderly persons offense is committed, "there is a presumption in favor of performing a stationhouse adjustment, rather than engaging in a curbside warning," is the best response. Specifically, they refer to Directive No. 2020-12, under Section II, "Stationhouse Adjustments," which provides:

> B. ***Presumption in favor of stationhouse adjustments for certain unlawful conduct.*** There shall be a presumption in favor of performing a stationhouse adjustment—rather than pursuing a delinquency complaint against a juvenile—when:
>
> 1. The juvenile has no prior history of juvenile adjudications or stationhouse adjustments;
> 2. The juvenile's conduct constituted a petty disorderly persons offense, a disorderly persons offense, or a fourth-degree crime if committed by an adult; *and*
> 3. The juvenile's unlawful conduct did not constitute an act of bias, sexual misconduct, or violence, and did not involve controlled dangerous substances (CDS) or CDS paraphernalia.

Yannuzzi adds that under Section I, "Curbside Warnings," Directive No. 2020-12, provides:

> C. ***Other curbside warnings***. For unlawful conduct more serious than described in Section I.B above, such as petty disorderly persons offenses, disorderly persons offenses, and fourth-degree crimes, there is no

> presumption in favor of a curbside warning, but an officer may nonetheless engage in a curbside warning at the officer's discretion, provided that the conduct did not cause serious or significant bodily injury to another.

Yannuzzi emphasizes that for a petty disorderly persons offense, "there is NO presumption in favor of a curbside warning." As noted above, Section II.B. provides, "There shall be a presumption in favor of performing a stationhouse adjustment—rather than pursuing a ***delinquency complaint*** against a juvenile . . ." As such option b is clearly incorrect. As noted by Yannuzzi, Section I.C., provides that there is no presumption in favor of a curbside warning in a situation involving a disorderly persons offense. However, this provision further indicates that "an officer may nonetheless engage in a curbside warning at the officer's discretion, provided that the conduct did not cause serious or significant bodily injury to another." Thus, an officer has *discretion* as to whether engage in a curbside warning in a situation where the juvenile has committed a disorderly persons offense but the conduct did not cause serious or significant bodily injury to another. Accordingly, the question is correct as keyed.

Question 21 indicates that Timothy Danvers has been arrested and the determination whether to charge him by complaint-warrant or complaint-summons must be made. Candidates were provided with four risk factors to consider. The question provided, "N.J. Attorney General Directive No. 2016-6 v3.0 [(September 27, 2017)] specifically states that a defendant need be charged by complaint-warrant only when some release condition or conditions are appropriate to manage." The keyed response, option c, does not include statement IV, "self-harming behavior by defendant."[3] Porto refers to Directive No. 2016-6 v3.0, Section 4.1, and notes that this section does not list "danger to self" as a factor but argues that "a further read of the directive, specifically . . . 4.3.1 Standard for Overcoming Presumption of Issuing a Complaint-Summons [provides:]"

> In any case where there is probable cause to believe the defendant has committed any indictable crime or disorderly persons offense and the case is not otherwise covered under Section 4.4 (mandatory charging by

---

[3] Directive No. 2016-6 v3.0, Section 4, "Determining Whether to Charge by Complaint-Summons or Complaint-Warrant," under "4.1 General Policy Considerations," provides, in part:

> The decision whether to charge by complaint-summons (commonly referred to as a CDR-1) or complaint-warrant (commonly referred to as a CDR-2) takes on enhanced significance under the Bail Reform Law . . . The Bail Reform Law provides that a defendant should be released on the least restrictive conditions necessary to assure his or her appearance at court proceedings and to prevent defendant from committing new crimes. *See N.J.S.A.* 2A:162-17. Consistent with that legislative policy, under this Directive a defendant need be charged by complaint-warrant only when some release condition or conditions are appropriate to manage the risk of flight, the risk to the safety of the community, witnesses, and victims, and/or the risk that defendant will obstruct the criminal justice process . . .

> complaint-warrant) or Section 4.5 (presumption of charging by complaint-warrant), a law enforcement agency shall issue a complaint-summons unless an assistant prosecutor or deputy attorney general consulted in accordance with Section 3.2 of this Directive, or a supervisory officer designated pursuant to subsection 3.3.2 and authorized by the County Prosecutor to overcome presumptions under Section 4 of this Directive, determines that application for a complaint-warrant is reasonably necessary to protect the safety of a victim or the community, to reasonably assure the defendant's appearance in court when required, or to prevent the defendant from obstructing or attempting to obstruct the criminal justice process, and further determines that there is a lawful basis to apply for a complaint-warrant pursuant to Rule 3:3-1(d) as recently amended.

Porto indicates that Rule 3:3-1(d), in part, "authorizes a judge to overcome the presumption of charging by complaint-summons where the judge finds that: (1) the defendant has been served with a summons for any prior indictable offense and has failed to appear; (2) there is reason to believe that the defendant is dangerous to self, or will pose a danger to the safety of any other person or the community if released on a summons; (3) there are one or more outstanding warrants for the defendant . . ." Porto argues that "according to AG Directive 2016-6 v3.0 the fact that a defendant is dangerous to self is a factor to consider for the issuance of a complaint-warrant." At the outset, it is noted that the wording of this item is taken directly from the Directive, as noted above: "Consistent with that legislative policy, under this Directive a defendant need be charged by complaint-warrant only when some release condition or conditions are appropriate to manage the risk of flight, the risk to the safety of the community, witnesses, and victims, and/or the risk that defendant will obstruct the criminal justice process . . ." However, it is not clear what this item is asking candidates to determine. In this regard, it is noted that Section 4.1 further provides:

> In other words, charging by complaint-summons rather than by complaint-warrant generally would be appropriate when the facts known at the time of the charging decision reliably indicate that the defendant requires no monitoring. A complaint-warrant, in contrast, ***generally*** should be sought when the defendant poses some level of risk of flight, new criminal activity or violence, or threat to the criminal justice process that should be managed by monitored release conditions, if not by the defendant's pretrial detention. Furthermore, a complaint-warrant should be sought in domestic violence cases where imposition of a no-contact or other restraint is reasonably necessary to assure the immediate protection of the victim. (emphasis added)

As such, it is not clear if the item is asking for the presumptions or circumstances under which a complaint-warrant would be issued or if the item is asking when a

complaint-warrant would be mandatory ("need be").[4] As a result, the Division of Test Development and Analytics determined to omit this item from scoring prior to the lists being issued.

Question 35 indicates that Jason Birkenstock was attempting to commit a theft when he accidentally inflicted bodily injury on a victim. Once the injury occurred, Birkenstock fled, without taking possession of the item he had been attempting to steal. The question asks, based on *N.J.S.A.* 2C, for the true statement concerning the potential charge of robbery. The keyed response is option a, Robbery would "be an appropriate charge for Birkenstock in this situation."[5] Escaleira, Foster, Luis, Montgomery, Pederson and Yannuzzi maintain that option b, Robbery would "not be an appropriate charge for Birkenstock since the bodily injury he inflicted on the victim was only accidental, not purposeful." Specifically, they refer to *State v. Sewell*, 127 *N.J.* 133 (1992) in which the court held that the State must prove "knowledge" as the requisite mental state for robbery.[6] It is also noted that *N.J.S.A.* 2C:2-2c(3) further provides:

---

[4] *See e.g.*, Section 4.4 (Cases Where Law Enforcement Must Apply for a Complaint-Warrant without Exception); Section 4.5 (Cases Where There is a Rebuttable Presumption of Applying for a Complaint Warrant); Section 4.3.1 (Standard for Overcoming Presumption of Issuing a Complaint-Summons);. In addition, Section 1.5, "General Approach Taken by This Directive," indicates:

> The presumptions established in this Directive on when to issue a complaint-summons or to apply for a complaint-warrant . . . are designed to guide the exercise of law enforcement/prosecutorial discretion . . . A presumption is the starting point for case specific analysis, but does not necessarily dictate the outcome of that analysis . . . Furthermore, nothing in this Directive restricts a prosecutor or designated supervisory officer for considering any relevant fact or circumstance, including those that do not automatically trigger a presumption.

[5] *N.J.S.A.* 2C:15-1 provides:

> a. Robbery defined. A person is guilty of robbery if, in the course of committing a theft, he:
>
> (1) Inflicts bodily injury or uses force upon another; or
> (2) Threatens another with or purposely puts him in fear of immediate bodily injury; or
> (3) Commits or threatens immediately to commit any crime of the first or second degree.
>
> An act shall be deemed to be included in the phrase "in the course of committing a theft" if it occurs in an attempt to commit theft or in immediate flight after the attempt or commission.
>
> b. Grading. Robbery is a crime of the second degree, except that it is a crime of the first degree if in the course of committing the theft the actor attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury, or is armed with, or uses or threatens the immediate use of a deadly weapon.

[6] It is further noted that the model criminal jury charges for robbery (https://www.njcourts.gov/sites/default/files/2022-09/robbery1.pdf (first degree); https://www.njcourts.gov/sites/default/files/2022-09/robbery3.pdf (second degree)), provide, in part:

> Construction of statutes not stating culpability requirement. Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of such offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such culpable mental state. A statute defining a crime, unless clearly indicating a legislative intent to impose strict liability, should be construed as defining a crime with the culpability defined in paragraph b.(2) of this section. This provision applies to offenses defined both within and outside of this code.

In this regard, *N.J.S.A.* 2C:2-2 (Kinds of culpability defined) provides in pertinent part:

> (1) Purposely. A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he is aware of the existence of such circumstances or he believes or hopes that they exist. 'With purpose,' 'designed,' 'with design' or equivalent terms have the same meaning.
>
> (2) Knowingly. A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence. A person acts knowingly with respect to a result of his conduct if he is aware that it is practically certain that his conduct will cause such a result. 'Knowing,' 'with knowledge' or equivalent terms have the same meaning.

As such, option b is incorrect since it indicates "purposeful" rather than "knowingly." With respect to option a, although the question stem indicates that Birkenstock "accidentally inflicted bodily injury", it is not clear whether this would meet the requirement of "knowingly" as indicated above. Given this, the Division of Test

---

> In order for you to find the defendant guilty of robbery, the State is required to prove each of the following elements beyond a reasonable doubt:
> 1. that the defendant was in the course of committing a theft,
> 2. that while in the course of committing that theft the defendant (Choose from the following three):
>   a. ***knowingly*** inflicts bodily injury or uses force upon another;
>   b. threatened another with or purposely puts him in fear of immediate bodily injury;
>   c. committed or threatened immediately to commit any crime of the first or second degree. (footnotes omitted) (emphasis added)

Development and Analytics determined to omit this item from scoring prior to the lists being issued.

Question 36 indicates that Tony Crosby, an 18-year-old, commits an act of sexual contact with a 12-year-old victim. The question asks for the most appropriate *N.J.S.A.* 2C charge for Crosby. The keyed response is option b, sexual assault. Foster, who misremembered the question as indicating that "an 18 y/o suspect committed a sexual assault on a 12 y/o victim," argues that "the only way to arrive at the keyed answer of Sexual Assault would be to change the wording of the question to in[dicate that the] 18 y/o suspect committed a 'sexual contact' on a 12 y/o victim . . ." Given that the question clearly states that Crosby "commit[ted] an act of sexual contact with a 12-year-old victim," his argument is moot.

Question 65 refers to Kenneth J. Peak, *et al.*, *Managing and Leading Today's Police* (4th ed. 2018), and indicates:

> You overheard Sergeant Damien talking to his subordinate, Officer Victor, about the new sick leave policy that the department recently implemented. Sergeant Damien told his subordinate that the new rules are unfair and that it seems like the new chief of the department is more concerned with developing stricter rules for unimportant matters than trying to solve the really important issues the department is facing. You plan to talk to Sergeant Damien later today about his behavior. The first thing you need to do when addressing this situation with Sergeant Damien is to identify the problem for him.

The question asks, keeping in mind that criticism should focus on behavior and not the person, for the best way for you to say to Sergeant Damien when identifying for him what the problem is. The keyed response is option b, "It's not appropriate for a supervisor to openly question management's decisions to a subordinate and your doing so could result in a negative work environment." Munoz selected option c, "You need to remember that Officer Victor is your subordinate, not your friend, and while I know you think commiserating with him about the new rules will make you more likable, you need to be more professional," and argues that this the best response. In this regard, Munoz refers to the subject text, in the section, "Rules and Regulations," which provides that "rules and regulations are not always popular, especially if perceived as unfair or unrelated to the job. Nonetheless, it is the supervisor's responsibility to ensure that officers perform these tasks with the same degree of professional demeanor as other job duties." He also refers to the section, "Negotiation by Police Managers and Supervisors," which provides, "police managers and supervisors must constantly negotiate with their subordinates and be able to ensure their maximum compliance with orders, directives, and assignments a supervisor is better able to induce voluntary compliance when he or she is able to negotiate effectively." Munoz argues that "as a professional, the sergeant must be able to negotiate an unpopular policy/rule/regulation and 'sell' it to his subordinates." It is noted that option b objectively indicates what the issue is in terms of Sergeant

Damien's behavior, *i.e.*, it was not appropriate for him to question management to a subordinate, and explains the issue further by providing a rationale, *i.e.*, the consequence of Sergeant Damien's action would be to foster a negative work environment. In other words, option b identifies the problem without speculating about Sergeant Damien's personality or characteristics, or criticizing him as a person or supervisor. Option c, however, assumes that the reason for the Sergeant Damien's behavior is that he wants to be likeable. In addition, although option c directs Sergeant Damien "to be more professional," it does not specifically identify what this entails. As such, option c is not the best response.

Question 66 refers to Peak, *et al.*, *Managing and Leading Today's Police, supra,* and indicates:

> Your subordinate, Sergeant Dunbar, was assigned the task of completing next week's schedule for the patrol officers on the day shift. The schedule was supposed to be posted by 9 a.m. on Friday the 14th, but he did not post it until 9 a.m. on Saturday the 15th. A couple of his officers have complained to you about the schedule not being posted on time. You recall seeing Sergeant Dunbar talking and laughing with co-workers several times during the day on the 14th, so it appears that he should have had enough time to complete the schedule sooner. You plan to talk to Sergeant Dunbar later today regarding this issue.

The question asks, keeping in mind that criticism should focus on behavior and not the person, for the best statement for you to say to Sergeant Dunbar. The keyed response is option d, "You were a day late in posting the recent patrol schedule, which upset some officers, and I want to make sure you are making the best use of your time." Munoz, Urena and Yannuzzi assert that option a, "The patrol schedule needs to be posted on time and if it isn't, a lot of people can be negatively affected," is the best response. Specifically, Munoz refers to the subject text[7] and maintains that "both answers seem to be similar in that they allow for me, the lieutenant, to address the problem (the schedule being turned in late) and point out the reasons why this is unacceptable. Both answers show a possibility of two-way communication whereby feedback, constructive criticism and follow-up would be possible." Munoz argues that the keyed response, which indicates that the officers are upset, "is not factual. It is assumed that people would be upset however they may not [be] . . . There are many variables to consider to simply state that people would be upset by turning in of a

---

[7] Munoz refers to the section, "Formal and Informal Communications," which provides:

> Formal communications generally flow downward, although feedback and information about problems and issues are sometimes transmitted upward by subordinates. Katz and Kahn found that downward communications fall into one of five categories: (1) job instructions, (2) rationale or explanations about jobs, (3) procedures, practices, and policies, (4) feedback on individual performance, and (5) efforts to encourage a sense of mission and dedication toward departmental goals.

schedule one day late." Urena argues that option a is "a better example of leadership and management and focuses on vision aspect of leadership. On page 52, under 'Leading versus Managing,' 'According to Bennis and Nanus, by focusing attention on vision, the leader operates on the emotional and spiritual resources of organization -- on its values, commitments and aspirations . . . This choice also focuses on the selling phase of situational leadership which can be used to explain to your subordinate manager the importance of submitting the schedule on time and avoiding the negative impact. On page 56 in the third paragraph it states, 'Here, the leader can sometimes overcome resistance explaining the benefits or importance of accomplishing task.' Here the importance is avoiding the negative impact." Yannuzzi asserts that option a "is assertive, professional and [e]ffective. I believe it addresses the unacceptable behavior directly and focuses on the behavior and not the person." It is noted that both option a and option d identify the issue, *i.e.*, the untimely posting of the patrol schedule, and the impact on the officers. In addition, neither option identifies the behavior that needs to be corrected.[8] As such, the Division of Test Development and Analytics determined to double key this item to option a and option d prior to the lists being issued.

Question 80 is based on the Tuition Reimbursement Policy provided to candidates in the test booklet and candidates were instructed that they are the Administrative Lieutenant of the Pineboro Police Department. The question indicates, in part, "On August 1, Chief Carroll disseminated a memo outlining the process for those who would be seeking tuition reimbursement for master's degree courses. Lieutenant Hayes electronically submitted a Tuition Request Form on August 10, which was completed fully and correctly, seeking tuition reimbursement for a master's degree course he will be taking during the Fall semester." The question asks, based on the policy, whether Lieutenant Hayes' Tuition Request Form should be approved. The keyed response is option c, "Yes, it should be approved, but only if there are still available funds." Cabral, Luis, McNelly and Petrazzuolo assert that option b, "Yes; it should be approved," is the best response. In this regard, they contend that the policy provides that the Police Chief will only issue a memo for tuition reimbursement for master's degree courses if the total is less than $200,000 for tuition reimbursement for all approved bachelor's degree courses. Thus, they argue that based on the policy, Lieutenant Hayes could only submit an application after the Chief determined that there were funds available for reimbursement. Cabral adds that the policy "never expressly indicated if there was a limit on funds available for tuition reimbursement for a master's degree." Vasbinder maintains that option a, "No; it should not be approved," is correct. Specifically, Vasbinder presents that the policy provides that "officers MUST submit their completed Request for Reimbursement Form ALONG with the Chief's original memo advising officers that the enrollment for tuition reimbursement is open. [Lieutenant Hayes] met all of the criteria to be eligible, however, he DID NOT submit the Chief's original memo along

[8] Although option d indicates "I want to make sure you are making the best use of your time," it does not clearly identify the behavior (as noted in the question stem, you observed "Sergeant Dunbar talking and laughing with co-workers several times during the day on the 14th, so it appears that he should have had enough time to complete the schedule sooner") that led to the issue,

with his Request for Reimbursement form." The Tuition Reimbursement Policy provides, in pertinent part:

> II. Master's Degree
>
> A. Once the total estimated cost of tuition reimbursement for all approved bachelor's degree courses for a semester has been calculated (using the assumption that all approved courses will be completed and reimbursed at the rate of 100%), if the total is less than $200,000, then the Police Chief will offer the opportunity for tuition reimbursement for sworn personnel enrolled in a master's degree program . . .
>
> C. Officers must fill out the Tuition Request Form, which will be emailed along with the Chief's memo, and submit it electronically to the Chief by either August 15 for the Fall semester or December 15 for the Spring semester.
>
> D. The Chief will review all Tuition Request Forms and determine whether they will be approved or denied . . .
>
> 6. The approval of tuition reimbursement for master's degree courses will be on a first-come, first-served basis. Anyone whose Tuition Request Form is properly completed will be approved in the order in which it was received, according to the time-stamp on the submitted email, ***until the additional funds have been depleted*** (emphasis added).

Thus, while the Chief only issues a memo for tuition reimbursement for master's degree courses if the total is less than $200,000 for tuition reimbursement for all approved bachelor's degree courses, Cabral, Luis, McNelly and Petrazzuolo failed to address Section II.D., as noted above, in their argument. Section II.D.6. provides, in essence, that if other officers applied for tuition reimbursement for master's degree courses ahead of Hayes and were approved, and no more funds were available at that point, then Hayes' application would not be approved. As such, option b is incorrect. With regard to Vasbinder, the Tuition Reimbursement Policy provides, in pertinent part:

> II. Master's Degree
>
> . . .
>
> B. The Chief will disseminate, through email, a memo twice a year, outlining the process for those who will be seeking tuition reimbursement for master's degree courses. A memo will be sent on August 1 for those who will be enrolled in the Fall semester (classes taking place August – December) and on December 1 for

those who will be enrolled in the Spring semester (classes taking place January – May).

C. Officers must fill out the Tuition Request Form, which will be emailed along with the Chief's memo, and submit it electronically to the Chief by either August 15 for the Fall semester or December 15 for the Spring semester.

The relative clause in Section II.C., *i.e.*, "which will be emailed along with the Chief's memo," describes how staff will receive the Tuition Request Form. In this regard, these two sections, B and C, should be read together in that the verb tense in the relative clause ("will") matches the verb tense in section II.B. where it describes what the Chief *will* do, *i.e.*, *will* disseminate and *will* send. Furthermore, immediately following this relative clause, the policy provides that the officers must "submit ***it*** electronically" (emphasis added). Given that the pronoun used, *i.e.,* "it," is singular, this indicates that only one document must be submitted. Thus, if staff were required to submit both documents as Vasbinder suggests, then the policy would have indicated "them." As such, the question is correct as keyed.

CONCLUSION

A thorough review of appellants' submissions and the test materials reveals that, other than the scoring changes noted above, the appellants' examination scores are amply supported by the record, and the appellants have failed to meet their burden of proof in this matter.

ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22ND DAY OF FEBRUARY, 2023

Allison Chris Myers

_____

Allison Chris Myers
Acting Chairperson
Civil Service Commission

Inquiries and Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Joseph Vasbinder (2023-870)
Jorge Cabral (2023-929)
Jose Escaleira (2023-868)
Jason Luis (2023-869)
Luciano Porto (2023-900)
Bryan Yannuzzi (2023-867)
Nathaniel Montgomery (2023-897)
Justin Pederson (2023-896)
Francisco Munoz (2023-895)
Anthony Petrazzuolo (2023-898)
Michael Urena (2023-871)
Luigi Violante (2023-901)
Lloyd McNelly (2023-865)
Brian Foster (2023-899)
Antonia Gonzalez (2023-902)
Division of Administration
Division of Test Development and Analytics
Records Center