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The Atlanta Journal-Constitution

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Charges expected in APS test-cheating scandal



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By Mark Niese and Bill Rankin

The Atlanta Journal-Constitution

Fulton County prosecutors are close to seeking indictments in the Atlanta Public Schools test-cheating scandal, lawyers familiar with the probe said.

Defense attorneys representing some educators are being told criminal charges could be filed soon and that more than two dozen people could be indicted. That would answer questions that have hung over the inquiry since its start: Would the cheating be treated as a crime, and who would be prosecuted?

The Fulton District Attorney's Office has spent more than 18 months investigating cheating on the 2009 Criterion-Referenced Competency Test.

In July 2011, three special investigators found cheating on standardized tests occurred at 44 Atlanta schools and involved 178 educators, including 38 principals. That probe, initiated by Gov. Sonny Perdue, was launched after multiple articles in The Atlanta Journal-Constitution raised questions about the validity of APS test scores when some dramatically rose or fell beyond what would normally be expected.

On Monday, Decatur lawyer Bob Rubin said prosecutors have told him they will be presenting the criminal case to the grand jury soon.

"From my conversations with the District Attorney's Office, it is my understanding that criminal charges will be filed as early as this week," said Rubin, who represents a number of educators. "I expect a large number of people to be indicted, unfortunately."

Fulton District Attorney Paul Howard has no comment on the investigation, a spokeswoman said Monday.

Atlanta attorney Michael Kramer, who represents 13 current and former Atlanta principals, said an assistant district attorney told him that prosecutors are reviewing files of 26 educators. Potential charges would include racketeering accusations, likely against high-ranking APS administrators, he said.

"That would indicate to me that they're likely to be going from the top down," said Kramer, who didn't expect his clients to be charged. "Until they issue it, we just don't know."

Last year, Howard brought in Atlanta lawyer John Floyd, an expert in racketeering prosecutions, to assist his office in the ongoing investigation.

The Racketeer Influenced and Corrupt Organizations Act — or RICO — is often used to try to prove that a legal business was being used for illegal means. It allows prosecutors to include defendants charged with various crimes in the same indictment and to allege they were all part of an ongoing enterprise. Racketeering convictions carry punishment of up to 20 years in prison.

The Georgia Professional Standards Commission, which licenses teachers, has been taking action on teachers' cases after prosecutors have concluded their investigations, said Kelly Henson, the commission's executive secretary.

Of 185 cases before the commission, the district attorney's office has released the files of all but 26 educators, which means the office has apparently narrowed its focus. As recently as January, the DA's office was withholding 40 files, Henson said.

Henson said Monday that files the DA has not released include those on former superintendent Beverly Hall and former top administrators Kathy Augustine, Millicent Few, Sharon Davis Williams, Michael Pitts and Tamara Cotman.

All but six of the 159 cases reviewed by the commission have resulted in certificates being revoked or suspended. No further action was taken against those six educators after no probable cause was found, Henson said.

Atlanta Public Schools spokesman Stephen Alford said he doesn't know whether educators will be charged with crimes, but he is aware that the district attorney's office has been investigating.

"We've been very clear about trying to root out unethical behavior," he said. "Our focus is going to be on trying to educate our kids."

Of the 178 educators implicated in the special investigators' report, the vast majority were dismissed, resigned or did not have their contracts renewed. To date, 21 have been reinstated and three are awaiting hearings to appeal their dismissals, Alford said.

Atlanta lawyer Gerald Griggs, who represents nine APS teachers, said teachers should not be made to pay for the crimes of their superiors.

"When you have most of the teachers accused of prompting students by coughing, sighing or making some other sort of gesture, it's preposterous to think they'd be facing a criminal indictment," he said. As for his clients, Griggs added, "I don't believe there's any evidence that shows they committed a criminal act."

Melvin Goldstein, a Marietta lawyer who represents about 25 teachers, said he expects prosecutors will probably go after the "masterminds" of the cheating scandal instead of classroom teachers.

"We're certainly hoping that there is no criminal action contemplated against any of the teachers who we consider lower-echelon type of defendants in this case," Goldstein said.

He said several of the teachers he represents have met with the district attorney's office for second and third interviews about what they know.

"Most of them have been informal interviews, except some of my folks who haven't cooperated. Those are the ones I'm worried about," he said.

During a court hearing last year, a Fulton prosecutor said the statute of limitations for possible crimes stemming from the scandal is four years. Since the CRCT tests were administered in April 2009, the deadline is drawing near for action by the grand jury to launch prosecutions.

Defense attorney Bruce Harvey, who also represents a number of educators, said he was glad to hear the criminal investigation is nearing an end so those accused can fight to clear their names.

"Every one of these educators has been living under a cloud," Harvey said. "Their personal and professional reputations have been infamously paraded before the public. It's about time they get the opportunity to open up these proceedings and challenge any alleged evidence in the crucible of cross-examination."

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If Beverly Hall isn't on the list, what's the point?