BEFORE THE FAIR DISMISSAL APPEALS BOARD OF THE STATE OF OREGON

In The Matter of the Appeal of GERALD BARTSCH, Appellant, v. ELKTON SCHOOL DISTRICT, District.	**Case No.:** FDA-13-011 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

INTRODUCTION

Appellant, a contract teacher, was dismissed from his employment with Elkton School District ("Elkton school" or the "District") on November 6, 2013. He timely appealed to the Fair Dismissal Appeals Board ("FDAB") on November 12, 2013. A hearing on the merits was conducted in Eugene, Oregon on January 23, 2014. Appellant was represented by John S. Bishop, Attorney at Law, and the District was represented by Rebekah R. Jacobson, Attorney at Law. The hearing was conducted before a panel appointed from the FDAB, consisting of Dennis Ross, Kathy Miller, and Gary Humphries. The panel, having considered the evidence and the arguments of counsel, makes the following rulings, findings, conclusions and order.

PANEL RULINGS

The District filed a pre-hearing motion to exclude Appellant from the hearing room during the testimony of witness "CC."[1] The panel reviewed the motion and supporting materials and denied the motion.

[1] Witness CC is the female OSU employee who submitted a sexual harassment complaint against Appellant. She is not a District employee. The panel has chosen to refer to her under a pseudonym.

At the hearing, Appellant objected to the admission of Exhibits D-2 on the basis of hearsay, and to the admission of D-9 and D-13 on the bases of hearsay and being more prejudicial than probative. The panel overruled those objections and admitted those exhibits.

Appellant also objected to the admission of Exhibit D-3, which the District withdrew.

FINDINGS OF FACT

Background

1. The District hired Appellant on August 21, 1998, as a math teacher. Appellant has been a "contract teacher" with the District, within the meaning of ORS 342.815(3), since the beginning of the 2001-2002 academic year.[2]

2. Appellant's performance evaluations in each year from 2006 through 2012 reflect that Appellant has mostly exceeded the District's performance expectations. The District perceived Appellant to be a very good math teacher.[3]

3. The District School Board adopted a policy in 1999, GBN/JBA ("Sexual Harassment Policy" or "GBN/JBA"), which states:

> Sexual harassment is strictly prohibited and shall not be tolerated. This includes sexual harassment of students or staff by other students, staff, Board members or third parties. "Third parties" include, but are not limited to, school volunteers, parents, school visitors, service contractors or others engaged in district business, such as employees of businesses or organizations participating in cooperative work programs with the district [...].
>
> Sexual harassment of students and staff shall include, but is not limited to, unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature when:
> [...]

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[2] Stip. ¶ 1. The panel uses the following citation methods in this order. The District exhibits and Appellant exhibits are referred to as D-# and A-#, respectively, with the relevant page number following when appropriate. The parties' Stipulated Facts are cited as "Stip.," with the relevant paragraph number following (*e.g.*, Stip. ¶ #). The hearing transcript is referred to by citation to the volume number, *e.g.*, either "TR1" (for Volume I) or "TR2" (for Volume II) and then the relevant page number(s) (*e.g.*, "TR1 25").

[3] A-1 to A-8; TR1 144.

3. The conduct or communication is so severe, persistent or pervasive that it has the purpose or effect of [...] creat[ing] an intimidating, offensive or hostile educational or working environment. Relevant factors to be considered will include, but not be limited to, did the individual view the environment as hostile; was it reasonable to view the environment as hostile; the nature of the conduct; how often the conduct occurred and how long it continued; [...] whether the alleged harasser was in a position of power over the student or staff member subjected to the harassment; [and] where the harassment occurred...
[...]
Employees in violation of this policy shall be subject to discipline, up to and including dismissal and/or additional sexual harassment awareness training, as appropriate.
[...]
The superintendent shall ensure appropriate periodic sexual harassment training awareness or information is provided to all supervisors, staff and students...[4]

4. A virtually identical sexual harassment policy is contained in Elkton school's 2013-14 District Staff Handbook ("Staff Handbook").[5] The Staff Handbook also includes expectations for teacher conduct derived from the Teacher Standards and Practices Commission ("TSPC") Standards for Competent and Ethical Performance of Oregon Educators.[6]

5. The District School Board adopted a policy in 2010, GBNA ("Hazing/Harassment/Intimidation/Bullying/Menacing Policy" or "GBNA"), which states that:

> Hazing, [h]arassment, intimidation, menacing or bullying and acts of cyberbullying by students, staff or third parties is strictly prohibited and shall not be tolerated in the district.
> [...]
>
> Staff whose behavior is found to be in violation of this policy will be subject to discipline, up to and including dismissal.[7]

6. The District School Board adopted a policy in 2010, GBNA-AR ("Hazing/Harassment/Intimidation/Bullying/Menacing Complaint Procedures" or "GBNA-AR"), which states that "third parties" for the purposes of the preceding GBNA policy includes, but is

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[4] Stip. ¶ 2; D-5, pp. 1-2.

[5] D-6, p. 2.

[6] D-6, pp. 2, 7.

[7] D-5, p. 8.

not limited to, "school visitors, service contractors or others engaged in district business..."

Harassment is defined as including, but not limited to:

> any act which subjects an individual ... to unwanted, abusive behavior of a nonverbal, verbal, written or physical nature on the basis of age, race, religion, color, national origin, disability or sexual orientation.

Cyberbullying is defined as:

> the use of any electronic communication device to convey a message in any form (text, image, audio or video) that intimidates, harasses or is otherwise intended to harm, insult or humiliate another in a deliberate, repeated or hostile and unwanted manner under a person's true or false identity, harass [sic], intimidate [sic] or bully [sic].[8]

7. The District School Board adopted a policy in 2006, GBNAA/JFCFA ("Cyberbullying Policy" or "GBNAA/JFCFA"), which prohibits cyberbullying. This policy contains a definition of cyberbullying slightly different from that found in the preceding GBNA-AR policy:

> "Cyberbullying" is the use of any electronic communication device to convey a message in any form (text, image, audio or video) that defames, intimidates, harasses or is otherwise intended to harm, insult or humiliate another in a deliberate, repeated or hostile and unwanted manner under a person's true or false identity. In addition, any communication of this form which disrupts or prevents a safe and positive educational or working environment may also be considered cyberbullying.
> [...]
>
> Staff whose behavior is found to be in violation of this policy will be subject to discipline, up to and including dismissal.
> [...]
>
> Staff and students will participate in an internet/electronic communications training annually to ensure awareness of and compliance with district use policies.[9]

[8] D-5, pp. 9-10.

[9] D-5, p. 12.

8. Prior to 2013, Appellant received copies of the Staff Handbook containing the definition of sexual harassment quoted above.[10] According to Superintendent Mike Hughes, Elkton did not conduct separate staff trainings with regard to the above-cited policies.[11]

Events 2009-2013

9. In 2009, the District entered into a partnership with the Oregon Natural Resources Education Program ("ONREP") at Oregon State University ("OSU") to incorporate a natural resources education program into the District's curriculum. Witness "CC" is the program coordinator for ONREP and an employee of OSU. CC worked with the District to implement a natural resources education program into the District's curriculum.[12]

10. CC first visited Elkton school in June of 2009 for an initial professional development meeting with the whole teaching staff, where she met Appellant.[13]

11. After that initial meeting, CC visited Elkton school three or four times during the 2009-2010 school year, and three or four times during the 2010-2011 school year. She visited only once during the 2011-2012 school year for professional development. She did not visit the school during the 2012-2013 school year, when the program entered a "maintenance" phase intended to "wean" the school off the ONREP program.[14]

12. Beginning in 2009, CC and Appellant developed a friendship outside of work. It was, in CC's words, a "warm relationship."[15]

13. No sexual contact occurred between CC and Appellant at any time.[16] They would hug in greeting and hold hands on occasion.[17]

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[10] TR1 200.

[11] TR1 147-149.

[12] Stip. ¶ 3.

[13] TR1 35.

[14] TR1 34-35, 69-70.

[15] TR1 36.

[16] TR1 193.

[17] TR1 96, 193.

14. In fall of 2009, Appellant sent CC a set of books on spiritual topics at her work address. CC sent him a thank you note which included the statement: "I feel honored by your gift but especially by your kind words and gentle heart."[18]

15. CC then gave Appellant her private home address in Albany, Oregon because she preferred he not send books of a personal nature to her work address. She also gave Appellant her personal cell phone number to arrange to go hiking together.[19]

16. CC and Appellant began to exchange personal emails, telephone calls, and text messages starting in 2009.

17. Sometime in 2009 or 2010, CC traveled approximately forty miles to meet Appellant and went on a five-hour hike with him. On another occasion, CC met Appellant for a hike in a park that lasted about four or five hours. On another occasion, they met in Roseburg (approximately 40 miles from CC's home), had lunch at a restaurant, and Appellant gave her a gift.[20]

18. At one point after their first hike together, CC asked her Human Resources department at Oregon State University about personal friendships with teachers to "make sure that it was acceptable and permissible to have a friendship with a colleague[.]"[21]

19. Appellant expressed romantic feelings for CC in the first year they met (2009).[22]

20. In 2009, CC shared with Appellant that her favorite song was "Come Away With Me" by Norah Jones (a popular song).[23] Appellant interpreted this comment as a signal from CC that she shared his romantic feelings. CC credibly denied that the song was intended to signal romantic interest to Appellant.[24]

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[18] TR1 39-40; A-9.

[19] TR1 41.

[20] TR1 74-76, 99.

[21] TR1 36-37, 73.

[22] A-16.

[23] TR1 45.

[24] TR1 45, 183.

21. Also in 2009, Appellant believed that CC intended to signal to him that she was romantically interested in him because she used a "love" postage stamp on a thank you card and used the phrase "kind thoughts" in the card. Appellant also believed that CC chose a card with a picture and description of a cougar to signal that she, like the cougar, was left alone in her marriage (raising her children without her husband) and that she had an open marriage.[25] CC credibly denied that she intended to convey to Appellant any hidden message.[26]

22. Appellant also interpreted one statement CC made during one of their hikes about her marriage -- that her husband had his friends and that she had her friends -- to mean that she had an "open marriage."[27]

23. On November 29, 2009, Appellant sent an email to CC which included the statement: "I have been thinking about you, also. Share with me. I want to know more about your thoughts ... to get to know you better. Tell me what it is that you think of when you think of me." He also stated that his five thoughts about her included "[y]our inner and outer beauty" and "the warmth and touch of your hands." On December 1, 2009, CC responded and listed five thoughts about Appellant, including, "[y]our voice is distictive [sic] -- like a warm cup of the perfect hot chocolate."[28]

24. On December 17, 2009, Appellant sent an email to CC which included the statement: "I have opened my heart, allowed you to enter, and experienced peace as I have never experienced with any woman." The email also stated: "I ask you to let me into you [sic] heart. I feel I am standing at the door. You are inside and I am outside. I am knocking. There is no answer. [CC], I need to know about you as you know about me. I need to know your feelings as you know mine."[29]

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[25] TR2 217-218.

[26] TR1 39-40.

[27] TR1 183.

[28] A-15.

[29] A-16.

25. In late 2009, Appellant went through a divorce and confided in CC about the painful details.[30]

26. On March 14, 2010, Appellant sent an email to CC stating: "Thoughts of you are walking through my mind so I am sending you a few words on this sunny day." He then wrote to her about rearranging his living space. CC wrote back that evening and began her message: "Thank you Gerry – I wanted to hear from you!" She then went on to describe the events of her day.[31]

27. In April of 2010, CC sent Appellant an email that included a poem by David Whyte entitled, "Sweet Darkness." CC wrote, "[f]or some reason this poem whispered your name and I heard your wonderful voice."[32]

28. Sometime between taking their first and second hike together, CC recognized that Appellant was "much more intent on meeting with me than I was with him." CC did not feel romantically about Appellant, but she cared for him and thought he had difficulty reading social cues. CC talked with Appellant about maintaining "boundaries" and toning down his romantic emails.[33]

29. In May of 2010, Appellant wrote an email to CC that stated, among other things: "Just because I may not be able to be physically present with you [doesn't] mean my path suddenly ends at a drop off near a steep ravine. My path is still in tandem with yours and vice versa. I am with you and by your side if you want me to be. I am your friend!" The email also stated, "I need you and want you in my life! You are very important to me. You are beautiful, as I have said, in so many ways," and "Tell me what it is you wish me [sic] to know. I want to listen. Whether an email or a phone call, I will listen. Tell me the little things!"[34]

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[30] TR1 37, 99.

[31] A-17.

[32] TR1 178-179.

[33] TR1 77, 81-82.

[34] A-11.

30. In another exchange of messages in the spring of 2010, Appellant explained to CC, "I have thought of you often during these recent days. I feel very fortunate and thankful you are there for me. I am here for you also. With each thought of you, I feel want inside; a pleasurable warmth which brings with it feelings of comfort, faith, and hope for the future. Thank you for your gift of friendship and the relationship we are building." CC responded with gratitude to his message, stating: "It is always a delight to hear from you and see your treasure of photos that you share with me. Thank you also for your kind words...you are a very encouraging person."[35]

31. On May 11, 2010, CC stated in an email to Appellant that she "wish[ed] to clear things," and asked Appellant what his motivation was for being her friend. CC stated she did not want to meet him for a picnic as they had planned – "it does not seem appropriate or wise to me." She wrote that she was concerned that she unintentionally misled him "into thinking there could be something more than just friendship." She also wrote, "I guess I feel like I missed something important, foundational in my understanding. I do not care for the fact that I acted in a way that lead you to a false assessment of my actions and intentions. It bothers me a great deal. I realize it is my issue..."Appellant wrote to CC, "I want you to be assured I have no thoughts of being misled by you. You have made yourself perfectly clear as to what possibilities of a friendship with you would be like and your relationship within your marriage, your agreement about friends 'his and yours,' and that you did not want to do anything which would cause harm to your marriage, on several occasions."[36]

32. CC credibly testified that, in 2009, 2010 and 2011, she would repeatedly remind Appellant to maintain "boundaries." Appellant would sometimes overstep those "boundaries" in the romantic tone of his emails and text messages. CC would then let him know – mostly verbally – "that's not okay." She encouraged Appellant to use a "filter" by asking himself, if his

[35] A-12.

[36] A-18.

wife received this text message from another man and Appellant happened to discover it, whether he would be offended by it. CC could not recall precise dates these conversations occurred. She would continue to correspond with him and periodically remind him of "boundaries."[37]

33. Appellant testified that, sometime in 2010, Superintendent Mike Hughes and another colleague stated to Appellant that they had each been sexually involved with CC, and were trying to make him jealous. Mr. Hughes credibly denied ever making a sexual statement about CC. The other colleague was not called to testify.[38]

34. In spring 2011, CC visited Appellant at his home where he was recovering from a serious car accident.

35. According to CC, after the accident, the frequency of Appellant's sending text messages of a personal nature that were "beyond boundary" increased. CC stopped communicating with Appellant at some point after the accident, but did not tell him to stop sending her personal messages at this time.[39] Beginning in 2009 or 2010, CC was aware of Appellant's romantic feelings for her but did not end the friendship or tell him to cease contact with her until 2013.[40]

Events in 2013

36. In March 2013, Appellant was still sending CC warm, personal text messages and emails.[41] CC contacted a confidential assistance program provided by OSU for advice. A consultant talked with her about stalking, and suggested she write a very direct email to Appellant telling him to stop contacting her. CC considered that option for a while.[42]

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[37] TR1 37-38.

[38] TR2 208-209, 230.

[39] TR1 37-39, 100.

[40] TR1 37, 77, 81-82.

[41] TR1 45.

[42] TR1 45-46.

37. On March 18 and March 19, 2013, CC received texts from Appellant that she found alarming. A March 18th text message read: "You are in my thoughts this morning. I want you to believe that I need and want you. I love you, [CC]. You are beautiful. You are strong. Have a good night, my love." A March 19th text message read: "My Dearest [CC], my desire is to touch you .... Everywhere. It is most beautiful in the garden today. Enjoy your self."[43]

38. On March 19, 2013, CC responded to Appellant: "Hello, Gerry, I think I understand what you meant but please reread your previous text and think through the possible meanings. Be well on this [sic]."[44] Over the next few days, Appellant continued to send CC romantic text messages.

39. On March 23, 2013, CC sent an email to Appellant that stated, among other things: "It is my understanding that we agreed to be friends. I have repeatedly tried to define those boundaries as to what is appropriate and what is inappropriate. You know I am married and have no intent to start a romantic relationship with you." CC's March 23, 2013 email also stated: "I am threatened and uncomfortable by the explicit and fantastical nature of your thoughts and possessive tendencies[.]" The email ended with: "I want this to stop. It is not negotiable. Maintaining a friendship with you is stress and worry for me. I will maintain a cordial professional relationship with you."[45]

40. One day after CC's March 23, 2013 email, Appellant emailed back: "Don't send me any more emails or call me on the telephone," and "Don't text me either." CC did not respond or otherwise initiate communication with Appellant at any time after March 23, 2013.[46]

41. On or around April 13, 2013, CC received another text message from Appellant. In the months that followed – between April 13, 2013 and September 16, 2013 – Appellant sent approximately 212 text messages to CC.[47]

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[43] TR1 50; D-1, p. 11.

[44] D-1, p. 11.

[45] D-1, p. 10.

[46] D-1, p. 10; TR1 52.

42. Appellant believed that CC wrote the March 23, 2013 email telling him to stop sending her emails or calling her because she was having trouble in her marriage, and that her husband was reading her emails and wanted her to write the March 23rd email to him. After three weeks, Appellant began sending her text messages again because he believed she had low self-esteem and was in need of his "support."[48]

43. Between April 13, 2013 and September 16, 2013, CC received text messages from Appellant every several days, sometimes as many as five in one day. The majority of the text messages were sent early in the morning or late at night. The text messages included the following statements: "I love you" (on 4/25, 5/18, 6/7, 6/16, 7/24, 8/9, 8/12, 8/26, 9/7, 9/8, 9/12, and 9/14), "You are beautiful" (4/13, 4/21, 4/25, 5/18, 7/10, 7/23, 8/3, 8/9, 9/6, and 9/12), "We were one. We are one. We will always be one" (on 6/7), "My darling, [CC], To improve and facilitate growth in and toward our relationship, your physical presence and participation in our relationship is requested as soon as possible" (on 7/10), "I want to look into your eyes, while I hold you in my arms" (on 7/23), "I wonder when you will be available. I wonder when we will be together" (on 7/23), "You are my only need. You are my only want. You are my only desire. You are my only love. You and I are complete. We Are one. We will share our world" (on 8/20), "I need you to touch me" (on 8/31), "I need your love" (on 8/31), "I need you by my side" (on 9/1), "I am your man and you are my woman, friends" (on 9/4), "You are my woman. I am your man" (on 9/4), "I am not going anywhere without you" (on 9/8), "I desire for you to be mentally, physically, and spiritually present with me" (on 9/8), "I am waiting for you" (on 9/12), "I need, want, and desire to touch you, [CC]. Everywhere..." (on 9/16).[49]

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[47] TR1 48.

[48] TR2 201-203.

[49] D-1, pp. 12-21.

44. During the summer, CC also received a message on her cell phone from Appellant, which she purged. She blocked his number so she would not receive calls but she was unable to block text messages.[50]

45. On July 22, 2013, CC received a card in the mail without a return address. It was from Appellant. He wrote that he sent it from her hometown, where he was browsing a bookstore and thinking of her. The card made her extremely uncomfortable. CC received five more cards over the course of the summer. She suspected, but does not know, whether they came from Appellant; none had return addresses and CC never opened them.[51]

46. After March 23, 2013, CC did not attempt to contact Appellant in person, by telephone, by text message, or by letter.[52]

47. There is no evidence indicating that CC was assigned to or did visit Elkton school between March 2013 and September 2013, after she instructed Appellant to stop corresponding with her.

48. In September 2013, CC filed a petition for a stalking protective order against Appellant in Benton County Circuit Court. According to CC, the court declined to issue a stalking protective order due to the absence of an imminent physical threat.[53]

49. Also in September, CC approached her supervisor, OSU/ONREP Director Susan Sahnow, as well as Roni Sue from OSU's Office of Equity and Inclusion, and said she was no longer comfortable going to Elkton school, and that OSU would need to find a replacement to work with that school.[54]

50. On September 10, 2013, Ms. Sahnow contacted Superintendent Hughes. Ms. Sahnow said she was reassigning CC to work with other school districts, "due to on-going

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[50] TR1 48.

[51] TR1 63.

[52] TR1 60-63.

[53] TR1 49, 56.

[54] TR1 48, 55.

inappropriate contact by one of the Elkton teachers." Ms. Sahnow stated that another OSU/ONREP facilitator would be assigned to Elkton school.[55]

51. Superintendent Hughes called Ms. Sahnow to ask what teacher she was referring to in her email when she referenced "inappropriate contact." Ms. Sahnow informed Mr. Hughes that it was Appellant. Ms. Sahnow then directed Mr. Hughes to contact Ms. Sue. Mr. Hughes called Ms. Sue and asked whether CC wanted to file a sexual harassment complaint. Ms. Sue indicated that CC wanted to do so.[56]

52. On September 12, 2013, OSU's Ms. Sue contacted Superintendent Hughes and stated that she had provided CC with a sexual harassment complaint form, and that CC had agreed to complete the form.[57]

53. On September 16, 2013, Ms. Sue emailed Mr. Hughes with a sexual harassment complaint form filled out by CC. On the form, CC named Appellant as her alleged harasser. CC described the conduct as follows: "Even though many attempts were made prior to 3/18/2013 to establish appropriate boundaries, [Appellant] continued to cross them. An email telling to stop (see evidence) was not honored." CC provided excerpts of two text messages sent by Appellant in September 2013. She also described receiving a card from Appellant in 2013 at her home address, in which he stated he was "touring" her town. CC also stated that the card was "followed by 5 more cards, no return addresses & different stylized writing." (In fact, CC never opened the cards.) When Ms. Sue forwarded CC's complaint to Mr. Hughes by email, Ms. Sue also attached to the email a spreadsheet of text messages sent by Appellant after March 18, 2013. In her email, Ms. Sue also stated, "Additional evidence includes notes and envelopes addressed to both [CC]'s home and office that Gerry sent. If you need any of this in hard copy format, please let me know and I will send the documents to you."[58]

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[55] Stip. ¶ 4.

[56] TR1 129-130.

[57] TR1 130; D-7; D-13.

[58] D-2; D-7; TR1 56-58, 130-131.

54. Also on September 16, 2013, CC contacted Benton County Police Department to report Appellant for telephonic harassment. According to the police record of the call, CC stated to the police that "she did not necessarily want him to get into trouble." CC testified that she told police that she did not want her report to affect his professional relationship, knowing that teaching was his passion.[59]

55. An Albany police officer, Scott King, called Appellant. When Officer King contacted him, Appellant wondered at the time whether it was really a police officer or CC's husband posing as an officer. Appellant stated to Officer King that he would stop contacting CC.[60]

56. Appellant did not and has not contacted CC after September 16, 2013, after he was contacted by Officer King.[61]

57. On September 17, 2013, Superintendent Hughes hand-delivered a letter to Appellant indicating the District had received a complaint that Appellant had sexually harassed, harassed, and/or intimidated an OSU employee who had been providing professional development to Elkton school employees. The letter stated that Appellant was placed on paid administrative leave pending the outcome of an investigation.[62]

58. On September 18, 2013, Superintendent Hughes met with Appellant and his association representative and provided Appellant with a copy of the sexual harassment complaint.[63]

59. Also on September 18, 2013, Mr. Hughes hand-delivered a letter to Appellant directing him to have no contact with CC.[64]

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[59] TR1 105-106; D-2.

[60] TR2 225.

[61] TR1 108-109.

[62] Stip. ¶ 6; D-8; TR1 196.

[63] Stip. ¶ 7.

[64] Stip. ¶ 7; D-8; TR1 197.

60. On September 19, 2013, Appellant was interviewed by Oregon School Boards Association attorney Jackie Marks, who represented the District. Superintendent Hughes scheduled an investigatory meeting with Appellant, which took place on October 14, 2013. At this meeting, Appellant was accompanied by association representatives.[65]

61. On October 15, 2013, Superintendent Hughes sent Appellant a letter to notify Appellant that he intended to recommend the dismissal of Appellant's employment to the District School Board at a Special Meeting of the Board to be held on November 5, 2013. Mr. Hughes said his recommendation would be based on the following statutory grounds: neglect of duty; insubordination; and "any cause which constitutes grounds for the revocation of such contract teacher's teaching license."[66]

62. On November 5, 2013, the District Board considered Superintendent Hughes's recommendation to dismiss Appellant. The Board voted 7-0 to uphold Mr. Hughes's dismissal recommendation on the grounds of: neglect of duty; insubordination; and any cause which constitutes grounds for the revocation of such contract teacher's teaching license.[67]

63. The District's November 6, 2013 dismissal notice states that the Board voted to accept Superintendent Hughes's dismissal recommendation on the grounds of neglect of duty, insubordination, and any cause which constitutes grounds for the revocation of such contract counselor's teaching license. The dismissal notice contains the following factual allegations:

> The District Superintendent, citing ORS 342.865 (1)(c), (d), and (i) concluded your conduct violated OAR 584-20-0035 and 584-20-0040 (4).
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> [...]

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[65] Stip. ¶ 8. The panel observes that Appellant's interview with Ms. Marks took place less than 48 hours after he first received notice that he was under investigation, which seems like a very short time for Appellant to have prepared for the interview.

[66] Stip. ¶ 9; D-10.

[67] Stip. ¶ 10. The panel observes that the Board meeting minutes do not reflect whether or not the Board agreed with Superintendent Hughes's stated grounds for dismissal. D-14, p. 4.

You sent approximately 218 unwanted text messages to [CC] after she told you to stop. You admitted to sending these text messages to CC. You admitted you received an email message from CC telling to stop sending her any messages that were not professional in nature.

[...] These messages were not professional in nature. These text messages contained references to touching CC and recitations of your love for her.

[...] In sending these unwanted text messages to CC, you violated the following Elkton School Board Policies:

A. GBN – Sexual Harassment[68]
B. GBN/JBA – Sexual Harassment
C. GBNA – Hazing/Harassment/Intimidation/Bullying/Menacing
D. GBNA-AR – Hazing/Harassment/Intimidation/Bullying/Menacing Complaint Procedures – Staff
E. GBNA/JFCFA – Cyberbullying

You admitted you were aware of the policy on sexual harassment and had received the policy numerous times. Your sending these text messages and mailed letters created an offensive or hostile working environment for CC.
[...]

You used an electronic communication device to convey a message that intimidated and harassed CC in a deliberate, repeated and unwanted manner which had the effect of creating a hostile work environment for CC.[69]

64. By letter dated November 12, 2013, Appellant appealed to the Fair Dismissal Appeals Board from the District's decision to dismiss him from employment.[70]

CONCLUSIONS OF LAW

1. District is a "fair dismissal district" under the Accountability for Schools for the 21st Century Law. Appellant is a "contract teacher" entitled to a hearing before this panel.

2. The factual allegation that Appellant sent approximately 218 unwanted text messages of a personal nature to CC after she told Appellant to stop is true and substantiated.

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[68] The panel observes that "GBN" policy was not entered into evidence; the only "Sexual Harassment" policy entered was GBN/JBA.

[69] D-15.

[70] Stip. ¶ 11.

3. The factual allegation that the text messages contained references to touching CC and recitations of Appellant's love for her is true and substantiated.

4. The factual allegation that Appellant received the school's sexual harassment policy is true and substantiated.

5. The factual allegation that Appellant *admitted* he received an email message from CC telling him to stop sending her *any messages* that were not professional in nature is not true and substantiated.

6. The factual allegation that Appellant violated Elkton school policies is not true or substantiated.

7. The factual allegation that Appellant's mailed letters and text messages created an offensive or hostile working environment for CC is not true or substantiated.

8. The factual allegation that Appellant used an electronic device to convey a message that intimidated and harassed CC in a deliberate, repeated and unwanted manner which had the effect of creating a hostile work environment for CC is not true or substantiated.

5. The true and substantiated facts are not adequate to support the charge of insubordination as a ground for dismissal.

6. The true and substantiated facts are not adequate to support the charge of neglect of duty as a ground for dismissal.

7. The true and substantiated facts are not adequate to support the charge of any cause which constitutes a ground for the revocation of such contract teacher's teaching license as a ground for dismissal.

8. TSPC's Standards for Competent and Ethical Performance of Oregon Educators apply to both "on duty" and, in *certain circumstances*, "off duty" conduct.[71]

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[71] *See, e.g., Talbott v. Teacher Standards & Practices Comm'n*, 260 Or App 355, 375 (2013) (off duty conduct can support ground for suspension of license where there is sufficient nexus between conduct and professional responsibilities).

9. The TSPC standards define gross neglect of duty as "any serious and material inattention to or breach of professional responsibilities," evidence of which may include sexual harassment.[72]

10. Because this panel concludes that the true and substantiated facts are not adequate to support the grounds for dismissal relied upon by the District, it is unnecessary for this panel to consider whether the dismissal of Appellant was arbitrary, unreasonable or clearly an excessive remedy within the meaning of ORS 342.905(6).

DISCUSSION

I. Applicable Legal Standard.

The applicable legal standard that guides this panel's analysis is set forth in ORS 342.905(6), which provides:

> The Fair Dismissal Appeals Board panel shall determine whether the facts relied upon to support the statutory grounds cited for dismissal or nonextension are true *and* substantiated. If the panel finds these facts true and substantiated, it shall then consider whether such facts, in light of all the circumstances and additional facts developed at the hearing that are relevant to the statutory standards in ORS 342.865(1), are adequate to justify the statutory grounds cited. In making such determination, the panel shall consider all reasonable written rules, policies and standards of performance adopted by the school district board unless it finds that such rules, policies and standards have been so inconsistently applied as to amount to arbitrariness. The panel shall not reverse the dismissal or nonextension if it finds the facts relied upon are true and substantiated unless it determines, in light of all the evidence and for reasons stated with specificity in its findings and order, that the dismissal or nonextension was unreasonable, arbitrary or clearly an excessive remedy.

ORS 342.905(6) (emphases added). The "degree of proof of all factual determinations by the panel shall be based on the preponderance of the evidence standard." OAR 586-030-0055(5). At the hearing, evidence of "a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs" is admissible. OAR 586-030-0055(1).

ORS 342.905(6) creates a three-step review process this panel must follow:

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[72] D-4, p. 7.

> First, the [FDAB] panel determines whether the facts upon which the school board relied are true and substantiated. Second, the panel determines whether the facts found to be true and substantiated constitute a statutory basis for dismissal. Third, even if the facts constitute a statutory basis for dismissal, the panel may reverse the school board's dismissal decision if the decision nonetheless was 'unreasonable, arbitrary[,] or clearly an excessive remedy.'

Bergerson v. Salem-Keizer School District, 341 Or 401, 412 (2006) (footnote omitted). If the panel "finds the facts are not true and substantiated, or even if true and substantiated, are not relevant or adequate to justify the statutory grounds cited by the district, the appellant shall be reinstated with any back pay that is awarded in the order." OAR 586-030-0070(3).

II. The Critical Facts Relied Upon by the District are not True and Substantiated.

The panel concludes that the three critical facts relied upon by the District to support Appellant's dismissal – (1) that Appellant violated school policies, (2) that his messages and letters created an offensive or hostile working environment for CC, and (3) that Appellant "deliberately" "intimidated and harassed" CC, resulting in a hostile work environment – are not true and substantiated.

With regard to a violation of policies, the panel concludes that the District has not established by a preponderance of the evidence that Appellant violated the school's Sexual Harassment Policy, as written.

First, there is no evidence that the policy, as written, extends to a teacher's *off duty* conduct toward a *third party* who was not currently working at or visiting the school or who was not scheduled to work at or visit the school. Put differently, the school's sexual harassment prohibition as written does not reach interactions – not even reprehensible interactions – between adults that occur within the context of a personal relationship. Rather, the policy defines sexual harassment as including harassment "*of* students or staff *by* other students, staff, Board member or third parties" (emphasis added), indicating that the main goal and contour of the policy relates to protecting children and teachers from harassment in their educational and work environment.[73]

[73] D-5, pp. 1-2.

The policy states further that "[s]exual harassment *of students and staff* shall include...conduct or communication ... creat[ing] an intimidating, offensive or hostile educational or working environment." (Emphases added).[74] The policy, as written, does not address a situation where a teacher like Appellant engages in conduct off school grounds and off duty, aimed at another adult, where the 'target' of the harassment is not a student or staff at the school.

Further, the District did not establish that Appellant's conduct affected the "educational or working environment" of CC. The Sexual Harassment policy defines harassment as conduct or communication that is so severe that it creates and "intimidating, offensive or hostile educational or working environment." Here, Appellant sent unwanted text messages to CC; even if she was a "third party" protected by the policy, her professional visits to the school had ceased during the period of April 13, 2013 to September 16, 2013, when Appellant sent the unwanted text messages.[75] There is no evidence that CC's actual working environment was affected in any way during the three months that Appellant sent her unwanted texts, beyond the fact that she felt uncomfortable about any potential visits to Elkton that may or may not have occurred at some future date. CC had ceased visiting the school and had ceased professionally engaging with Appellant as of 2012.[76]

Nor does the fact that OSU/ONREP officially "removed" CC as a facilitator from the school as a consequence of Appellant's conduct, during a maintenance period where CC was not visiting the school anymore,[77] establish that Appellant created a hostile educational or working environment. CC may have been Elkton's official facilitator, but she was not physically present at the school. The policy does not define the school as a "working environment" for any contractor, vendor, or consultant who ever once set foot on the premises. This panel believes that

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[74] Similarly, the Hazing/Harassment/Intimidation/Bullying/Menacing Policy addresses conduct "*by* students, staff or third parties;" it does not address conduct *toward* third parties. D-5, p. 8.

[75] TR1 34-35, 69-70.

[76] TR1 34-35, 69-70.

[77] TR1 49, 56.

this broad interpretation would not be a reasonable interpretation of the policy. Tellingly, the Sexual Harassment Policy lists "relevant factors" to determine whether an intimidating, offensive, or hostile educational or working environment exists, which includes the factor "*where* the harassment occurred." Appellant's conduct toward CC outside the working environment, with no effect on her actual, current working environment proved at the hearing, is not squarely covered by the Sexual Harassment Policy. Therefore, the District did not establish that Appellant's conduct created a hostile workplace for CC.

The District did not establish that Appellant violated the school's Hazing/Harassment/Intimidation/Bullying/Menacing Procedures. These procedures, as written, cover conduct toward someone "engaged in district business."[78] As stated above, there is no evidence to suggest that Appellant subjected CC to unwanted texts while she was at, near or even slated to visit the school or in any way engaged in district business from April 13, 2013 to September 16, 2013.

The District also did not establish by a preponderance of the evidence that Appellant violated the school's "Cyberbullying Policy." This policy covers electronic communications that intimidate, harass or are otherwise "*intended* to *harm, insult, or humiliate*" another person (not defined) "in a *deliberate*, repeated or hostile and unwanted manner..." (emphases added).[79] The District has not established that Appellant's conduct, while unquestionably unwanted, unacceptable, and even alarming, was Appellant's deliberate or intentional attempt to harm, insult or humiliate CC.

Critical here is history. Appellant and CC enjoyed a "warm" friendship over several years, during which Appellant from time to time expressed romantic feelings and passion for CC.[80] She would periodically put Appellant's feelings in check, and then the two would resume

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[78] D-5, pp. 9-10.

[79] D-5, p. 12.

[80] TR1 36; A-16.

their interactions.[81] This rhythm occurred for several years. Given this history, Appellant had no reason to believe that his fits of passionate correspondence 'harmed, insulted or humiliated' CC, who historically expressed only discomfort and gentle rebuke. Appellant's testimony – that he thought CC would welcome his resuming of messages of love after heeding her "stop message" for three weeks – is believable in light of the history between CC and Appellant (although the panel by no means endorses Appellant's behavior, which was inappropriate).

Appellant also regularly misinterpreted CC's communications as evidence that she returned his feelings. CC knew this and even concluded early on in their relationship that Appellant had difficulty with "social cues."[82] Yet, knowing his limitations, she sent him only one "stop" message, on March 23, 2013, when she bluntly directed him to stop his "explicit and fantastical" correspondence.[83] Unfortunately, Appellant did not stop. Appellant, *as he had in the past*, misinterpreted her words and, after a brief break, reverted back to declaring his love for her as he had done for several years. Appellant testified that he interpreted her March 23rd email to him as saying, "stop using those types of words [...] which we had been using in our relationship for the last three and a half years at different points in time and in songs and things like that. It was a message to me to stop at that time."[84] While this panel finds sending 218 romantic text messages to a person who has said "stop" repulsive and unacceptable, there is no evidence that Appellant "*intended* to *harm, insult, or humiliate*" CC as stated in the language of the cyberbullying policy. Indeed, Appellant abruptly stopped sending his text messages when the police gave him a call – namely, after he was given a second, unmistakable cue that his conduct was unwanted.

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[81] TR1 37, 77, 81-82.

[82] TR1 77, 81-82; A-18.

[83] D-1, p. 10. Appellant's belief that Superintendent Hughes and another colleague intended to taunt him, or even interfere with, his relationship with CC, struck the panel as fantastical. It lent credence to CC's description of Appellant as having difficulty correctly interpreting social situations.

[84] TR1 202.

Furthermore, there is no evidence of Appellant's "intent" to harm CC. While it is baffling and disturbing that Appellant ignored CC's "stop" message, CC herself testified that, in the past, she had ignored Appellant's repeated overstepping of boundaries.[85] She testified that had to *repeatedly* explain and remind him of "boundaries," which she did, and after which she would allow the warm relationship to resume. This pattern does not excuse Appellant's behavior, but it makes his testimony about his intent – that he believed his messages were welcomed and wanted to be "supportive," even after she drew the line – credible. The District has failed to establish that Appellant *intended* to harm CC, given Appellant's past of consistently misreading and ignoring her cues, and being forgiven for it – until 2013.

Significant here is also the school's failure to train teachers, including Appellant, on what conduct was and was not covered by the harassment and cyberbullying policies.[86] This panel's conclusions may have been different, had the District been able to show that the school communicated to Appellant what is missing from the written policies: that unwanted messages, sent off-duty, to a person with even just a dormant professional connection to the school, is considered harassment or bullying and prohibited.

For the foregoing reasons, the panel finds that the District failed to establish by a preponderance of the evidence that Appellant violated school policies when, off duty, he sent a third party who had no current presence at the school and with whom he had a personal relationship, unwanted text messages which were not intended to harm nor created a hostile "working" environment.

The panel would like to again emphasize that it does not condone Appellant's behavior, which was clearly beyond the acceptable norm of human interaction, and eventually required police intervention to come to an end. CC shouldn't have had to endure what she endured. The panel, however, is tasked with making a finding as to whether the District's central factual

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[85] TR1 86-87.

[86] TR1 147-149.

allegations – that Appellant violated District policies, as written, and created an offensive or hostile working environment for CC – are true and substantiated. It cannot make such a finding.

III. The True and Substantiated Facts are Not Adequate to Justify the Statutory Grounds Cited by the District.

A. The Charged Facts are Not Adequate to Justify Dismissal for Insubordination.

The panel concludes that the true and substantiated facts are not adequate to support dismissal on the basis of insubordination. Insubordination within the meaning of ORS 342.865(1)(c) means "disobedience of a direct order or unwillingness to submit to authority," and must be accompanied by a defiant intent or attitude on the part of the teacher. *Bellairs v. Beaverton Sch. District,* 206 Or App 186, 199 (2006). To establish insubordination, there must be credible evidence that the District imposed a lawful order or directive, that it clearly communicated that order or directive, and that the teacher willfully refused to obey the order. *Sherman v. Multnomah Education Service Dist.,* FDA-95-4, p. 23 (1996). The panel concludes that the District ordered Appellant by letter on September 18, 2013 to cease contact with CC.[87] Appellant obeyed that order and had no contact with CC after September 18, 2013. Therefore, he was not insubordinate.

The District conceded at hearing that insubordination "is not the District's strongest claim." This panel agrees.[88] The District issued an order to Appellant on September 18, 2013 and he complied. Appellant was not instructed by the District to cease contact with CC prior to September 18th, and one cannot defy an order that does not exist. The panel concludes that Appellant was not insubordinate with respect to the one and only District order or directive that was issued – Superintendent Hughes's September 18th letter.

The panel is also unpersuaded by the District's argument that Appellant was insubordinate because he violated (claims the District) school policies. As explained above, this

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[87] Stip. ¶ 7; D-8.

[88] TR2 244.

panel finds that he did not violate the policies, as written. Moreover, there is no legal support for the proposition that a violation of policies in and of itself constitutes insubordination. The accepted definition of insubordination contains a "defiant intent" and clear communication of an order. School policies are not "orders." Even if a violation of school policy constituted a "neglect of duty," it *still* would not follow that the violator was also "insubordinate." The two grounds carry different definitions; there is no legal support for conflating these two grounds.

There is no basis for this panel to conclude that the true and substantiated facts support a conclusion that Appellant, with defiant intent, violated a lawful order or directive. The charged facts are not adequate to justify dismissal for insubordination.

B. The Charged Facts are Not Adequate to Justify Dismissal for Neglect of Duty.

This panel concludes that the true and substantiated facts are inadequate to support dismissal for neglect of duty within the meaning of ORS 342.865(1)(d). Neglect of duty means the "failure to engage in conduct designed to result in proper performance of duty." *Wilson v. Grants Pass School District,* FDA 04-7, p. 9 (2005). Neglect of duty can be demonstrated through evidence of "repeated failures to perform duties of a relatively minor importance or a single instance of a failure to perform a critical duty." *Id.*, p. 10, *citing Enfield v. Salem-Keizer School District,* FDA-91-1 (1992), *affirmed without opinion,* 118 Or App 162 (1993), *rev. denied,* 316 Or 142 (1993). The true and substantiated facts are not adequate to demonstrate that Appellant repeatedly failed to perform minor duties or failed to perform a critical duty.

First, the District did not establish that Appellant engaged in repeated failure to perform duties of a relatively minor importance when he sent repeated unwanted text messages. "FDAB has interpreted 'neglect of duty' to mean the failure of a teacher to engage in conduct designed to bring about a performance of his or her responsibilities." *Bellairs v. Beaverton School Dist.*, 206 Or App 186, 196 (2006) (internal citations omitted). The Court of Appeals has explained that off duty conduct may constitute neglect of duty if the conduct is incompatible with a teaching duty.

Kari v. Jefferson County School Dist. No 509-J, 311 Or 389 (1991), *aff'd*, 120 Or App 99 (1993) (remanding case to FDAB regarding drug awareness teacher who failed to take appropriate measures in response to husbands use of home for drug sales).

Here, Appellant's repeated sending of unwanted text messages had a grave effect on his personal relationship with CC, but there is no evidence that Appellant's conduct had any effect on or was incompatible with his math teaching duties. The essential facts are that, following a three-and-a-half year friendship during which Appellant from time to time expressed romantic feelings to CC and which she, for a period of time and to a degree, tolerated, she asked him to stop sending her intimate messages. He did not honor that request, for misguided reasons, until a police officer called him with the same request. However, as explained above, Appellant's conduct consisted of off-duty actions toward a person with whom he had a personal history, and Appellant did not engage in deliberate workplace harassment of CC. The District did not prove that Appellant's sending of text messages had an effect on his work duties, even when he did so repeatedly. Even if his conduct would have become known by students, parents, or other staff, and damaged his reputation (of which there is no evidence), it takes more to establish neglect of duty. "It is not enough to say that where some damage to the teacher's effectiveness is predictable, the teacher must simply avoid that conduct. Societal considerations may exist which require protection of a teacher's rights in her personal life, even at the expense of detriment to a teacher's effectiveness as a teacher." *Kari v. Jefferson County School Dist. No 509-J*, 120 Or App at 237 (quoting FDAB panel and finding conclusion in accord with court precedent).

Second, the District did not establish that Appellant engaged in a single instance of a failure to perform a critical duty. Even assuming that a violation of school policies relating to harassment and cyberbullying could constitute a failure to perform a critical duty, here the District did not establish that Appellant violated school policies, for the reasons explained above. The panel concludes that the District did not prove that Appellant failed to perform a critical duty.

C. The Charged Facts are Not Cause Constituting a Ground for the Revocation Of a Contract Teacher's License Under ORS 342.865(1)(i).

This panel concludes that the true and substantiated facts are not adequate to support a dismissal on the basis that Appellant engaged in conduct constituting a ground for the revocation of a teaching license, within the meaning of ORS 342.865(1)(i). Neither party presented evidence that as of the hearing date Appellant's license had been revoked or even suspended.

Further, even if the District had proven that Appellant engaged in harassment or cyberbullying in violation of its policies (it did not), these violations would not establish a mandatory ground for revocation of an educator's license. The Teacher Standards and Practices Commission may revoke an educator's license for "gross neglect of duty." OAR 584-020-0040(3)(c). Gross neglect of duty is "any serious and material inattention or breach of professional responsibilities," which *may* include sexual harassment. OAR 584-020-0040(4)(l). Appellant presented cases in which the TSPC imposed a range of discipline on teachers for sexually inappropriate conduct, all of which, unlike here, related to other staff or students: *e.g.*, probation and a reprimand for a teacher who engaged in unwanted physical conduct and personal communications with an instructional aide; a brief suspension and probation for a teacher who made a disparaging comment about another teacher's breasts, at school; a reprimand and probation for a teacher who engaged in inappropriate physical conduct and sexual remarks involving a student, at school.[89] It is unlikely that Appellant's conduct would be viewed as more egregious than verbal or physical assaults on co-workers and children.

Furthermore, Oregon courts have held that TSPC may not interpret "gross neglect of duty" to mean that teachers must behave "ethically and lawfully" *at all times*. Instead, TSPC's rules reach unethical or unlawful conduct "only if there is a specific and demonstrable nexus between the conduct and an educator's professional responsibilities." This conclusion was illustrated in a recent case, *Talbott v. TSPC*, 260 Or App 355 (2013), where the Court of Appeals

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[89] *In re Frank William Anderson* (TSPC 2006); *In re Michael Richard Gordon* (TSPC 2010); *In re John Stuart Dixon* (TSPC 2005), at A-22.

found that a teacher's giving his principal a book titled, "The Girl's Guide to Being a Boss (Without Being a Bitch)" and sharing his low opinion of her, which did not take place where students or other staff member would see or hear it, had no effect on or nexus to his professional responsibilities. By contrast, delivering a disrespectful letter off duty to a complaining parent of a student was directly related to his teaching duties.

Here, Appellant engaged in off duty conduct that did not have a nexus to his professional responsibilities, or any effect whatsoever on his teaching duties. Indeed, Superintendent Hughes testified that Appellant is a "very good math teacher," despite the conduct that took place relating to his personal relationship with CC. Because a specific and demonstrable nexus between Appellant's conduct and Appellant's professional duties is lacking, the panel believes that Appellant's conduct would not constitute grounds for revocation of his license.

For all the reasons discussed above, this panel does not believe that Appellant engaged in any serious and material inattention or breach of professional responsibilities. Even if Appellant's off-duty conduct could be considered an example of extremely poor judgment, this panel nonetheless cannot find that Appellant's exercise of poor judgment, under the circumstances in this particular case, was tantamount to a gross neglect of duty constituting grounds for the revocation of his license. The true and substantiated facts are not, therefore, adequate to support a dismissal pursuant to ORS 342.865(1)(i).

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ORDER

The dismissal of Appellant is set aside. Appellant shall be reinstated to his position without back pay.

DATED this March 27, 2014

Dennis Ross, Panel Chair

DATED this _____, 2014

Kathy Miller, Panel Member

DATED this _____, 2014

Gary Humphries, Panel Member

Notice: Under ORS 342.905(9), this order may be appealed in the manner provided for in ORS 183.480, and any appeal must be filed within 60 days from the date of service of this Order.

ORDER

The dismissal of Appellant is set aside. Appellant shall be reinstated to his position without back pay.

DATED this _____, 2014

Dennis Ross, Panel Chair

DATED this 3/28, 2014

Kathy K Miller

Kathy Miller, Panel Member

DATED this _____, 2014

Gary Humphries, Panel Member

Notice: Under ORS 342.905(9), this order may be appealed in the manner provided for in ORS 183.480, and any appeal must be filed within 60 days from the date of service of this Order.

ORDER

The dismissal of Appellant is set aside. Appellant shall be reinstated to his position without back pay.

DATED this _____, 2014

Dennis Ross, Panel Chair

DATED this _____, 2014

Kathy Miller, Panel Member

DATED this March 27, 2014

Gary Humphries, Panel Member

Notice: Under ORS 342.905(9), this order may be appealed in the manner provided for in ORS 183.480, and any appeal must be filed within 60 days from the date of service of this Order.

CERTIFICATE OF SERVICE

I hereby certify that on 3-28-14, I served a true and correct copy of FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER by the method indicated below:

John S. Bishop, II McKanna Bishop Joffe & Arms, LLP 1635 NW Johnson Street Portland, OR 97209	[ ] [X] [ ] [ ] [ ]	HAND DELIVERY U.S. MAIL – CERTIFIED, RETURN RECEIPT REQUESTED OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY
Rebekah Jacobson Attorney at Law Garrett Hemann Robertson PC 1011 Commercial NE, Ste 210 PO Box 749 Salem, OR 97308	[ ] [X] [ ] [ ] [ ]	HAND DELIVERY U.S. MAIL – CERTIFIED, RETURN RECEIPT REQUESTED OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY

Respectfully submitted,

Stephanie R. Parks

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