



B-36

STATE OF NEW JERSEY

In the Matter of Brian Valyo, *et al.*,
County Correction Sergeant, various
jurisdictions

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-3371

Examination Appeal

ISSUED: **OCT - 8 2015** (JH)

Brian Valyo (PC1551S), Mercer County; Daniel Dowd, Richard Gable, Patrick Geary, Richard Nikodem, Christopher Petrone, Joseph Rice and Joseph Rubino, (PC1552S), Ocean County; and Christopher Baker, Robert Scott and Richard Soltis, (PC1553S), Passaic County; appeal the promotional examination for County Correction Sergeant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on June 2, 2015 and consisted of 80 multiple choice questions.

Messrs. Dowd and Rice argue that candidates were only provided with 30 minutes for review. In addition, Mr. Dowd contends that their ability to take notes on exam items was severely curtailed. In this regard, he asserts that "the review process should allow a candidate to document questions and answers which the candidate believes are flawed. Not being able allowed to copy down items word for word greatly limits what I am trying to submit as an appeal." He requests that he be provided with "sufficient time to review the entire exam and to take the necessary notes in order for my rights as an applicant for the [County] Correctio[n] Sergeant Exam to be completed." He adds that he "may not have listed the correct question or the actual lettered answer but I believe that with the information provided, you should be able to determine which question it was in the exam and which answers I am referring to." Mr. Rice "suggest[s] allowing candidates be permitted to leave with the full question and answer to allow for a well argued appeal."

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.

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.

In addressing challenges to the scoring key, only arguments and contentions as they relate to disputed issues will be reviewed herein. An independent review of the issues presented under appeal has resulted in the following findings:

Question 13 indicates that Inmate Blake comes to you with concerns about his safety following an incident among several inmates in your housing unit. He fears that he may be a target for other inmates and comes to you to discuss the potential for voluntary Protective Custody. The question asks for the true statement according to *N.J.A.C.* 10A:31-18 (Protective Custody). The keyed response is option c, "Removal from Protective Custody requires a release form signed by the Facility Administrator and inmate." Messrs. Baker, Dowd and Soltis contend that option b, "Inmates in voluntary Protective Custody may sign themselves out at any time," is the best response. Mr. Rice asserts that "based on my interpretation of [*N.J.A.C.*] 10A:31-18.4, I believe that both answers [option b and option c] have truth in them."¹ Specifically, Mr. Baker presents:

One requirement in [*N.J.A.C.*] 10A:31-18.4 is an inmate 'completes' a release form which may or may not have a line for a signature. The test's master answer key stated that removal required a signature from the inmate and the facility administrator; however, [*N.J.A.C.*] 10A:31-18.4(c) states that a release form that is signed by the facility administrator and the inmate shall be placed in the inmate's classification folder. Based on the previous sentence concerning the statute [*sic*], removal from protective custody does not require a signature from the two parties prior to the act of the inmate being removed; however, the alleged correct answer stated that removal

¹ Mr. Rice indicates that he "answered this question with the option[,] 'the inmate may sign himself or herself out by completing a release form at any time'" and the keyed response was "a release form must be signed by Administrator and the inmate." It is noted that these were not answer choices presented to candidates.

required signatures which is simply not true because as long as the release form is not placed in the inmate's classification folder, it does need the facility administrator's signature. [N.J.A.C.] 10A:31-18.4(a) provides that the facility administrator or designee and the Classification Committee only have to be satisfied that there is no known danger to the inmate's well-being before he/she can sign themselves out . . . [N.J.A.C.] 10A:31-18.4(c) states that the facility administrator will place a signed form in the inmate's classification folder but provides no time frame and does not explicitly state that removing the inmate must occur via two-party signatures. Moreover, a release form that is not signed by the facility administrator will simply not be placed in the inmate's classification folder; however, the inmate can still be removed if the[y're] deemed to be safe from danger.

Mr. Dowd maintains:

[N.J.A.C. 10A:31-18.4(a)] states that 'an inmate who has voluntarily signed himself or herself into Protective Custody may sign himself or herself out upon completion of a release form.' Therefore, this means that at any time the inmate may choose to sign himself out of voluntary Protective Custody. Subsection (a) requires a release form signed only by the inmate in order for said inmate to be removed from voluntary Protective Custody. The only additional requirement for an inmate[']s voluntary removal from Protective Custody is merely the acknowledged satisfaction of the Administrator and Classification Committee that no known danger to the inmate[']s well[-]being exists upon his exit. Subsection (c) does state that 'a release form that is signed by the adult county correctional facility Administrator and the inmate shall be placed in the inmate's classification folder'. However, subsection (c) does not state that this form must be signed by both the inmate and the Administrator prior to the inmates exit from Voluntary Protective Custody. The fact that there is no time frame in subsection (c) means that a form signed by the inmate and Administrator is not necessarily required prior to the inmate[']s exit from voluntary Protective Custody. This just informs you that a form signed by the inmate and administrator must be signed at some point and placed in his/her classification folder. There is no section in [N.J.A.C.] 10A:31 which explicitly states, 'a form must be completed by the administrator and the inmate in order to be removed from voluntary Protective Custody.'

Mr. Soltis argues that N.J.A.C. 10A:31-18.4(a) "does not indicate that the form needed to be signed for by the Adult County Correctional Facility Administrator. In fact, it says if the Administrator or his designee are

satisfied there is no known danger to [the] inmate[']s well[-]being. There is not mention, whatsoever, that an Adult County Correctional Facility Administrator is required to sign the release form.”

N.J.A.C. 10A:31-18.4 (Release of inmates from Protective Custody) provides:

- (a) Provided the Classification Committee and the adult county correctional facility Administrator or designee are satisfied that there is no known danger to the inmate’s well-being, an inmate who has voluntarily signed himself or herself into Protective Custody may sign himself or herself out upon completion of a release form.
- (b) An inmate who has been placed in Protective Custody involuntarily may be released by the adult county correctional facility Administrator or designee upon recommendation by the Classification Committee when they are satisfied that the conditions giving rise to the inmate’s placement in Protective Custody have abated or no longer exist.
- (c) A release form that is signed by the adult county correctional facility Administrator and the inmate shall be placed in the inmate’s classification folder.

N.J.A.C. 10A:31-18.4(a) indicates that two conditions must be met before an inmate who has voluntarily signed himself or herself into Protective Custody may be removed from Protective Custody: 1) the Classification Committee and the adult county correctional facility Administrator or designee must be satisfied that there is no known danger to before the inmate may sign out; and 2) the inmate may sign himself or herself out *upon the completion of a release form*. Thus, the inmate may not sign himself or herself “at any time.” As such, option b is incorrect. Messrs. Baker and Dowd maintain that subsection (c) is, in essence, optional prior to the inmate’s release, and Mr. Soltis contends that, under subsection (a), the adult county correctional facility Administrator is not required to sign a release form. However, *N.J.A.C.* 10A:31-18.4, read as a whole, clearly indicates that a completed release form which contains the signatures of both the adult county correctional facility Administrator and inmate is required. As such, the question is correct as keyed.

Question 53 indicates that during a fire drill, in which all inmates are required to exit their cells and line up to be counted, Inmate Duke is non-compliant. He states that he is too tired to stand in front of his cell and then walks toward a day room table to sit down. The question asks, as the supervisor conducting the count, how you should resolve this situation. The keyed response is option c, “After the inmates have been locked-in, inform Inmate Duke that you will be charging him with failure to comply with orders and have officers remove him from the day

room.” Mr. Geary contends that option a, “Ignore Inmate Duke’s actions and continue with the count and drill so the situation does not escalate while all inmates are out of their cells,” is the best response. He asserts that Inmate Duke is passively resisting and “sitting at the dayroom table does not constitute a threat to the officers, other inmates, or interfere with the fire drill.” He adds that the keyed response “does not say whether the fire drill was completed or aborted prior to locking the other inmates in. This is a crucial detail.” It is noted that options a, b and d indicate whether the fire drill is continued or discontinued and indicate the actions that are taken before the inmates are locked in. Option c indicates what action is taken after the inmates are locked in. However, option c does not indicate whether the officers continued or discontinued the fire drill or whether the fire drill had been completed. Thus, it is unclear at what point option c occurs during the incident. Given this, Test Development and Analytics determined to omit this item from scoring prior to the lists being issued.

Question 54 indicates that you and an officer are monitoring a housing unit from a post in the control station which requires that one staff member stay in the control station at all times. As a fight breaks out between two inmates, you immediately radio Central Command for assistance. As the fight begins to escalate, more inmates become involved while others are standing close-by and watching. The question asks for the actions you should take in this situation. The keyed response is option a, “You and the officer should remain in the housing unit control station noting which inmates are involved and what they are doing.” Mr. Scott argues that option b, “As the supervisor, you should instruct the officer to remove the inmates not involved in the fight from the housing unit,” is the best response. In this regard, he maintains that “officers are required to protect all within their care” and officers may use constructive authority to protect uninvolved inmates. He contends that “verbally ordering uninvolved inmates to lock in or move away from the incident area protects those uninvolved inmates and promotes safety. My answer choice of ordering the officer to remove inmates may utilize constructive authority to protect uninvolved inmates.” Option b does not state that you order officer to verbally order uninvolved inmates to lock in or move away from the incident but rather, remove the inmates. In this regard, the question indicates that this situation is evolving and more inmates are becoming involved. Thus, a single officer would clearly be outnumbered and his safety placed at risk in this scenario. Mr. Scott notes that the officers have a duty to protect inmates, which has been exercised by radioing for assistance. As such, option b is not the best response.

Question 55 indicates that two officers are instructing all inmates in the housing unit’s day room area to lock into their cells for a formal head count. An inmate using the phone refuses to hang up even after being ordered by officers to place his hands on the wall to be handcuffed. After another order is given, the inmate grabs onto the railing of a nearby staircase and refuses to let go. The question asks how the officers should respond to this situation. The keyed response

is option b, "Officers should focus on having all other inmates lock-in before they return their attention to attempting to handcuff and remove the non-compliant inmate." Mr. Rice maintains that he "personally contacted two ranking custody staff supervisors from two different facilities" who both indicated that his response, option d, "One of the officers should contact the supervisor of the housing unit and await instruction before responding to the non-compliant inmate," is the best response. They also indicated that leaving the non-compliant inmate unattended "is not the safest way to command this incident" and "could allow time for the inmate to retrieve a weapon." It is noted that Test Development and Analytics contacted a Subject Matter Expert (SME) regarding this matter who indicated that the officers would want to ensure that attention can be focused on the inmate who is causing a problem. The SME indicated that the best way to do this would be to eliminate the possibility of the other inmates becoming involved in the situation or their taking advantage if the officers are distracted. The SME noted that there is nothing in the scenario that indicates that the inmate is left unattended or alone. The SME added that there is no reason to believe that a weapon is available or obtainable. The SME indicated that while option d could be correct, option b is the best response. In this regard, the SME explained that option b is a specific action that accomplishes more than option d. Thus, the question is correct as keyed.

For question 56, since Mr. Scott selected the keyed response, his appeal of this item is moot.

Question 57 indicates that While Officer Nash was working his assigned post, he observed a group of approximately fifteen inmates gathering together. As he approached the inmates, two separate fights broke out at once. Officer Nash radioed for assistance and backup officers quickly arrived. All of the inmates immediately complied with the order to get on the floor with their hands behind their heads. Officer Nash is unable to identify to you, the supervisor on scene, which inmates were involved in the fights. The question asks what your immediate response should be to this situation. The keyed response is option b, "Inspect each inmate for injuries and keep them separated until the individuals involved can be identified." Messrs. Dowd, Gable and Rubino assert that option a, "Have the inmates immediately lock-in with their cell mates, so the inmates are no longer in a group which might outnumber the available officers," is the best response. Specifically, Mr. Dowd presents that "when entering an area of any facility that is actively engaged in aggressive behavior, gaining immediate control of that area is paramount. The only guaranteed way to gain control of an area in a short period of time is to perform a lockdown of the area." Mr. Gable contends that since the inmates are not restrained, "they could easily get up and start fighting again at any time" which would put the officers and inmates in danger. Mr. Rubino argues that inmates involved in the fights might have "friends in the dorm who might get upset and decide to jump into the violence and spread the problem even bigger. Locking down the inmates is the best way to slow down the chain of events." It is noted that

Test Development and Analytics contacted an SME regarding this matter who indicated that depending on where the incident took place, which was not indicated in the scenario, options a and b could both be correct. In this regard, the SME stated that if the fight occurred in the recreation yard, the best option would be for the inmates to get on the ground and then be secured and searched. However, the SME indicated that if the fight took place in the housing unit, unit staff would likely rather have the inmates lock-in before checking for injuries since it would be safer and easier to inspect for injuries. Given this, Test Development and Analytics determined to double key this item to option a and option b prior to the lists being issued.

Question 58 indicates that Inmate Carter informs an officer that he is being forced by Inmate Bryant to keep a weapon in his cell. He was told to keep the weapon hidden until Inmate Bryant is ready to use it. The officer comes to you and asks how he should handle the situation. The question requires candidates to complete the following sentence, "Your **FIRST** action should be to . . ." The keyed response is option c, "order the search of several cells, including Inmate Carter's, for the weapon he has described." Mr. Baker contends that option b, "verify the officer's story by talking to Inmate Carter directly before you take action," is the best response. He argues:

The searching of cells can come immediately after an attempt to verify a story; however, skipping over the possibility of obtaining more can be harmful and pose a danger to the staff conducting the searches without knowing more information regarding the alleged contraband. Potentially unnecessary searches that aren't warranted by supporting facts can be viewed as punishment in violation of [N.J.A.C.] 10A:31-8.3(c) . . . [T]aking one inmate's word and carrying out a potentially unwarranted search without obtaining facts or supporting information from others in an attempt to verify the claim can constitute punishment . . . Staff shall not be burdened with having to conduct immediate cell searches following one inmate's claim without attempting to obtain additional information to support the claim and the subsequent search and further without knowing the facility's written policy governing searches . . . There is no harm in attempting to verify a claim as your first action prior to conducting the act of searching the cells and the inmates which could potentially be baseless.

Option b requires you to "verify the officer's story," which suggests that the information presented by the officer is fabricated. However, there is nothing in question stem to indicate that you have reason to doubt the officer's veracity. Furthermore, Mr. Baker argues that "following one inmate's claim without attempting to obtain additional information" is problematic in this situation.

However, option b does not state that you “obtai[n] facts or supporting information from others,” as advocated by Mr. Baker, but rather, you “verify the officer’s story by talking to Inmate Carter.” Thus, option b is not the best response.

Question 71 indicates that after inmates have locked in their cells for the night you hear noises coming from a cell in the upper tier. Officers arrive to find an inmate attempting to use a makeshift tool to remove the sink from the wall. The inmate was removed from the cell and secured by officers. The question asks, as the custody staff supervisor, what your first response to this situation should be. The keyed response is option b, “Consider the cell a crime scene and secure it to preserve all evidence.” Mr. Soltis presents that option d, “Inspect other cells to make sure this is not a coordinated action by other inmates,” is the best response. He argues that “there is no mention of ‘Crime Scene’ in 10A so this question should be treated as an escape. The searching of other cells to establish if there were other cells involved and to verify all inmates have been accounted for, through roll call, should be conducted first to ensure that a crime has been committed. Once it is discovered that a crime was committed, the area will be considered the location of a crime.” It is noted that Test Development and Analytics contacted an SME regarding this matter who indicated that you should secure the damaged cell *first* and focus on maintaining all evidence associated with that problem. The SME stated that you then can move on to searching beyond the cell that you know has been compromised. The SME emphasized that option d is clearly a secondary action in this scenario. Thus, the question is correct as keyed.

Question 78 indicates that out of the five inmates who have arrived at the intake center to be admitted into the facility, three have identical tattoos on their arms and neck. The other two inmates have different tattoos but are similar to each other. You are concerned that the two sets of tattoos are indications of gang membership and the inmates may be in rival gangs. The question requires candidates to complete the following sentence, “In this situation your **BEST** course of action should be to . . .” The keyed response is option c, “separate the inmates into different holding cells to avoid a potential incident.” Mr. Scott argues that option b, “make sure the officers in the intake center are aware of what you have observed,” is the best response. He asserts that the keyed response is “unrealistic” since “to separate each category of gang member based on visual appearance and tattoos creates the need for multiple holding cells which may go way beyond the 10A requirement.” It is noted that Test Development and Analytics contacted an SME regarding this matter who indicated that keeping inmates separated, whether due to gang affiliation, co-defendants that need to be separated, or inmates who are “vulnerable,” is a very common occurrence during intake. The SME also emphasized that the question indicated that only two sets of different tattoos were found so separating the inmates would not be unusual. The SME concluded that of the answer choices provided, option c is clearly the best response.

Question 79 indicates that a fight breaks out between two inmates in a general population unit. An officer observes the fight and immediately radios for assistance to deal with the incident. The question asks for, as a supervisor, what factor should be most important in determining the resources needed to successfully handle the incident. The keyed response is option c, When responding to calls for assistance, you should "send the minimum number of officers necessary to secure the scene, to ensure that excessive force does not escalate the situation." Upon review of this item during the appeal process, Test Development and Analytics determined that this item had been miskeyed. As such, the key was corrected to option a, When responding to calls for assistance, you should "send a response that exceeds the number of inmates involved, in case the incident intensifies," prior to the lists being issued.

Question 80 indicates that you are supervising the medical unit when two officers bring in Inmate Wilson for a medical evaluation, following a fight with another inmate. You are supervising an inmate in the waiting area while the two officers are in the examination room with Inmate Wilson and the doctor. During the evaluation, the inmate is seated on an examination table. As the doctor turns to retrieve an instrument, Inmate Wilson kicks him causing him to fall to the floor. The question asks how the officers should respond to this situation. The keyed response is option d, "Both officers should ensure the inmate is restrained before attending to the doctor." Mr. Geary argues that option c, "One officer should restrain the inmate, while the other officer goes to request assistance," is the best response. He asserts that "the officers' immediate supervisor is within shouting distance in the waiting area. One officer should be able to restrain the inmate for a few seconds while the other shouts out the door to alert their immediate supervisor and/or requests assistance via radio transmission. This would take a matter of seconds and allows the officer to both request assistance and help secure the exam room." It is noted that option c does not indicate that one of the officers "shouts out the door" or "requests assistance via radio transmission" but rather, "goes to request assistance." In addition, option c does not specify that requesting assistance "would take a matter of seconds." Furthermore, the priority in this situation is to restrain the inmate so that the incident is brought under control. Thus, having both officers restrain the inmate ensures that the inmate is secured before attending to the doctor's situation. Accordingly, the question is correct as keyed.

CONCLUSION

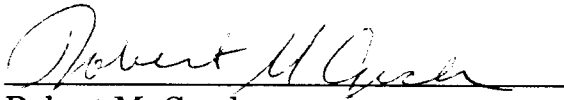
A thorough review of the appellants' submissions and the test materials reveals that, other than the scoring changes noted above, the appellants' examination scores are amply supported by the record, and the appellants have failed to meet their burdens of proof in this matter.

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
THE 7TH DAY OF OCTOBER, 2015**



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