

**BEFORE THE
TEACHER STANDARDS AND PRACTICES COMMISSION
STATE OF OREGON**

IN THE MATTER OF:	)	FINAL ORDER
	)	
MARC A. THIELMAN	)	OAH Case No. 2025-ABC-06916
	)	
	)	

This matter came before the Teacher Standards and Practices Commission (TSPC or the Commission) during its regularly scheduled meeting of June 23, 2026 to consider the Proposed Order issued on May 4, 2026 by Senior Administrative Law Judge (ALJ) Joe L. Allen. The Proposed Order advised Mr. Thielman of the opportunity to file exceptions. Mr. Thielman (Licensee) did not file exceptions. After considering the files and records herein, the Commission issues the Final Order as follows. The Commission has identified modifications to the proposed order below.

HISTORY OF THE CASE¹

On October 13, 2024, the Commission issued a Notice of Opportunity for Hearing to Licensee alleging multiple counts of gross neglect of duty and proposing to revoke his professional administrator license. On December 3, 2024, Licensee requested a hearing.

On February 5, 2025, TSPC referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned ALJ Joe L. Allen to preside at hearing. ALJ Allen convened a prehearing conference by telephone on March 20, 2025. Licensee appeared *pro se*, and TSPC was represented by Senior Assistant Attorney General (AAG) Raul Ramirez. The purpose of the prehearing conference was to identify the issues for hearing and establish a schedule of the proceedings and filing deadlines.

A hearing was held on December 8 through 10, 2025, in Salem, Oregon. Licensee appeared without counsel but did not testify. TSPC was represented by AAG Ramirez. TSPC representative Kevin Cooley also appeared. Testifying on behalf of Licensee were Robert Hess, Jeffrey Davis, and Nicole Davis. Testifying on behalf of TSPC were Katie Sapp, Risteen Follett, Catherine Ellis, Shannon Rice, Sean Gallagher, Lora Nickle (*née* Dowles), Krista Neiraeth, and Kevin Cooley. The ALJ held the record open to allow Mr. Thielman and the Commission to submit written closing arguments. The record closed on February 6, 2026, after receipt of those arguments.

ISSUES

1. Whether Licensee engaged in gross neglect of duty by sexually harassing one or more

¹ The Commission made non-substantive modifications to the case history.

employees of the Alsea School District during the 2020-21 school year. OAR 584-020-0040(1).

2. Whether Licensee engaged in gross neglect of duty by falsely reporting compliance with one or more Division 22 standards for the 2020-21 school year. OAR 584-020-0040(c), (n).

3. If either of the above are proven, whether TSPC may revoke Licensee's professional administrator license. ORS 342.175(1)(b), (6); OAR 584-020-0040.

EVIDENTIARY RULINGS

Exhibits A1 through A18, offered by the Commission, were admitted into the record without objection. Exhibits R1, R2, R5, R7, R8, R13, R14, R16, and R17, offered by Licensee, were also admitted into the record without objection. Licensee's Exhibits R11, R12, R15, R18 and R23 were admitted over the Commission's objections. The ALJ excluded Exhibits R3, R4, R6, R9, R10, R19 through R22, and R24 through R28 based on the Commission's relevance objections.

FINDINGS OF FACT

1. Licensee has held a professional administrator license issued by TSPC since 2006. Prior to that time, Licensee also held a teaching license issued by TSPC. Licensee has served as the superintendent of the Alsea School District (ASD) since at least 2010. (Test. of Cooley and Sapp; Ex. A2.)

2. ASD is a small rural school district consisting of grades kindergarten through 12 housed in a single school building, with a gymnasium at the center. Grades kindergarten through eight have classrooms on one side of the building, and grades nine through twelve meet in classrooms on the opposite side of the building. The ASD school building is located next to the Benton County library. (Test. of Gallagher.)

Katie Sapp.

3. In 2010, ASD hired Katie Sapp as a coach for the girls' volleyball team. During that time, Ms. Sapp also worked in various roles with the United States Forest Service, including as a wildland firefighter, emergency dispatcher, and project manager. (Test. of Sapp; Ex. A9 at 2.)

4. Ms. Sapp was in a long-term relationship with a member of the Alsea School Board, Aaron Schneider.² Ms. Sapp and Mr. Schneider share a son who, during the 2014-15 school year, was entering seventh grade. At that time, Mr. Schneider was serving as the school board chair. (Ex. A9 at 3; test. of Sapp.)

5. In early 2014, Ms. Sapp learned that ASD was hiring for a deputy clerk/business

² For reasons not relevant to this order, Ms. Sapp and Mr. Schneider ended their relationship in 2020. See Exhibit A9 at 3.

manager position. Ms. Sapp decided to apply for the position, in part, so she could be more involved in her son's school activities. ASD hired Ms. Sapp, and she began working as the ASD business manager in July 2014. (Test. of Sapp; Ex. A9 at 3.)

6. As the business manager, Ms. Sapp reported directly to Licensee, ASD's superintendent and, for a period of time during Ms. Sapp's employment, the principal of all grades at ASD. (Test. of Sapp and Ellis.)

7. During Ms. Sapp's first interaction with Licensee in July 2014, Licensee commented that Ms. Sapp only secured the position as business manager because she was sleeping with a member of the school board. (Test. of Sapp; Ex. A9 at 3.)

8. During the initial weeks of Ms. Sapp's employment in 2014, Licensee would also make jokes with custodial staff about Ms. Sapp getting hired because she was sleeping with a school board member. At one point, Licensee joked that he would hang a sign on Ms. Sapp's office door reading, "I'm sleeping with a board member, how did you get your job." (Test. of Sapp, Ex. A9 at 3.)

9. During Ms. Sapp's initial months working as ASD's business manager, the school district advertised for and hired a new school secretary, following the retirement of the previous secretary. Among the candidates for the position were Tiffany Schreiber and Shirley Koetz. Mrs. Koetz was married to Ron Koetz, a member of the school board. Ms. Schreiber had been serving as a backup to the prior secretary before her retirement. (Ex. A9 at 4; test. of Sapp.)

10. During the selection process, Licensee mentioned to Ms. Sapp that he would be amenable to either Ms. Schreiber or Mrs. Koetz because Ms. Schreiber was "nice to look at" and, since Mrs. Koetz was married to a board member, no one would accuse him of sleeping with her. (Ex. A9 at 4.)

11. Eventually, ASD selected Ms. Schreiber for the role of school secretary. Licensee then instructed Ms. Sapp to train Mrs. Koetz as a substitute for the ASD front office. When Mrs. Koetz began training, she exhibited hostility towards Ms. Sapp and Ms. Schreiber because Mrs. Koetz felt she should have been hired for the business manager and secretary roles. (Ex. A9 at 4; test. of Sapp.)

12. In summer 2016, Ms. Sapp had the opportunity to travel to Europe with her son and visit a foreign exchange student their family had previously hosted. In preparation for that trip, Ms. Sapp worked with another employee, Shannon Rice, who agreed to cover her duties while she traveled to Europe. (Test. of Sapp and Rice; Ex. A9 at 5.)

13. While Ms. Sapp and Ms. Rice were working in the school building, Licensee approached to two women and asked if they had noticed the custodial staff visiting the administrative offices to ask questions. Licensee then stated that the only reason the custodians were visiting was to ogle the two women's breasts. While making those comments, Licensee made hand gestures around his chest indicating large breasts. (Test. of Sapp and Rice; Ex. A9 at 5.)

14. Toward the end of 2016, Ms. Schreiber began experiencing personal issues. During that time, Licensee would often meet with Ms. Schreiber to counsel her on personal matters and allow her to vent in his office. On one occasion, Ms. Sapp received a telephone call from the school board chair inquiring about whether she believed Licensee and Ms. Schrieber were engaged in a sexual relationship. The board chair informed Ms. Sapp that a member of the community had made a complaint alleging Licensee and Ms. Schreiber were having an affair, and he was investigating in his official capacity. (Ex. A9 at 5.)

15. When Ms. Schreiber learned of the allegation, she was upset that people would believe she was having an affair with Licensee. For his part, Licensee would simply laugh and joke about the allegation. Ms. Schreiber eventually resigned her position, in 2017, and moved out of the Alsea area. (Ex. A9 at 5.)

16. Following Ms. Schreiber's departure, ASD began recruiting for a new school secretary. At that time, ASD was also recruiting for the newly created position of executive secretary who would serve the superintendent directly. Mrs. Koetz was offered her choice of position and elected to accept the executive secretary job. (Ex. A9 at 5-6; test. of Sapp.)

17. Following Ms. Schreiber's departure in 2017, Licensee began to focus more of his attention of Ms. Sapp. At times he would accuse her of being "no fun" and commented that the two needed to attend some training conferences together so they could "party." (Ex. A9 at 6; test of Sapp.)

18. During that time, Licensee also began to comment openly about how he and other administrators regularly traveled to school conferences or trainings outside the school district to engage in sexual intercourse with women other than their spouses. Licensee would also make comments to Ms. Sapp and others regarding the large size of his penis, and he provided detailed commentary to Ms. Sapp and other female employees regarding his sex life. (Test. of Sapp and Rice; Ex. A9 at 6.)

19. Ms. Sapp often tried to avoid engaging with Licensee when he made inappropriate comments by telling him it was inappropriate or asking him to stop. Licensee persisted despite her attempts. Ms. Sapp eventually began to tune out, or dissociate, when Licensee made inappropriate comments her or others in the workplace. (Test. of Sapp; Ex. A9 at 6.)

20. Following Mrs. Koetz's hiring, ASD administrative offices employed three women who were married to or in long-term relationships with school board members. Licensee often made jokes in the school building about women sleeping with school board members to get a job. Licensee made comments of a sexual nature to Ms. Sapp on a weekly, if not daily, basis. (Test. of Sapp and Rice; Ex. A9 at 6.)

21. In 2019, Ms. Sapp and another ASD business office employee, Lora Nickle, registered to attend an OASBO³ conference at the Riverbend Hotel in Bend, Oregon. The

³ Oregon Association of School Business Officials

conference was typically attended only by individuals working in school district business offices. School superintendents did not typically attend and, during Ms. Sapp's tenure with ASD, Licensee had never previously attended. (Test. of Sapp and Nickle; Ex. A9 at 7.)

22. In July 2019, Licensee informed Ms. Sapp that he would be attending the OASBO conference with her and Ms. Nickle so they could all "go out and have fun." (Ex. A9 at 7; test. of Sapp.) This made Ms. Sapp uncomfortable, and she approached then school board chair Ron Koetz and urged him to discourage Licensee from attending the conference. (Test. of Sapp; Exs. A9 at 7, A10 at 2, and A11 at 2.)

23. On the first day of the conference, Licensee showed up in Bend and attempted to talk Ms. Sapp and Ms. Nickle into having dinner with him that evening. Both women declined. However, due to his insistence, both women agreed to have dinner with him on the second night of the conference. (Test. of Sapp and Nickle; Exs. A9 at 7 and A11 at 2.)

24. During dinner on the second night of the conference, Licensee began to brag about sexual exploits at past conferences and informed the women how he and other superintendents, including Robert Hess, would take the conferences as opportunities to cheat on their wives by having sex with other women. Licensee also made comments about how much women liked his penis. His comments made Ms. Sapp and Ms. Nickle feel uncomfortable. Ms. Sapp ultimately left the table and paid the check to get away from Licensee. (Test. of Sapp and Nickle; Exs. A9 at 7, A10 at 2-3, and A11 at 2.)

25. Subsequently, to avoid Licensee, Ms. Sapp and Ms. Nickle skipped the following day's conference sessions. (Test. of Sapp; Exs. A9 at 8 and A11 at 2.)

26. Upon returning from the conference, Ms. Sapp conveyed her concerns about Licensee's behavior to the new ASD High School Principal, Eric Clendenin. (Ex. A10 at 3.)

27. In 2020, Licensee began his campaign for the 2022 gubernatorial race in Oregon. (Test. of Sapp.)

28. In October 2020, Licensee insisted that Ms. Sapp accompany him to a school superintendent's retreat in Newport, Oregon. Ms. Sapp was not a licensed administrator and had never held any license from TSPC. Regardless, Licensee insisted she was his "assistant superintendent," and he needed her to attend. Licensee told her that he needed to discuss his run for governor and how he would need Ms. Sapp to take over some responsibilities with ASD's leadership team. Ms. Sapp relented but refused to stay at the conference hotel, opting instead to drive to and from the conference daily. (Test. of Sapp; Exs. A9 at 9 and A11 at 3.)

29. Following the first night of the retreat, Licensee invited Ms. Sapp to his hotel room to discuss school matters and his political campaign. Ms. Sapp attempted to select a more public location for the meeting, but Licensee insisted on his hotel room. He told Ms. Sapp they could stay out on the balcony if that made Ms. Sapp feel more comfortable. (Test. of Sapp; Ex. A11 at 3.)

30. After some initial discussions regarding school matters and Licensee's gubernatorial campaign, Ms. Sapp left the balcony to use the restroom in Licensee's room. Upon exiting the restroom, Ms. Sapp observed Licensee come in from the balcony and head for the restroom. Licensee then urinated without closing the door. (Test. of Sapp; Ex. A9 at 9-10.)

31. After he exited the restroom, Licensee asked Ms. Sapp to have a seat at the table in his room for a moment and then asked, "if we were both single, would we have sex right now?" Ms. Sapp immediately responded, "no" and worked to wrap up the conversation. Once outside the hotel, Ms. Sapp sat in her vehicle and cried for approximately 30 minutes before driving home. (Exs. A9 at 10 and A11 at 4; test. of Sapp.)

32. In the days following the Newport retreat, Ms. Sapp informed several individuals about Licensee's behavior, including Mr. Schnieder – with whom she was no longer in a relationship – and Ms. Rice. (Test. of Sapp; Ex. A9 at 10.)

33. As a result of Licensee's unwelcome sexual comments, Ms. Sapp began to alter the way she dressed at work, being careful to avoid attire that might give rise to comments from Licensee. Ms. Sapp also began seeking treatment from a therapist and was diagnosed with post-traumatic stress disorder (PTSD) resulting from the work environment at ASD. (Test. of Sapp.)

34. In May 2021, Ms. Sapp approached Mr. Clendenin about an adult substitute teacher's aide and bus monitor, Keith Davis, and his interactions with underaged female students. Ms. Sapp had previously received reports from school staff indicating that Keith Davis might be grooming underaged girls for inappropriate relationships. Keith Davis is the biological son of school board member Jeff Davis and stepson to Nicole Davis, who at that time served as needed in the school kitchen and as an assistant to Ms. Sapp. (Test. of Sapp, J. Davis, and N. Davis; Ex. A9 at 14.)

35. On July 6, 2021, Keith Davis was arrested for having sexual intercourse with a minor student of ASD. Keith Davis was still employed by ASD at that time. Licensee refused to terminate Keith Davis's employment. (Test. of Sapp; Ex. A9 at 14.)

36. During this same time period, Ms. Sapp began to experience difficulties with the custodial supervisor, Keenan Elbers, whom she was responsible for supervising. Mr. Elbers began refusing tasks assigned to him and would not complete work unless directed by Licensee. When Ms. Sapp raised the issue with Licensee, he repeatedly counseled her to change her tone and approach with Mr. Elbers. (Test. of Sapp; *see* Ex. A9 at 12-14.)

37. Mr. Elbers continued to escalate his behavior with Ms. Sapp by refusing work and acting in a hostile manner towards her throughout summer and spring 2021. In September 2021, Mr. Elbers entered the ASD administrative offices and presented the school secretary with an email that he demanded be attached to his new employment contract before he would agree to sign it. The email was from Licensee, addressed to Mr. Elbers and his wife, and stated, "Katie Sapp is not your boss" despite ASD's organizational chart showing Mr. Elbers reporting directly to Ms. Sapp. (Test. of Sapp; Ex. A9 at 13.)

38. Around that same time period, another employee, Nathan Roberts, also began refusing to work with Ms. Sapp. Ms. Sapp attempted to resolve the issue with Mr. Roberts directly, to no avail. Ms. Sapp then approached Licensee with the issue. (Ex. A11 at 6.)

39. On September 28, 2021, Licensee called Ms. Sapp into his office and accused her of upsetting Mr. Roberts during an interaction the previous day. Licensee informed Ms. Sapp that Mr. Roberts had filed a complaint with his labor union, and he advised Ms. Sapp that she had “better watch it.” (Ex. A11 at 6.) Licensee then made Ms. Sapp sit in his office for more than two hours, while visible to staff and students walking by the window, without speaking or doing any work. Licensee only allowed Ms. Sapp to leave his office after she agreed to hold his hand. (*Id.*; test. of Sapp.)

40. On September 29, 2021, Ms. Sapp handed in her resignation letter to Licensee, gathered her children from the ASD campus, and went home. Licensee thereafter informed Ms. Sapp that he refused to accept her resignation. (Ex. A11 at 7; test. of Sapp.)

41. Between September 29 and October 4, 2021, Licensee contacted Ms. Sapp by phone and tried to persuade her to return to work. Ms. Sapp informed him that she did not feel safe at ASD any longer and she would not return unless and until her concerns were addressed. (Test. of Sapp; Ex. A14 at 7.)

42. In October 2021, Licensee asked to meet with Ms. Sapp off the ASD grounds. Ms. Sapp was uncomfortable about meeting with Licensee alone and invited Ms. Rice – who had been experiencing her own challenges with Licensee – to accompany her. On October 4, 2021, two women met with Licensee at a local restaurant. (Test. of Sapp and Rice; Exs. A9 at 14 and A14 at 15-16.)

43. During the meeting, Licensee advised Ms. Sapp that the friction between her and Mr. Elbers was her fault and she needed to repair things with Mr. Elbers. Licensee then segued into comments about Ms. Sapp’s personal life, indicating that her life was in chaos because she was not able to keep her former partner, Mr. Schneider, interested. Licensee conveyed that he would not initiate an investigation into Mr. Elbers’ behavior. When Ms. Rice stated that perhaps it was time to address the issues with the school board, Licensee advised both women that, if they crossed him, he would “burn [them] to the ground.” (Exs. A9 at 14 and A14 at 16; test. of Sapp and Rice.)

44. During this time period, board member Mr. Davis and board chair Mr. Koetz – both close personal friends of Licensee – began spending significant amounts of time in ASD administrative offices visiting with their respective spouses. (Test. of Sapp and Rice; Ex. A14 at 16.)

45. On October 5, 2021, Ms. Sapp submitted a formal complaint to Licensee regarding Mr. Elbers. Licensee refused to accept the complaint. Subsequently, Ms. Sapp contacted Licensee via phone and advised that she would not return to work until Licensee guaranteed a safe work environment. (Ex. A9 at 14; test. of Sapp.)

46. Despite not working on ASD's campus, Ms. Sapp attended a leadership team meeting on October 27, 2021. Following that meeting, Ms. Sapp spoke with Licensee in the school parking lot to ascertain the status of her complaints regarding the working environment. Licensee advised Ms. Sapp that the only way she was likely to get any relief would be to resign from ASD. (Test. of Sapp; Ex. A9 at 15-16.)

47. When Ms. Sapp told Licensee she had been consulting with legal counsel, Licensee suggested that, if she resigned, he could talk the school board into a severance agreement that would pay out the balance of her employment contract and cover her medical insurance for a specified period. Licensee made that offer on the condition that Ms. Sapp would acknowledge that he never asked her to have sex with him. This led Ms. Sapp to believe that Jeff Davis had reported her complaint regarding Licensee's behavior at the Newport retreat to Licensee. (Test. of Sapp; Ex. A9 at 16.)

48. Following the leadership team meeting on October 27, 2021, Ms. Sapp packed up her personal belongings from ASD offices and left. Ms. Sapp did not return to work after that date. She resigned from ASD employment on December 9, 2021. (Ex. A9 at 16.)

49. Following her resignation, Ms. Sapp filed a civil suit against ASD. (Test. of Sapp; *see also* Ex. A12.)

Lora Nickle.

50. Lora Nickle began working at ASD in 2017 as a part-time employee. In 2018, Licensee hired Ms. Nickle as the full-time registrar for ASD's online education programs. (Test. of Nickle.)

51. Between 2017 and 2022, Licensee would regularly make comments in Ms. Nickle's presence about how attractive women find him and the large size of his penis. Ms. Nickle repeatedly told Licensee that his comments were inappropriate, and she frequently walked away from the conversation when he made such comments. (Test. of Nickle.)

52. During dinner on the second night of the 2019 OASBO conference, Ms. Nickle interpreted Licensee's sexual comments and statements regarding sexual encounters he and other male superintendents had at conferences as sexual advances towards herself and Ms. Sapp. Ms. Nickle was uncomfortable for herself and Ms. Sapp. (Test. of Nickle.)

53. Ms. Nickle elected not to file a complaint regarding Licensee's behavior during the dinner because she believed it was common knowledge within the school district that Licensee behaved inappropriately towards women. Ms. Nickle was also aware that Licensee was close friends with multiple school board members – including Mr. Davis and Mr. Koetz – and therefore believed her complaint would be ignored. (Test. of Nickle.)

Shannon Rice.

54. Shannon Rice began working for ASD in 2013 as a coach for the girl's middle

school basketball and volleyball teams. Ms. Rice worked at ASD until her resignation in 2022. During her tenure, Ms. Rice also served as a substitute teacher's aide, business office support, a student teacher, substitute elementary teacher, full-time kindergarten teacher, special education teacher, and elementary principal. (Test. of Rice; Ex. A14 at 3.)

55. During the 2014-15 school year, when Ms. Rice was working full-time at ASD, Licensee began making comments about her appearance and that of other female employees. For example, Licensee would make hand gestures commenting on the size of Ms. Rice's and other women's breasts. He would also comment to other people, in Ms. Rice's presence, that he thought certain women at ASD were "smoking hot." (Test. of Rice and Sapp; Ex. A14 at 4.)

56. In addition, Licensee would routinely steer conversations with ASD employees towards sex, and he often bragged about his sexual exploits outside of marriage and the purportedly large size of his penis. When Ms. Rice would ask him to stop, or advise him that his conduct was inappropriate, Licensee would dismiss her complaints by saying, "I'm just joking with you." (Test. of Rice; Ex. A14 at 4-5.)

57. Due to the ongoing and pervasive nature of Licensee's conduct, Ms. Rice made verbal complaints to school board members, including Risteen Follett, Mr. Davis, and Mr. Schneider. Ms. Rice also brought her complaints to then board chair Mr. Koetz, to no avail. (Test. of Rice.)

58. On February 14, 2022, Ms. Rice filed a formal written complaint against Licensee with the school board. (Test. of Rice; Ex. A14 at 19.)

59. On February 22, 2022, legal counsel for Ms. Rice filed a preservation notice, advising the school board that Ms. Rice intended to file suit for sexual harassment and discrimination and demanding the school board preserve evidence in any form. On that date, counsel also served upon the school board a request that an independent investigator be hired to look into allegations of inappropriate conduct by Licensee. Counsel's letter also requested the school board place Licensee on administrative leave during the pendency of the investigation. (Ex. A13; test. of Rice.)

60. Also on February 22, 2022, the school board met to consider, *inter alia*, Ms. Rice's complaints against Licensee. After meeting in executive session, school board member Ms. Follett made a motion to open an investigation into Licensee's conduct, and another board member seconded that motion. Licensee resigned his position as superintendent immediately following Ms. Follett's motion. (Test. of Follett.)

61. Upon conclusion of the independent investigation into allegations of Licensee's inappropriate conduct, the school board settled at least four lawsuits from female employees, including Ms. Sapp and Ms. Rice. (Test. of Follett, Gallagher, Sapp, and Rice; Exs. A12 and A15.)

Division 22 Assurance Report.

62. The ASD school board hired Sean Gallagher to serve as interim superintendent in March 2022. Mr. Gallagher had previously served as the superintendent of two small rural school districts, Lake County and Brooking Harbor. (Test. of Gallagher.)

63. Upon beginning work at ASD, Mr. Gallagher discovered a culture of tension and fear among staff members, with at least one female employee reluctant to return to work due to the work environment created by Licensee. Another employee resigned on the advice of her physician. (Test. of Gallagher.)

64. As part of his role as interim superintendent, Mr. Gallagher began familiarizing himself with the various programs, board meeting minutes, and the prior year's Division 22 assurance report (Division 22 report) presented to the school board and the Oregon Department of Education (ODE) by Licensee. (Test. of Gallagher.)

65. Division 22 standards are state standards for public elementary and secondary schools found in chapter 581 division 22 of the Oregon Administrative Rules. The Division 22 report is how a school superintendent notifies the school board and ODE of a school district's compliance with those standards for the prior school year. (Test. of Gallagher and Hess.)

66. A Division 22 report must state whether the school district met compliance standards for each individual standard, and, if not, identify a plan to bring the school district into compliance. The Division 22 report must also include evidence to support the school district's compliance with each individual standard. (Test. of Gallagher and Follett.)

67. If a school district has not met one or more elements of a state standard, the Division 22 report should reflect "not in compliance" and provide a corrective action plan to remedy those deficient elements. A superintendent should not report a school district in compliance until all elements of the individual standard have been met. (Test. of Hess and Gallagher.)

68. Prior to his resignation, Licensee was responsible for preparing the Division 22 report and presenting it to the school board each November. For the 2020-21 school year, Licensee met with several ASD staff members in September or October 2021 to prepare the report. Staff present at that meeting included Ms. Sapp, Ms. Rice, Mr. Clendenin, and Mrs. Koetz. At that meeting, Licensee stated his expectation that all staff agree with his determination that ASD met all state standards for the prior school year. When Ms. Sapp and Ms. Rice asked for the underlying data to demonstrate compliance, Licensee dismissed their inquiries and pushed the meeting forward. (Ex. A9 at 15, test. of Rice and Sapp.)

69. In reviewing the Division 22 report for the 2020-21 school year – delivered to the school board by Licensee in November 2021 – Mr. Gallagher found multiple state standards reported as "in compliance" that were actually out of compliance, some for several years. Mr. Gallagher spoke with ASD staff members who confirmed multiple areas of known deficiencies in the Division 22 standards for the 2020-21 school year. (Test. of Gallagher; *see generally* Exs. A3 and A4.)

70. In his review of the Division 22 report for the 2020-21 school year, Mr. Gallagher noted that Licensee had reported that ASD was in compliance with the state standard for issuing regular high school diplomas because students were allowed to apply alternative education credits to the requirements of a regular high school diploma. (Test. of Gallagher; Ex. A4 at 10.)

71. Alternate education courses for high school students during the 2020-21 school year awarded middle school level credits and did not satisfy the curriculum requirements for high school level credit. (Test. of Gallagher.)

72. Following this discovery, Mr. Gallagher and school staff worked to reassign students enrolled in alternative education courses to regular education courses that would satisfy state requirements for regular, rather than modified, high school diplomas. This caused significant stress and irritation among students and parents. (Test. of Gallagher.)

73. In addition, Mr. Gallagher noted that ASD had no comprehensive school counseling program because it employed no school counselors. Moreover, ASD had no common curriculum goals for technology or career-related learning standards. Mr. Gallagher also discovered that ASD had failed to comply with ODE's timeline for adoption of instructional materials, and many teachers were trying to develop their own curriculum for students. (Test. of Gallagher and Ellis; Ex. A4 at 1.)

74. Despite those deficiencies, Licensee had reported ASD was in compliance with the state standard for school district curriculum on the 2020-21 Division 22 report. (Test. of Gallagher; Ex. A3 at 3.)

75. In addition, Mr. Gallagher found that ASD employed no school counselors and thus offered no comprehensive school counseling programs for the entirety of the 2020-21 school year. Mr. Gallagher found that, due to this deficiency, ASD did not offer career-targeted education plans for students as required. (Test. of Gallagher; Ex. A4 at 2.)

76. In the Division 22 report for the 2020-21 school year, Licensee reported ASD to be in compliance with all requirements of the state standard for career education. (Test. of Gallagher; Ex. A3 at 3.)

77. Similarly, because ASD employed no school counselor during the 2020-21 school year, Mr. Gallagher realized the school district could not be in compliance with the state standard requiring comprehensive school counseling programs. (Test. of Gallagher; Ex. A4 at 2.)

78. Despite not employing a school counselor at any time during the year, Licensee reported to the school board and ODE that ASD was in compliance with that state standard. (Test. of Gallagher; Ex. A3 at 3.)

79. Mr. Gallagher also found that ASD did not employ a school nurse for the entire 2020-21 school year. Moreover, ASD did not have any staff members with current CPR/AED certifications. He also learned ASD was using untrained administrative staff to dispense medications to students. Based on this, Mr. Gallagher determined that ASD was not in

compliance with the state standard pertaining to health services for the 2020-21 school year. (Test. of Gallagher; Ex. A4 at 11.)

80. Licensee had reported that ASD complied with all elements of the health services standard for the 2020-21 school year when he presented the Division 22 report to the school board and ODE. (Ex. A3 at 5.)

81. Mr. Gallagher found that ASD had no safety plan in place for the 2020-21 school year and no training available for faculty or staff. Moreover, according to staff members, ASD had no school resource officer after Licensee severed its relationship with the local sheriff's office. Further, Mr. Gallagher discovered ASD had no working intercom system and only an antiquated, intermittently operational bell system. Mr. Gallagher also learned that ASD staff had not been offered emergency or safety training of any type during the 2020-21 school year. When Mr. Gallagher and school staff ran the first earthquake drill, students became fearful and had to be reassured it was only a drill. (Test. of Gallagher; Ex. A4 at 13.)

82. In the Division 22 report for the 2020-21 school year, Licensee had reported that ASD was in compliance with all elements of the state standard for emergency plans and safety programs. (Test. of Gallagher; Ex. A3 at 5.)

83. During his review of school district operations, Mr. Gallagher also found that ASD had no continuous district improvement plan in place as required by state standards. Mr. Gallagher and ASD staff began working with the Linn Benton Lincoln Educational Service District (LBLED or ESD) to draft and implement a continuous improvement plan for the district. (Test. of Gallagher; Ex. A4 at 15.)

84. In the Division 22 report for the 2020-21 school year, Licensee had reported that ASD was in compliance with the state standard pertaining to school district continuous improvement plans. (Test. of Gallagher; Ex. A3 at 5.)

85. Mr. Gallagher also found discrepancies and deficiencies in ASD's record keeping and reporting, during the 2020-21 school year. Upon inquiry with faculty and staff, Mr. Gallagher learned that Licensee had instructed them to keep pertinent information, including student discipline incidents, on a separate spreadsheet rather than recording information on the ESD controlled reporting form. Licensee encouraged staff to misrepresent attendance and discipline information on the ESD report. (Test. of Gallagher and Nickle; Ex. A4 at 15.)

86. As a result of Mr. Gallagher's discovery regarding inappropriate record keeping and reporting, he reached out to the LBLED to reestablish ASD's relationship and correct such errors. (Test. of Gallagher.)

87. Licensee had reported ASD to be in compliance with all record keeping and reporting requirements in the state standard when he presented the Division 22 report for the 2020-21 school year to the school board and ODE. (Test. of Gallagher; Ex. A3 at 5.)

88. In addition, Mr. Gallagher discovered that although ASD was providing the

required level of physical education for students in grades six through eight, ASD did not provide any physical education for students in kindergarten through fifth grade as required by the state standard. (Test. of Gallagher; Ex. A4 at 3.)

89. In the Division 22 report for the 2020-21 school year, Licensee had reported that ASD was in compliance with all elements of the state standard pertaining to physical education. (Ex. A3 at 5.)

90. In reviewing the prior school year's Division 22 filing, Mr. Gallagher also noted that Licensee had reported that ASD complied with all elements of the state standard for anti-discrimination and anti-harassment policies (*i.e.*, Every Student Belongs). Upon reviewing ASD's policies, Mr. Gallagher found an antiquated policy that was not being implemented as evidenced by the fact that male-on-female student harassment was ongoing, Title IX violations in girls' sports were rampant, and the complaint procedures for students and staff were not being followed. (Test. of Gallagher, Sapp, and Rice; Ex. A4 at 11.)

91. Licensee had reported that ASD was in compliance with the state standard on non-discrimination and harassment in the Division 22 report for the 2020-21 school year. (Ex. A3 at 6.)

92. Mr. Gallagher also discovered that Licensee had reported that the state standard for identification of TAG students, was waived for 2020-21 school year. (Ex. A3 at 7.) Upon review of ASD policies and procedures, Mr. Gallagher found those pertaining to identification of TAG students were deficient. (Test. of Gallagher; Ex. A4 at 9.)

93. Mr. Gallagher also determined that, during the 2020-21 school year, ASD did not have a current program in place to serve the needs of TAG students, or to notify parents of available services as required by state standards. Mr. Gallagher discovered that ASD had been operating under an outdated plan that failed to address all areas required by ODE, including, inter alia, identification processes, outline of services, or an evaluation plan for potentially eligible students. (Test. of Gallagher; Ex. A4 at 4.)

94. Similarly, Mr. Gallagher found that, for the 2020-21 school year, ASD had no program in place to notify parents of a student's eligibility for the TAG program or to provide the parent an opportunity to provide input regarding their student's educational program or services as required by the state standard. (Test. of Gallagher; Ex. A4 at 9.)

95. Licensee had reported that ASD was in compliance with the applicable state standard in the Division 22 report for the 2020-21 school year. (Ex. A3 at 7.)

96. Licensee had reported that ASD complied with all requirements of the state standard requiring programs and services for TAG students and programs and procedures to notify parents of a student's eligibility for TAG services, in the 2020-21 school year, when he presented the Division 22 report to the school board and ODE. (Ex. A3 at 9.)

97. Regarding the state standard requiring school districts to provide a coordinated

media program, Mr. Gallagher's research revealed that, during the 2020-21 school year, ASD did not employ a certified librarian. Additionally, Mr. Gallagher found ASD's media facilities, including its printed library volumes, to be severely underutilized and out of date. (Test. of Gallagher; Ex. A4 at 4.)

98. In speaking with staff and faculty, Mr. Gallagher learned that they were aware of the deficiencies but were prohibited, by Licensee, from using the local public library to compensate for deficits in the school district's media programs. (Test. of Gallagher.)

99. To remedy the media compliance issue, Mr. Gallagher worked with the local library system to develop a memorandum of understanding that permitted students and faculty to utilize the library and its staff to develop and deliver media program services. (Test. of Gallagher; Ex. A4 at 4.)

100. Licensee had reported that ASD complied with all elements of the state standard pertaining to media programs for the 2020-21 school year when he completed the Division 22 report for the school board and ODE. (Ex. A3 at 7.)

101. Mr. Gallagher also found that ASD had not been updating its instructional materials on a regular basis, as required by ODE, and had not submitted any requests to postpone purchase of those materials as required by state standards. (Test. of Gallagher; Ex. A4 at 6.)

102. In speaking with faculty members, Mr. Gallagher learned that for many core subjects, ASD had not adopted district-wide instructional materials for several years. The seventh through twelfth grade English and social studies teacher, Catherine Ellis, informed him that no instructional materials for English had been adopted since she began teaching at ASD in 2011. Instead, she informed Mr. Gallagher that she and other teachers were attempting to develop curriculum on their own and submitting individual requests for instructional materials to Licensee or Ms. Sapp. (Test. of Ellis and Gallagher.)

103. Licensee had reported that ASD was in compliance with curriculum updates and postponement to purchase approvals for instructional materials for the 2020-21 school year when he presented the Division 22 report to the school board and ODE. (Ex. A3 at 7.)

104. ASD had no tracking system or policy for tracking teacher or administrator licenses. As a result, Mr. Gallagher discovered that, during the 2020-21 school year, several teachers allowed their licenses to lapse and continued to teach without proper licensure. Mr. Gallagher sent home each individual with a lapsed license until ASD could work with the staff member and TSPC to bring each license current. (Test. of Gallagher; Ex. A4 at 17.)

105. Licensee had reported that ASD was in compliance the state standard on personnel licensing when he presented the Division 22 report for the 2020-21 school year to the school board and ODE. (Ex. A3 at 8.)

106. Mr. Gallagher discovered ASD had no policies or procedures in place regarding teacher evaluation processes, procedures, or frequency. Several teachers at ASD reported to Mr.

Gallagher that they had either not been evaluated for several years or had never been evaluated during their tenure with the school district. (Test. of Gallagher; Ex. A4 at 17.)

107. In the Division 22 report for the 2020-21 school year, Licensee had reported that ASD complied with all elements of the state standard pertaining to personnel policies. (Ex. A3 at 8.)

108. Based on the lack of policies and procedures, and the failure to conduct teacher or administrator evaluations for several years, Mr. Gallagher also determined ASD was not in compliance with the state standard requiring evaluations aligned with the Oregon Framework for Teacher and Administrator Evaluation and Support Systems for the 2020-21 school year. Mr. Gallagher found that ASD had no teacher or administrator evaluation procedures, including evaluation criteria, in place and that neither Licensee nor any principal within ASD conducted evaluations of faculty, staff, or administrators during that school year. Following this discovery, Mr. Gallagher immediately instructed the middle and high school principals, as well as two other administrators, to begin evaluations of all staff members. (Test. of Gallagher; Ex. A4 at 17.)

109. Licensee had reported that ASD was in compliance with the state standard pertaining to teacher and administrator evaluations when he presented the Division 22 report to the school board for the 2020-21 school year. (Ex. A3 at 8.)

110. Mr. Gallagher discovered that, during the 2020-21 school year, ASD did not employ any staff members trained in the administration of dyslexia screening tools. Accordingly, Mr. Gallagher determined that ASD was not in compliance with the requirements for screening students for risk factors of dyslexia during that period. To remedy the deficiency, Mr. Gallagher arranged for training of two ASD staff members for the 2021-22 school year. (Test. of Gallagher; Ex. A4 at 8.)

111. In the Division 22 report for the 2020-21 school year, Licensee had reported that ASD was in compliance with the state standard requiring universal screening of students for dyslexia risk factors. (Ex. A3 at 9.)

112. During the November 17, 2021 school board meeting where Licensee presented the Division 22 report for the 2020-21 school year, board member Ms. Follett asked Licensee when TAG programs would be returning to ASD. Licensee responded by stating, “we don’t get funding for that anymore.” (Test. of Follett.)

113. During the 2020-21 school year, ASD maintained multiple alternative education programs, including special education programs and remote learning programs. Those programs included one developed in part by Licensee and a personal friend, Learn at Home Oregon. Upon review of the alternative education programs, Mr. Gallagher found that each failed to provide the student supports required by the applicable state standard. Those included students with an IEP requiring supports or related services to access their education. Additionally, during that time period, Licensee permitted students to take courses earning junior high school level credit but directed staff to record the course as completed at the high school level on the students’ transcripts. (Test. of Gallagher; Ex. A4 at 9.)

114. Mr. Gallagher made the decision to discontinue all but one online alternative education program, Learn at Home Oregon, as well as the program offered within the school building. (Test. of Gallagher; Ex. A4 at 9.)

115. In the Division 22 report for the 2020-21 school year, Licensee had reported to the school board and ODE that ASD had complied with all elements of the state standard pertaining to alternative education programs. (Ex. A3 at 9.)

116. Mr. Gallagher's review of ASD operations also revealed that, for the 2020-21 school year, ASD did not have a suicide prevention policy in place that met the applicable state standard. Mr. Gallagher noted that the policy in place did not provide necessary supports for LGBTQ+ students experiencing suicidal ideation as required by state standards. (Test. of Gallagher; Ex. A4 at 13.)

117. In the Division 22 report for the 2020-21 school year, Licensee had reported that ASD was in compliance with the state standard pertaining to suicide prevention plans. (Ex. A3 at 9.)

118. Following his review of all Division 22 standards within ASD, Mr. Gallagher compiled a tracking sheet for the school board and ODE showing all areas of non-compliance, evidence showing areas of deficiencies for each standard, and the outline of a plan to bring ASD into compliance with each individual state standard. (Test. of Gallagher; Ex. A4.)

CONCLUSIONS OF LAW

1. Licensee engaged in gross neglect of duty by sexually harassing three employees of the Alsea School District during the 2020-21 school year.

2. Licensee engaged in gross neglect of duty by falsely reporting compliance with 20 Division 22 standards for the 2020-21 school year.

3. TSPC may revoke Licensee's professional administrator license.

OPINION⁴

TSPC concludes that Licensee engaged in repeated conduct constituting gross neglect of duty and proposes to revoke his professional administrator license. Specifically, TSPC concludes that Licensee engaged in sexual harassment of multiple school district employees and falsified a Division 22 compliance report during the 2020-21 school year. As the proponent of those positions, TSPC bears the burden of proving its allegations by a preponderance of the evidence. ORS 183.450(2) and (5); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (in administrative actions, the standard of proof that

⁴ The language in this section has been modified to change the perspective from that of the ALJ to that of the Commission.

generally applies in agency proceedings, including license-related proceedings, is the preponderance standard.) Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

The burden of proof encompasses two burdens, the burden of production and the burden of persuasion. *Marvin Wood Products v. Callow*, 171 Or App 175 (2000) (Conceptually, the burden of proof encompasses two distinct burdens: the burden of producing evidence of a particular fact (*i.e.*, the burden of production), and the burden of convincing the trier of fact that the alleged fact is true (*i.e.*, the burden of persuasion)). Accordingly, any party advocating a particular position bears the burdens of production and persuasion as to that position. A party may not rely on an absence of evidence in the record to meet its burden. *May Trucking Co. v. Dept. of Transportation*, 203 Or App 564, 572-573 (2006) (rejecting petitioner's contention of an absence of evidence in the record and finding, "It was petitioner's obligation to make sure that there is evidence in the record supporting its position.").

Pursuant to ORS 342.175(1)(b) and OAR 584-020-0040(3)(c), TSPC may discipline a licensee for "[g]ross neglect of duty."

OAR 584-020-0040(4) defines "gross neglect of duty," in part, as follows:

Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following may be admissible as evidence of gross neglect of duty. Consideration may include but is not limited to:

* * * * *

(c) Falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

* * * * *

(l) Sexual harassment; [and]

* * * * *

(n) Substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030[.]

1. *Sexual Harassment.*

TSPC concludes that Licensee engaged in gross neglect of duty by making inappropriate sexual comments to female staff on the ASD campus and at training events paid for by ASD. Specifically, TSPC concludes that Licensee made inappropriate comments of a sexual nature on multiple occasions to Katie Sapp, ASD's Business Manager, Lora Nickle, the registrar for ASD online programs and school board secretary, and Shannon Rice, principal of ASD's elementary

grades.

As relevant to this matter, OAR 584-020-0005 defines the terms “sexual conduct” and “sexual harassment” as follows:

- (8) “Sexual Conduct:” Any conduct defined by ORS 339.370(12).⁵
- (9) “Sexual harassment:” Any unwelcome conduct with an individual which includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 - (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;
 - (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - (c) Such conduct unreasonably interferes with an individual’s work performance or creates an intimidating, hostile, or offensive working environment.

In addition, as set out more fully below, OAR 584-020-0010(1) requires competent educators to demonstrate a commitment to recognizing the work and dignity of all persons and respect for each individual. Pursuant to OAR 584-020-0040(4)(l), proof of sexual harassment is sufficient to establish gross neglect of duty.

Katie Sapp.

The record revealed that, beginning in 2014 and continuing until her resignation in December 2021, Licensee made inappropriate sexual comments, sexual innuendos, and gestures of a sexual nature to Ms. Sapp in the workplace on at least a weekly basis. Such comments included repeated references by Licensee to the size of his genitalia and boasts about engaging in infidelity while he attended district-paid conferences. Licensee’s inappropriate conduct towards Ms. Sapp also extended outside the workplace.

The record shows that in 2019, when Ms. Sapp and Ms. Nickle attended a conference for

⁵ ORS 339.370(12) defines “sexual conduct” as follows:

- (a) “Sexual conduct” means verbal or physical conduct or verbal, written or electronic communications by a school employee, a contractor, an agent or a volunteer that involve a student and that are:
 - (A) Sexual advances or requests for sexual favors directed toward the student; or
 - (B) Of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with the student’s educational performance, or of creating an intimidating or hostile educational environment.

school business personnel, Licensee invited himself along and subsequently made remarks of a sexual nature to both women, including commenting on the frequency with which he and his colleagues engaged in infidelity. Licensee's unwanted comments made both women feel such discomfort that Ms. Sapp abruptly ended the conversation, left the table, and paid the bill.

In October 2020, Licensee insisted that Ms. Sapp accompany him to a retreat for school superintendents. Following the first day's conference sessions, Licensee convinced Ms. Sapp to accompany him to his hotel room to discuss school matters and his campaign for governor. Ms. Sapp had attempted to avoid being alone with Licensee by proposing a more public location for their meeting, but she ultimately acquiesced to Licensee's demands because, as her direct supervisor, she did not believe she had a choice. Following discussions of pending school matters, Ms. Sapp excused herself from the balcony to use the restroom. Upon her exit from the restroom, Licensee entered the restroom and urinated in her presence without closing the door. Licensee then asked Ms. Sapp whether they would have intercourse if they were both single. Ms. Sapp rebuffed the inquiry.

When Ms. Sapp and another female ASD employee made complaints about Licensee's conduct, he threatened to "burn [them] to the ground" if they did not stop raising allegations against him.

As a result of Licensee's conduct, Ms. Sapp altered her manner of dress, avoided interactions with Licensee, sought treatment for resulting mental health issues, and eventually resigned from the school district and filed a lawsuit against ASD.

The preponderant weight of the evidence showed Ms. Sapp believed that acceptance of Licensee's inappropriate sexual comments and behavior were a condition of her employment. For example, when Ms. Sapp attempted to address the issues directly with Licensee and asked for help resolving conflicts between male janitorial staff and herself, Licensee indicated the only way to improve the situation would be for her to resign from ASD. Moreover, the record reflects that the pervasive nature of Licensee's unwelcome comments and conduct towards her (or in her presence), more likely than not, created an intimidating, hostile, and offensive work environment and constitutes sexual harassment pursuant to OAR 584-020-0005(9)(a) and (c). On this record, TSPC has proven that Licensee's inappropriate sexual conduct towards, and in the presence of, Ms. Sapp constituted gross neglect of duty under OAR 584-020-0040(4)(l).

Lora Nickle.

The record establishes that, beginning in 2019 and continuing through his resignation, Licensee made inappropriate comments of a sexual nature to or in the presence of then-registrar Lora Nickle. According to Ms. Nickle's uncontroverted testimony, while discussing legitimate school business with her, Licensee would diverge on tangents and make comments on the size of his genitalia and that other women found him attractive. Moreover, as discussed above, in July 2019, Licensee made inappropriate sexual comments to Ms. Nickle and Ms. Sapp while they were at a work-related conference, which Ms. Nickle interpreted as sexual advances towards herself and Ms. Sapp. The discomfort she felt at Licensee's conduct caused Ms. Nickle to retreat to her hotel room to avoid Licensee.

The record also reflects that Ms. Nickle avoided filing a complaint against Licensee due to her belief that it was common knowledge that Licensee regularly engaged in this type of inappropriate behavior without consequence and because she knew that he was good friends with then-school board chair Ron Koetz and then-board member Jeff Davis. More likely than not, Ms. Nickle viewed acceptance of Licensee's unwelcome behaviors as a condition of her employment.

While Ms. Nickle testified that the instances of Licensee's inappropriate sexual conduct in her presence were not as pervasive as what Ms. Sapp experienced, the frequency (or infrequency) of the inappropriate conduct is not a criterion of sexual harassment under the relevant rule. Licensee's conduct more likely than not created an intimidating and offensive working environment for Ms. Nickle and thus constitutes sexual harassment under OAR 584-020-0005(9)(a) and (c). On this record, TSPC has established that Licensee's inappropriate sexual conduct toward Ms. Nickle constitutes gross neglect of duty under OAR 584-020-0040(4)(l).

Shannon Rice.

TSPC also concludes that Licensee sexually harassed Shannon Rice, ASD's former Elementary Principal and special education teacher, beginning when she started employment in 2013 and continuing until Licensee resigned in February 2022. The record established that Licensee made comments about Ms. Rice's physical appearance, including the size of her breasts, and made accompanying sexualized hand gestures, referred to the purportedly large size of his penis, and dismissed her complaints and pleas to stop such commentary by claiming he was merely joking. The record revealed that Licensee engaged in such inappropriate "jokes" in the workplace on a daily basis and made inappropriate comments about Ms. Rice's appearance at least once per week.

Ms. Rice's requests that Licensee cease his inappropriate conduct were not successful. Moreover, Ms. Rice made verbal complaints to at least three members of the school board, two of whom were close friends with Licensee. Her complaints remained unaddressed. Finally, Ms. Rice filed a lawsuit against the school board, ASD, and Licensee alleging, *inter alia*, sexual harassment and sex discrimination. The record demonstrates Licensee's inappropriate conduct towards Ms. Rice was unwelcome and made her feel uncomfortable. Thus, the record supports the conclusion that Ms. Rice found the working environment offensive. The unaddressed nature of her complaints, along with Licensee's continuing behavior more likely than not also created a hostile and intimidating workplace for Ms. Rice. As such, on this record, TSPC has established that Licensee engaged in sexual harassment of Ms. Rice during the period in issue.

At hearing, Licensee presented no evidence to counter the claims of Ms. Sapp, Ms. Nickle, or Ms. Rice. Instead, he presented testimony from a former board member, Jeff Davis, and his wife – a former ASD administrative employee – who made collateral attacks against Ms. Sapp's personality, motivations, and character. During his testimony, Mr. Davis attempted to dismiss complaints by Ms. Nickle, made directly to him, as more off-hand comments than complaints, and he focused on her not feeling safe in the work environment rather than

allegations of sexual harassment or misconduct. Notably, Licensee elected not to testify at hearing.

Mr. and Mrs. Davis had significant reason to express bias against Ms. Sapp as she also initiated a recall petition against Mr. Davis and another school board member, Ron Koetz, resulting in the removal of both individuals after Licensee's resignation from ASD. Moreover, Mr. and Mrs. Davis revealed that Ms. Sapp reported that Mr. Davis's adult son Keith Davis – at that time employed by ASD as a teacher's aide and bus monitor – was engaging in inappropriate behavior with an underaged female student of ASD. Finally, testimony from the interim superintendent who replaced Licensee and from a member of the school board at the time of Licensee's resignation both confirmed that ASD settled four individual lawsuits brought because of Licensee's inappropriate sexual behavior toward female staff members.

Based on this record, the Commission finds the corroborating nature of the testimony and other evidence presented at hearing from each victim outweighs Licensee's limited evidence. As such, the preponderant weight of the evidence proves Licensee engaged in sexual harassment of Ms. Sapp, Ms. Nickle, and Ms. Rice during the 2020-21 school year. TSPC has therefore established that Licensee engaged in gross neglect of duty under OAR 584-020-0040(4)(1).

2. Division 22 Compliance Reporting for the 2020-2021 School Year.⁶

Following Licensee's resignation from ASD, the school board hired Sean Gallagher to serve as the interim superintendent. Mr. Gallagher discovered that, despite representations to the contrary in the report, ASD was out of compliance for the 2020-21 school year with regard to more than 20 state standards. In October 2022, Mr. Gallagher filed a misconduct report with TSPC alleging Licensee had falsified documents in order to mislead the public, the school board, and ODE. TSPC concludes that that Licensee falsely reported ASD in compliance with 21 separate state standards in the Division 22 report for the 2020-21 school year.

At hearing and in his closing argument, Licensee attempted to assert that the applicable rules only require a superintendent to report compliance to the school board and ODE and that such assurance by the superintendent constitutes compliance. Licensee's Closing Argument at 2-3. According to Licensee, once the superintendent provides "assurance" of compliance, a school district is automatically in compliance pursuant to chapter 581 division 22.

Licensee's arguments are not persuasive. He cites no authority to support his position, and there is none found in the relevant statutes or administrative rules. Furthermore, as set forth more fully below, Licensee's arguments run counter to the language of chapter 581 division 22 and chapter 584 division 20. Finally, at hearing, Licensee's own witness, Superintendent Robert Hess, testified that unless a school district has met each element of the state standard during the preceding school year, a superintendent should report "not in compliance" and identify any deficiencies to the school board and ODE.

⁶ The Commission has modified this section to remove discussion regarding Division 22 standard under OAR 581-022-2325 because the standard was waived during the 2020-21 school year and the Commission does not rely on it for this final order.

Applicable law.

OAR chapter 584 division 20 provides standards for the competent and ethical performance of job duties by Oregon educators and administrators.

OAR 584-020-0010 provides the relevant standards for the competent educator in Oregon and reads, in part:

The educator demonstrates a commitment to:

(1) Recognize the worth and dignity of all persons and respect for each individual;

* * * * *

(4) Raise educational standards;

(5) Use professional judgment[.]

OAR 584-020-0015 sets forth the standard for competent educators and administrators pertaining to curriculum and instruction and provides, in relevant part:

(3) The competent administrator demonstrates:

* * * * *

(b) Knowledge of curriculum and instruction appropriate to assignment;

(c) Skill in implementing instructional programs through adequate communication with staff[.]

OAR 584-020-0025 provides, among other things, the standards for competent school administrators with regard to management skills and states, in part:

(3) The competent administrator demonstrates:

(a) Leadership skills in managing the school, its students, staff, and programs as required by lawful and reasonable district policies, rules, and regulations, state and federal laws and regulations, and other programs as assigned, and assures that staff is informed of these requirements;

(b) Skills in planning and staff assignment.

OAR 584-020-0030 provides the applicable standard for competent educators and administrators as it pertains to human relations and communications and states, in pertinent part:

(2) The competent teacher demonstrates:

- (a) Willingness to be flexible in cooperatively working with others; and
- (b) Skill in communicating with administrators, students, staff, parents, and other patrons.
- (3) The competent administrator demonstrates:
 - (a) Skill in helping students, staff, parents, and other patrons to learn about the school, the district and its program;
 - (b) Skills in communicating district and school goals to staff and the public;
 - (c) Willingness to be flexible in cooperatively working with others; and
 - (d) Skill in reconciling conflict.

It is in the light of these standards for competent educators and administrators that TSPC concludes Licensee engaged in gross neglect of duty during the 2020-21 school year. Pursuant to OAR 581-022-2305, all school districts in Oregon are required to comply with the state standards set forth in OAR chapter 581 division 22, maintain evidence of that compliance, and submit a report annually (Division 22 report) indicating compliance or non-compliance with each state standard. OAR 581-022-2305(1)-(3). For any state standard that a school district is not in compliance with, ODE requires the district to report that lack of compliance along with a corrective action plan and timeline for achieving compliance.

OAR 581-022-0104 provides applicability guidelines for state standards for the 2020-21 school year, including identifying standards waived by ODE during that school year, and reads:

(1) Applicability.

- (a) This rule sets forth the state standards for the 2020-20201 school year.
- (b) The definitions set forth in OAR 581-022-0102, 581-022-2010(1), 581-022-2015(1), and 581-022-2020(1) apply to this rule.

(2) State Standards for the 2020-21 School Year. All Division 22 standards are in effect for the 2020-21 school year except as specifically waived or modified by this rule.

(3)Waivers. The following standards are waived for the 2020-21 school year:

- (a) Diploma. School districts and public charter schools must comply with all requirements set out in OAR 581-022-2000 except sections (7), (8), (9), (10), and (11).

(b) Modified Diploma. School districts and public charter schools must comply with all requirements set out in OAR 581-022-2010 except sections (9) and (12).

(c) Essential Skills and Local Performance Assessments. The Essential Skills graduation requirement and local performance assessment requirement for grades 3 - 8 and high school set out in OAR 581-022-2115 are waived.

(d) Health Services. School districts and public charter schools must comply with all requirements set out in OAR 581-022-2220 except section (1)(f).

(e) Physical Education Requirements. School districts and public charter schools must comply with the requirement in OAR 581-022-2263(2)(a) to ensure that each public school student in kindergarten through grade eight will receive physical education throughout the entire school year. All other requirements in OAR 581-022-2263 are waived for the 2020-21 school year.

(f) Identification of Academically Talented and Intellectually Gifted Students. The identification of talented and gifted students as required in OAR 581-022-2325 is waived.

(4) **Nationally Normed College Entrance Practice Assessment.** The requirement established in ORS 329.488 that school districts must make a nationally-normed college entrance practice assessment available to all students in grade 10 who are enrolled in a public school is waived for the 2020-21 school year.

(5) **Ready School, Safe Learners Guidance.** School districts and public charter schools must comply with the Ready School, Safe Learners Guidance issued by the Oregon Department of Education.

(6) **Instructional Time.** School districts and public charter schools may include in the calculation of required instructional time of up to an additional 60 hours for staff professional development and up to an additional 60 hours for parent teacher communication to facilitate student learning, including parent teacher conferences, training, and support for distance learning. This allowance is in addition to the 30 hours allowed under OAR 581-022-2320(6)(d) and (e), respectively.

Emphasis original. The balance of the Division 22 standards remained applicable to all school districts in Oregon, including ASD, for the 2020-21 school year.

The undisputed evidence shows that during ASD an executive team meeting pertaining to Division 22 standards reporting for the 2020-21 school year, Licensee encouraged all members present to agree that ASD complied with all state standards despite refusing to present evidence or data collected showing how the school district achieved compliance for the discrete areas in the report. Licensee pushed through approval of the Division 22 report without presenting any

underlying data or evidence. As the superintendent for ASD during the period in issue, responsibility for accurately reporting compliance to the school board and ODE falls squarely on Licensee.

Diploma requirements.

OAR 581-022-2000⁷ (2018) provides state standards for diplomas issued by Oregon public schools and requires a minimum number of general high school credit hours to qualify for graduation with a regular diploma. Alternate education courses for high school students during the 2020-21 school year in the ASD awarded junior high school level credits. During the period in issue, the ASD, under Licensee's direction, permitted high school students to use alternate education courses to satisfy high school diploma requirements. Licensee concealed this from the school board and ODE when he submitted ASD's Division 22 report and provided assurance that the district was in compliance with state standards for issuing regular high school diplomas. None of the provisions waived in OAR 581-022-0104(3)(a) are applicable to general credit level requirements for awarding regular high school diplomas in Oregon.

During the period in issue, the ASD permitted multiple students to graduate with a regular, rather than modified, high school diploma using alternative education credits, contrary to the requirements of OAR 581-022-2000 (2018). Moreover, for the remaining students previously enrolled in alternative education credits on a regular diploma track, Mr. Gallagher and ASD counselors worked to enroll them in high school level courses to make up credit deficiencies prior to graduation. This created significant displeasure among students and parents, who were not aware of the disparate credit accumulations for alternative education courses.

TSPC concludes that Licensee's conduct of permitting students to earn regular high school credit using alternative education credits demonstrated a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(4) and (5), -0015(3)(b) and (c), -0025(3)(a), and -0030(2)(b). Licensee ignored state standards regarding diploma requirements and appropriate credit accumulation and allocation. Moreover, Licensee failed to communicate to school staff, parents, or students the difference in the type of credits earned through alternative education and their applicability to regular diplomas issued in Oregon.

Given the above conduct, Licensee failed to demonstrate a commitment to raising educational standards, and he failed to use professional judgment as required by OAR 584-020-0010(4) and (5). Moreover, Licensee failed to demonstrate knowledge of appropriate curriculum and instruction or skill in implementing instructional programs as required by OAR 584-020-0015(3)(b) and (c). Additionally, Licensee failed to demonstrate leadership skills in managing the school, the general education program, and state standards applicable to issuance of high school diplomas in Oregon as required by OAR 584-020-0025(3)(b). Finally, Licensee failed to show skill in communicating district and school goals regarding alternative education credits to staff or parents as required by OAR 584-020-0030(2)(b).

Licensee's conduct of permitting alternative education credit to count towards a regular

⁷ State standards for issuance of alternative diplomas, including veterans, modified, and extended diplomas, as well as alternative certificates are found at OAR 581-022-2010 through -2020, respectively.

high school diploma was a substantial deviation from the professional standards of competency addressed above. Thus, Licensee's conduct constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(n). Licensee's falsification of the Division 22 report also constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

District curriculum.

OAR 581-022-2030 (2018) provides state standards for school district curriculum and reads, in relevant part:

- (1) Each school district shall provide a planned K–12 instructional program.
- (2) The planned K–12 instructional program shall include the following:
 - (a) Common Curriculum Goals and academic content standards adopted by the State Board of Education to include:
 - (A) English;
 - (B) Mathematics;
 - (C) Science;
 - (D) Social Science (including history, geography, economics and civics);
 - (E) The Arts;
 - (F) World Languages;
 - (G) Health Education; and
 - (H) Physical Education; and
 - (I) Comprehensive School Counseling.
 - (b) Additional Common Curriculum Goals for technology.
 - (c) Essential Learning Skills, as contained in the Common Curriculum Goals and academic content standards;
 - (d) Career-related learning standards, as contained in the Common Curriculum Goals and academic content standards; and
 - (e) Career education which may include career and technical education.

For the 2020-21 school year, Licensee reported that ASD was in compliance with all

provisions of state standards pertaining to curriculum, implying that ASD provided a K-12 instructional plan that met all standards. Based on the preponderant weight of the evidence, during the period in issue, ASD had no comprehensive school counseling program because it employed no school counselors, had no common curriculum goals for technology or career related learning standards, and had not developed emergency plans or safety programs. Moreover, ASD had failed to comply with ODE's timeline for adoption of instructional materials, and many teachers were trying to develop their own curriculum for students. During the period in issue, ODE did not grant any waiver to the curriculum requirements for Oregon school districts.

TSPC concludes that Licensee's conduct of failing to ensure ASD's curriculum was updated on a regular basis demonstrated a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(4) and (5), -0015(3)(b) and (c), -0025(3)(a), and -0030(2)(b).

Licensee ignored state standards regarding updating, or even establishing, curriculums for several grades and failed to ensure appropriate counseling services as part of the curriculum. Licensee thereby failed to demonstrate a commitment to raising educational standards and using professional judgment as required by OAR 584-020-0010(4) and (5). He also failed to demonstrate knowledge of appropriate curriculum and instruction or skill in implementing instructional programs as required by OAR 584-020-0015(3)(b) and (c). Moreover, he failed to demonstrate leadership skills in managing the school, the general education program, or state standards applicable to school district curriculum as required by OAR 584-020-0025(3)(b). Finally, Licensee failed to show skill in communicating district and school goals regarding school district curriculum to staff or the school board as required by OAR 584-020-0030(2)(b).

Licensee's conduct of permitting alternative education credit to count toward a regular high school diploma was a substantial deviation from the professional standards of competency addressed above. Thus, his conduct constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(n). Moreover, his falsification of the Division 22 report constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

Career education.

OAR 581-022-2055 (2018) identifies the state standards for career education programs within a school district and provides:

Each school district shall implement plans for career education for grades K through 12, as part of its comprehensive school counseling program, based on the Oregon Department of Education's Framework for Comprehensive School Counseling Programs. Career education curriculum is part of the overall comprehensive school counseling curriculum, written to address Essential Skills, Education Plan and Education Profile and the four interrelated student developmental domains: academic, career, social/emotional, and community involvement.

For the 2020-21 school year, Licensee reported ASD was in compliance with all requirements of the above rule. However, the record showed that ASD employed no school counselors and thus offered no comprehensive school counseling programs for the entire school year. The record also showed that ASD did not offer career-targeted education plans for students. ASD was therefore not in compliance with the requirements of OAR 581-022-2055 (2018). OAR 581-022-0104 provided no waivers of these requirements during the period in issue.

TSPC concludes that Licensee's conduct of reporting that ASD met the state standard for career education when it did not employ a school counselor or have a career education program in place was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5), -0015(3)(c), and -0025(3)(a). Based on the record, Licensee failed to employ a school counselor during the 2020-21 school year and thus could not have an appropriate career education program that operated within ODE's framework for comprehensive career counseling. Moreover, Licensee failed to communicate this deficiency to school board members, parents, or ODE.

Given the above conduct, Licensee failed to demonstrate a commitment to using professional judgment as required by OAR 584-020-0010(5). Additionally, he failed to demonstrate knowledge of the requirements of an appropriate career education program as required by OAR 584-020-0015(3)(b). He also failed to demonstrate leadership skills in managing the school or state standards applicable to the school counseling component of an appropriate career education program as required by OAR 584-020-0025(3)(b).

Licensee's failure to employ a school counselor and/or have an appropriate career education program in place for the 2020-21 school year was a substantial deviation from the professional standards of competency addressed above. Thus, Licensee's conduct constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(n). His falsification of the Division 22 report also constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

Comprehensive school counseling programs.

OAR 581-022-2060 (2020) sets forth the state standards for school counseling programs and requires, in part, that each district provides a coordinated comprehensive school counseling program to support the academic, career, social-emotional, and community involvement development of each student. OAR 581-022-2060(1)(a) (2020).

ASD employed no school counselor during the 2020-21 school year and thus could not and did not offer a coordinated comprehensive school counseling program to students. As such, ASD was not in compliance with OAR 581-022-2060 for the entirety of the school year.

TSPC concludes that Licensee's conduct of reporting that ASD met the state standard for comprehensive school counseling when it did not employ a school counselor for the entire school year demonstrated a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5) and -0025(3)(a). Licensee did not employ a school counselor during the 2020-21 school year and thus could not have an appropriate comprehensive school counseling

program. Licensee failed to communicate this deficiency to school board members, parents, or ODE. He therefore failed to demonstrate a commitment to using professional judgment as required by OAR 584-020-0010(5). He also failed to demonstrate leadership skills in managing the school or state standards applicable to comprehensive school counseling programs as required by OAR 584-020-0025(3)(b).

Licensee's conduct, detailed above, constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(n), and his falsification of the Division 22 report in this regard also constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

Health services.

OAR 581-022-2220 identifies state standards for health services required to be provided to students by each school district and reads, in relevant part:

(1) School districts, education service districts, and public charter schools shall develop, implement, and annually update a written prevention-oriented health services plan for all students. The plan must describe a health services program for all students at each facility that is owned or leased where students are present for regular programming. The health services plan will be created and maintained by the administration of each district and charter school serving students.

* * * * *

(2) School districts, education service districts, and charter schools shall ensure that nurses who provide health services to students are licensed to practice nursing by the Oregon State Board of Nursing (OSBN)[.]

* * * * *

(3) Each school shall have, at a minimum, at least one staff member with a current first aid/CPR/AED card for every 60 students enrolled, as set by ORS 339.345, and 342.664 and who are trained annually on the district and building emergency plans. Emergency planning will include the presence of at least one staff member with a current first aid/CPR/AED card for every 60 students for school-sponsored activities where students are present.

The record reflects that, during the period in issue, ASD did not employ a school nurse, did not have staff with current CPR/AED certifications, and used administrative staff to administer medications to students. Thus, ASD was not in compliance with the requirements of OAR 581-022-2220. OAR 851-022-0104 waived a single requirement of the health services state standard, to wit, the requirement for integration of school health services with school health education programs and coordination with health and social service agencies found in OAR 581-022-2220(1)(f). All other provisions of that state standard remained in effect for the 2020-21 school year.

TSPC concludes that Licensee falsely reported that ASD met the state standard for health services, when it did not employ a school nurse for the entirety of the school year, and thus engaged in a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5) and -0025(3)(a). Licensee failed to employ a school nurse for ASD during the 2020-21 school year and thus could not have an appropriate health services program in place.

Licensee failed to demonstrate a commitment to using professional judgment as required by OAR 584-020-0010(5). Moreover, Licensee failed to demonstrate knowledge of the requirements of an appropriate health services program and the importance of trained personnel for medication administration. Licensee also failed to demonstrate leadership skills in managing the school or state standards applicable to the health services requirements as required by OAR 584-020-0025(3)(b).

Licensee's conduct constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(n). Additionally, his falsification of the Division 22 report amounts to gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

Emergency plans and safety programs.

OAR 581-022-2225 sets out the state standards for school district emergency plans and safety programs and provides, in pertinent part:

The school district shall maintain a comprehensive safety program for all employees and students which shall:

- (1) Include plans for responding to emergency situations.
- (2) Specify general safety and accident prevention procedures with specific instruction for each type of classroom and laboratory.
- (3) Provide instruction in basic emergency procedures for each laboratory, shop and studio, including identification of common physical, chemical, and electrical hazards.
- (4) Require necessary safety devices and instruction for their use.
- (5) Require that an accident prevention in service program for all employees be conducted periodically and documented.

* * * * *

- (9) In schools operated by the district that are occupied by students, the district must ensure that all students are instructed and have drills on emergency procedures in compliance with ORS 336.071. The emergency procedures shall include drills and instruction on:

- (a) Fires;
- (b) Earthquakes, which shall include tsunami drills and instruction in schools in a tsunami hazard zone; and
- (c) Safety threats including procedures related to lockdown, lockout, shelter in place and evacuation and other appropriate actions to take when there is a threat to safety.

The record established that ASD had no safety plan in place for the 2020-21 school year, no training available for faculty or staff, and no school resource officer due to a severed relationship with the local sheriff's office. Moreover, when Mr. Gallagher took over as superintendent, ASD had no intercom system and only an antiquated bell that worked intermittently. Additionally, the record showed that, due to the lack of emergency drills conducted in the past, students became fearful when the ASD ran its first earthquake preparedness drill. The record also reflected that ASD staff had not been offered emergency or safety training during the 2020-21 school year. OAR 851-022-0104 provided no waivers of these state standards for the period in issue.

TSPC concludes that Licensee falsely reported that ASD met the state standard for emergency plans and safety programs, when it did not have procedures in place for emergency drills, or other measures for student and staff safety, for the entirety of the school year. According to TSPC, that misrepresentation and failure to ensure compliance with the state standard was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5), -0025(3)(a), and -0030(2)(b). Licensee failed to ensure ASD was prepared for emergencies through appropriate safety planning and functional notification devices for the 2020-21 school year.

Licensee failed to demonstrate a commitment to using professional judgment as required by OAR 584-020-0010(5) by permitting ASD to operate with no emergency plan, no working notification system within the school building, and no school resource officer. Moreover, Licensee failed to demonstrate knowledge of the requirements of an appropriate emergency plan and safety program as it was common knowledge that ASD had no reliable working bell system to notify students and faculty of an emergency. Licensee also failed to demonstrate leadership skills in managing the school or state standards applicable to the emergency plan and safety program requirements as required by OAR 584-020-0025(3)(b). Additionally, Licensee failed to show skill in communicating district and school goals with regard to emergency plans or safety programs to staff or the school board as required by OAR 584-020-0030(2)(b) because Licensee did not disclose known deficiencies to the Board, ODE, or to the public through the Division 22 report or other means.

Licensee's failure to ensure appropriate emergency plans and safety programs were in place for the 2020-21 school year was a substantial deviation from the professional standards of competency addressed above. Thus, Licensee's conduct constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(n). His falsification of the Division 22 report is also gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

District improvement plans.

OAR 581-022-2250 identifies state standards for school district continuous improvement plans and provides, in part:

(2) Each school district shall conduct self-evaluations in order to develop and update their local district continuous improvement plans once every four years. Except as provided in subsection (3) of this rule, the department may not require school districts or schools to conduct self-evaluations or to update their local district continuous improvement plans more frequently than biennially.

(3) Each school district shall:

(a) Submit its local district continuous improvement plan to the Department of Education once every four years unless there are substantial changes.

The record shows that in 2022, when Mr. Gallagher took over as interim superintendent, ASD had no continuous improvement plan in place. Accordingly, Mr. Gallagher and ASD staff began working with the local ESD to draft and implement a continuous improvement plan for the district. While the record is devoid of evidence indicating the 2020-21 school year was one in which ASD was required to conduct self-evaluations and/or submit the improvement plan to ODE, the preponderant weight of the evidence indicates no improvement plan existed for the ASD to update or to serve as the basis for self-evaluation. OAR 851-022-0104 provided no waiver of these requirements for the period in issue.

TSPC concludes that Licensee falsely reported that ASD met the state standard for school district improvement plans when no plan existed for ASD. According to TSPC, that misrepresentation and failure to ensure ASD had a continuous improvement plan was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5), -0025(3)(a), and -0030(2)(b).

Licensee failed to demonstrate a commitment to using professional judgment as required by OAR 584-020-0010(5) by permitting ASD to operate without a continuous improvement plan in place as required by ODE. Moreover, Licensee failed to demonstrate knowledge of the requirements of an appropriate improvement plan as ASD had no such plan in place. Licensee also failed to demonstrate leadership skills in managing the school or state standards applicable to the improvement plan as required by OAR 584-020-0025(3)(b). In addition, Licensee failed to show skill in communicating district and school goals with regard to the school district improvement plan to staff or the school board as required by OAR 584-020-0030(2)(b) because Licensee did not disclose the absence of such a plan to the school board, ODE, or to the public through the Division 22 report or other means.

Licensee's failure to ensure an appropriate school district improvement plan was in place for the 2020-21 school year was a substantial deviation from the professional standards of competency addressed above. Thus, Licensee's conduct constitutes gross neglect of duty

pursuant to OAR 584-020-0040(4)(n). Moreover, his falsification of the Division 22 report constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

Records and reports.

OAR 581-022-2260 sets out the state standards for completing records and reports and cooperating with the local ESD in its review of a school district's operations and provides, in part:

(1) Required Records and Reports: The school district shall provide all records and reports required by the Oregon Department of Education.

* * * * *

(4) ESD Annual Report: Pursuant to the requirements and review schedule as set out in OAR 581-024-0228⁸ and ORS 334.125(9), all school districts shall cooperate with their education service district in:

(a) Annually reviewing specific school district operations for purposes of achieving economies and efficiencies; and

(b) Preparing and submitting an annual report concerning the results of the annual review to the State Board of Education.

The record reflects that, during the 2020-21 school year, Licensee instructed ASD staff to keep pertinent information, including student discipline incidents, on a separate spreadsheet rather than reporting information on the ESD controlled reporting form. Moreover, Licensee encouraged staff to misrepresent information on the ESD report, thereby giving a false impression of ASD operations. None of the reporting requirements in this rule, or OAR chapter 581 division 24 generally, were waived by OAR 581-022-0104.

TSPC concludes that Licensee falsely reported to the school board, ODE, and the public that ASD was in compliance with the state standard requiring record keeping and reporting while instructing staff to falsely report or record student disciplinary matters. According to TSPC, that misrepresentation and failure to ensure that ASD complied with the applicable state standard was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5), -0025(3)(a), and -0030(2)(b).

Licensee's instructions to staff to deviate from accepted standards of recording and reporting student disciplinary matters showed a lack of commitment to using professional judgment as required by OAR 584-020-0010(5). Licensee also failed to demonstrate leadership skills in managing the school or state standards applicable to record keeping and reporting as required by OAR 584-020-0025(3)(a). Finally, based on this record, Licensee's conduct of

⁸ OAR chapter 581 division 24 provides standards for education service districts. OAR 581-024-0228 requires each ESD board to adopt policies and procedures for working with local school districts to periodically review the operations of those districts.

concealing student disciplinary matters demonstrated a lack of skill in communicating with administrators, staff, parents, and the ESD. Thus, Licensee's conduct fell short of the expectations of a competent administrator set forth in OAR 584-020-0030(2)(b).

Licensee's failure to ensure that appropriate and accurate record keeping and reporting was in place for the 2020-21 school year was a substantial deviation from the professional standards of competency addressed above. Thus, Licensee's conduct constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(n). His falsification of the Division 22 report also constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

Physical education requirements.

OAR 581-022-2263 sets out the state standards for physical education requirements for students in kindergarten through eighth grade and provides, in part:

(2)(a) Every public school student in kindergarten through grade five, and every public school student in grade six at a school that teaches kindergarten through grade six, shall participate in physical education **for the entire school year** for at least 150 minutes during each school week, or at least 120 minutes during each school week if the school on average holds classes four days a week over the course of the school year.

(b) Except as provided by paragraph (a) of this subsection, every public school student in grades six through eight shall participate in physical education for at least an average of 150 minutes during each school week, as calculated over the duration of a school year, or at least an average of 120 minutes during each school week, as calculated over the duration of a school year, if the school on average holds classes four days a week over the course of the school year.

Emphasis original. OAR 581-022-0104(3)(e) waived all requirements of OAR 581-022-2263 except for the provision requiring school districts to ensure students in kindergarten through eighth grade received physical education throughout the entire school year.

The record demonstrated that ASD did not provide physical education for students in kindergarten through fifth grade but provided the required level of education for students in grades six through eight. Thus, the preponderant weight of the evidence shows that ASD was not in compliance with OAR 581-022-2263 when Licensee completed the Division 22 report and indicated full compliance with this state standard.

TSPC concludes that Licensee falsely reported that ASD met the state standard for physical education because data showed student physical activity participation time was substantially less than that required by the state standard. The misrepresentation and failure to ensure students obtained the required instruction in physical education was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5), -0025(3)(a), and -0030(2)(b).

During the entire 2020-21 school year, students at ASD – in kindergarten through fifth grade – received no physical education. Licensee, as the superintendent of this small district, knew or should have known of this deficiency. Nonetheless, he permitted the deficiency to continue throughout the school year, demonstrating a lack of professional judgment required by OAR 584-020-0010(5), as well as a lack of leadership skills in managing the school and its programs as required by OAR 584-020-0025(3)(a). Moreover, his decision to falsely report compliance in the Division 22 report demonstrates a lack of skill communicating with the school board, parents, and ODE required by OAR 584-020-0030(2)(b). Licensee's conduct constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

Every student belongs.

OAR 581-022-2312 (2021) provides state standards applicable to Oregon's Every Student Belongs program and reads, in part:

(1) It is the policy of the State Board of Education that all students, employees, and visitors in public schools are entitled to learn, work, and participate in an environment that is safe and free from discrimination, harassment, and intimidation.

* * * * *

(6) On or before January 1, 2021, school districts, public charter schools, the Oregon School for the Deaf, and Education Service Districts must adopt a policy that:

- (a) Affirms all students are entitled to a high[-]quality educational experience, free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability or national origin;
- (b) Affirms all employees are entitled to work in an environment that is free from discrimination or harassment;
- (c) Affirms all visitors are entitled to participate in an environment that is free from discrimination or harassment;
- (d) Prohibits the use or display of any symbols of hate, including at a minimum the noose, symbols of neo-Nazi ideology and the battle flag of the Confederacy, on school grounds or in any program, service, school or activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly except where used in teaching curriculum that is aligned the Oregon State Standards; and
- (e) Establishes procedures for addressing bias incidents.

The record shows that, despites Licensee's representations to the contrary in the Division

22 report, ASD had not developed or implemented an anti-discrimination or anti-harassment policy for students, staff, or visitors.

TSPC concludes that Licensee falsely reported that ASD met the state standard for Oregon's Every Student Belongs program in the 2020-21 Division 22 report. According to TSPC, that misrepresentation and failure to ensure that ASD developed and implemented anti-discrimination and harassment policies for students, staff, and visitors was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5) and -0025(3)(a). As the superintendent for this small school district, Licensee more likely than not knew that ASD had no policies in place to address discrimination or harassment of students, staff, or visitors.

Licensee's failure to ensure appropriate anti-discrimination and harassment policies were in place for the 2020-21 school year was a substantial deviation from the professional standards of competency addressed above in that it demonstrates a lack of professional judgment required by OAR 584-020-0010(5), as well as a lack of leadership in managing the school district. Thus, Licensee's conduct constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(n). His falsification of the Division 22 report also constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

Rights of parents of TAG students.

OAR 581-022-2330 (2019) sets forth the state standards pertaining to the rights of parents of TAG students and reads, in part:

In carrying out the requirements of OAR 581-022-2325 and OAR 581-022-2500, the school district shall:

- (1) Inform parents at the time of the identification of the child and the programs and services available.
- (2) Provide an opportunity for the parents to provide input to and discuss with the district the programs and services to be received by their child.
- (3) The parents may, at any time, request the withdrawal of their child from programs and services provided under OAR 581-022-2330. The school district shall notify parents of identified students of this right.
- (4) Parents shall be informed of their right to file a complaint under OAR 581-002-0001 to OAR 581-002-0023.

The record reflects that, for the 2020-21 school year, ASD had no program in place to notify parents of a student's eligibility for the school district's TAG program or to provide parents an opportunity to provide input regarding their student's educational program or services in the TAG program. While OAR 581-022-0104 waived the requirement for school districts to

identify TAG students during the 2020-21 school year, that rule is silent on a school district's obligation to notify parents of their rights regarding a student's identification and eligibility for the TAG program. As such, ASD was still required to comply with that state standard.

TSPC asserts that Licensee falsely reported that ASD met the state standard pertaining to the rights of parents of TAG students for the 2020-21 school year. According to TSPC, that misrepresentation and failure to ensure ASD had the necessary policies and procedures in place to notify parents of their rights was a substantial deviation from professional standards of competency set forth in OAR 584-020-0015(3)(c), -0025(3)(a), and -0030(2)(b). Based on the evidence in the record, TSPC has met its burden.

Permitting ASD to remain out of compliance with the applicable state standard by failing to ensure provision and implementation of policies and procedures for notifying parents of TAG eligible students of their rights with respect to their child's education showed a lack of professional judgment required by OAR 584-020-0010(5), a lack of necessary skill in implementing the TAG program as required by OAR 584-020-0015(3)(c), and a lack of leadership skill in managing the TAG program as required by OAR 584-020-0025(3)(a). Moreover, Licensee's inaccurate reporting in the Division 22 report to the school board and ODE demonstrated a lack of skill, required by OAR 584-020-0030(2)(b). Accordingly, Licensee's conduct constitutes gross neglect of duty under OAR 584-020-0040(n), and his falsification of the Division 22 report constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

Media programs.

OAR 581-022-2340 identifies state standards for school district media programs, including library services, and provides in part:

- (1) School District Media Services: The school district shall provide a coordinated media program. The district shall:
 - (a) Adopt Program goals for:
 - (A) Media instruction for all grade levels; and
 - (B) Support services.
 - (b) Provide appropriate instructional facilities, materials, equipment, and services which support the school district, program and course goals;
 - (c) Assign responsibilities to certificated media specialists and other personnel for the development, implementation, maintenance, and supervision of media services;
 - (d) Organize media services and materials required for the achievement of district and building media program goals; and

(e) Evaluate district and school media programs.

(2) School Media Services: The school district shall provide in each school a media program consistent with district, program and course goals which:

(a) Provides an organized media center with materials, equipment and services supervised by appropriate certificated personnel;

(b) Identifies instructional activities designed to achieve media skills goals; and

(c) Includes instruction that addresses the ability of each student to:

(A) Locate and retrieve organized print and nonprint media;

(B) Use media to record and express ideas and knowledge; and

(C) Listen to, view, interpret and analyze media materials.

The undisputed record reveals that, during the 2020-21 school year, ASD did not employ a certified librarian and its media facilities, including its printed library volumes, were severely underutilized and out of date. In addition, the evidence showed that faculty were aware of this issue but were prohibited, by Licensee, from using the Benton County Public Library, located next door to the ASD, to compensate for deficiencies in the school district's media programs. Despite these known deficiencies, Licensee reported that ASD complied with this state standard for the 2020-21 school year when he completed the Division 22 report for the school board and ODE.

TSPC concludes that Licensee falsely reported that ASD met the state standard for media programs because ASD did not employ a certified librarian, lacked appropriate instructional facilities, and had no media program course goals. This misrepresentation and failure to comply with the state standard by providing students with adequate media programs was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5) and -0025(3)(a).

Failing to ensure that ASD employed a certified librarian to develop and implement media programs to students demonstrates a lack of professional judgment as well as a lack of leadership in managing the school and its media program as required by OAR 584-020-0010(5) and -0025(3)(a). Licensee's conduct constitutes gross neglect of duty under OAR 584-020-0040(n). His falsification of the Division 22 report with respect to this state standard also constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

Postponement of purchase of state-adopted instructional materials.

ODE requires each school district to provide students with access to instructional materials adopted pursuant to OAR 581-022-2355, unless the school district opts for an independent instructional materials adoption under 581-022-2350. OAR 581-022-2360 provides state standards for the postponement of purchase of state-adopted instructional materials and

provides, in part:

If a district seeks to postpone regular purchase of state-adopted materials as required by ORS 337.120, it shall submit an application to the Department which shall include:

- (1) The reason for seeking postponement;
- (2) The subjects or categories for which postponement is sought;
- (3) The projected dates for purchase and implementation of new instructional materials which shall not be later than two years from the beginning of the school year following the state adoption;
- (4) Identification of the instructional materials to be used during the postponement;
- (5) Assurance that the postponement will not delay future purchases in other subject areas; and
- (6) Local school board approval of the application and the date of such approval.

The uncontroverted evidence showed that ASD had not updated certain instructional materials – through either the adoption of state-approved instructional materials or through the independent adoption of instructional materials – for more than 10 years and had not submitted for approval of the postponement of such a purchase or implementation. Yet, Licensee reported that ASD was in compliance for the 2020-21 school year when he completed the Division 22 report.

TSPC concludes that Licensee falsely reported ASD met the criteria for this state standard. This misrepresentation and failure to ensure that ASD complied with its curriculum update requirements was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5) and -0025(3)(a).

Licensee was superintendent of ASD for at least 10 years prior to the 2020-21 school year. As such, it is highly improbable that Licensee was unaware that ASD had not updated instructional materials or applied for a postponement. Thus, Licensee's failure to ensure compliance with the postponement to purchase requirement while aware that ASD had not updated instructional materials as required reflects a lack of professional judgment required by OAR 584-020-0010(5), as well as a lack of leadership skills in managing ASD as required by 584-020-0025(3)(a). Licensee's conduct constitutes gross neglect of duty under OAR 584-020-0040(4)(n). And, his act of knowingly falsifying the Division 22 report for the 2020-21 school year is gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

Personnel.

OAR 581-022-2400 requires that all teachers, specialists, and administrators employed by a school district hold valid licenses issued by TSPC. The record established that it is common practice for school districts to track school personnel licensure and provide notification for any teacher whose license is about to expire to ensure compliance with this state standard.

ASD had no such tracking system in place to determine which staff members needed to renew licensure during the period in issue. As a result, during the 2020-21 school year, several teachers had lapsed licenses and continued to teach without current licensure. Despite that fact, Licensee reported that ASD was in compliance with OAR 581-022-2400 when he presented the Division 22 report for the 2020-21 school year to the school board

TSPC concludes that Licensee falsely reported that ASD met this state standard for the 2020-21 school year. This misrepresentation and failure to ensure that all teachers and administrators held current licensure throughout the school year was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5), -0025(3)(a) and (b), and -0030(2)(b).

For the 2020-21 school year, several of ASD's teachers and/or administrators worked under expired licenses. As the superintendent for ASD, compliance with all state standards, including the requirement to ensure all personnel held appropriate active licensure, rested with Licensee.

Failing to implement a policy and/or procedure to ensure that all educators and administrators held current licenses and permitting staff to work with expired licenses demonstrates a lack of professional judgment required by OAR 584-020-0010(5), as well as lack of leadership in managing ASD as required by OAR 584-020-0025(3)(a) and a lack of skill in planning for need of ASD students (e.g., properly licensed personnel for course instruction and school administration) as required by (3)(b) of that rule. Moreover, Licensee's failure to track and ensure current licensure of ASD staff demonstrates a lack of skill in communicating with administrators and staff required by OAR 584-020-0030(2)(b). As such, Licensee's conduct constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(n). Pursuant to OAR 584-020-0040(4)(c), his falsification of the Division 22 report for the 2020-21 school year pertaining to this state standard also constitutes gross neglect of duty.

Personnel policies.

OAR 581-022-2405 provides the state standards regarding adoption and implementation of school district personnel policies and reads, in relevant part:

- (1) The school district shall adopt and implement personnel policies which address:
 - (a) Affirmative action;
 - (b) Staff development;

- (c) Equal employment opportunity;
- (d) Evaluation procedures; and
- (e) Employee communication system.

* * * * *

(2) Personnel policies shall be accessible to any school employee and notice of their availability to the general public shall be published:

- (a) A current copy shall be accessible in each school office and library; and
- (b) Any organization which represents employees of the district shall be furnished a copy and revisions as they are made.

The record reveals that ASD had no policies or procedures in place regarding teacher evaluation processes, procedures, or frequency. Moreover, after Licensee's separation from ASD, multiple teachers reported to the interim superintendent that they had either not been evaluated for several years or had never been evaluated during their tenure with the school district. Thus, at a minimum, Licensee was aware that, for the 2020-21 school year, ASD was not implementing any teacher development or evaluation policies or procedures when he presented the Division 22 report to the school board indicating that ASD had complied with the state standard during the 2020-21 school year.

TSPC concludes that Licensee falsely reported that ASD met the state standard for personnel policies because there was no policy for evaluating licensed staff. This misrepresentation and failure to develop and implement a policy for staff evaluations was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5), -0025(3)(a), and -0030(2)(b).

Licensee's failure to develop and implement a policy for licensed staff evaluations required by OAR 581-022-2405 constitutes a lack of professional judgment, a lack of leadership in managing ASD, and a lack of skill in communicating with staff members as required of competent administrators by OAR 584-020-0010(5), -0025(3)(a), and -0030(3)(b), respectively. Those failures constitute a substantial deviation from the professional standards of competency and thus amount to gross neglect of duty under OAR 584-020-0040(4)(n). Moreover, Licensee's falsification of the Division 22 report for the 2020-21 school year pertaining to ASD's compliance with personnel policies is gross neglect of duty pursuant to OAR 584-020-0040(4)(c).

Teacher and administrator evaluation and support.

OAR 581-022-2410 sets forth the state standards for evaluating teachers and administrators within a school district and requires, *inter alia*, that each school district align

evaluation criteria to the Oregon Framework for Teacher and Administrator Evaluation and Support Systems and evaluate teachers on a regular cycle. OAR 581-022-2410(2), (4); *see also* OAR 581-022-2420. Moreover, the rule requires school district superintendents to regularly report implementation and effectiveness of evaluation and support systems. OAR 584-020-2420(5).

As set forth above, the uncontroverted evidence established that, for the 2020-21 school year, ASD had no teacher or administrator evaluation procedures, including evaluation criteria, in place and conducted no evaluations of faculty, staff, or administrators during that school year. Despite those facts, Licensee reported that ASD was in compliance with the state standard when he presented the Division 22 report to the school board for the 2020-21 school year.

TSPC concludes that Licensee falsely reported that ASD complied with the state standard for teacher and administrator evaluation and support. The misrepresentation and failure to conduct education evaluations was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5), -0025(3)(a), and -0030(2)(b). The preponderant weight of the evidence shows that, as superintendent, Licensee was aware that ASD had no evaluation procedures in place and that no teacher staff, faculty, or administrator evaluations had been conducted during the school year in issue.

Licensee's failure to develop an appropriate evaluation procedure and to conduct teacher evaluations on a regular cycle showed a lack of professional judgment required by OAR 584-020-0010(5). Licensee's failure in this regard also demonstrates a lack of leadership skills in managing ASD staff as required by OAR 584-020-0025(3)(a) and lack of skill in communicating with staff required by OAR 584-020-0030(2)(b). Thus, Licensee's failure to ensure compliance with the requirements of the state standard pertaining to teacher and administrator evaluation and support constitutes gross neglect of duty under OAR 584-020-0040(4)(n). Additionally, Licensee's intentional falsification of the Division 22 report pertaining to this state standard constitutes gross neglect of duty under OAR 584-020-0040(4)(c).

Universal screenings for risk factors of dyslexia.

OAR 581-022-2445 requires school districts to screen all students for risk factors of dyslexia in kindergarten – or first grade if the student is not enrolled in kindergarten – using a screening test that is on ODE's approved list referenced in OAR 581-002-1820 and administering the measures in each area in accordance with 581-002-1820(2)(b).

A preponderance of the evidence indicates that, during the 2020-21 school year, ASD did not employ any staff members trained in the administration of dyslexia screening tools and thus could not have been in compliance with the requirements for screening students for risk factors of dyslexia during that period. Following Licensee's resignation, the interim superintendent had to arrange for training of staff members to bring ASD into compliance with this state standard for the 2021-22 school year.

As the superintendent of ASD for multiple years, more likely than not Licensee knew the school district did not employ properly trained staff for dyslexia screening. Thus, Licensee knew

ASD was not in compliance with the state standard when he presented the Division 22 report to the school board and represented otherwise.

TSPC concludes that Licensee falsely reported that ASD complied with the state standard for dyslexia screening during the 2020-21 school year. This misrepresentation and failure to properly screen students for dyslexia was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5), -0015(3)(c), -0025(3)(a), and -0030(2)(b).

Licensee's failure to ensure compliance with the state standard requiring dyslexia screening of all students demonstrates a lack of professional judgment, a lack of skill in implementing instructional programs, a lack of leadership in managing those programs, and a lack of skill in communicating with staff, parents, and the school board and therefore falls short of several minimum standards for competent school administrators. *See* OAR 584-020-0010(5), -0015(3)(c), -0025(3)(a), and -0030(2)(b). Accordingly, Licensee's failure to properly screen ASD students for dyslexia constitutes gross neglect of duty pursuant to OAR 584-020-0040(4)(n), and his knowing misrepresentation in the Division 22 report indicating ASD was in compliance with the state standard amounts to gross neglect of duty under OAR 584-020-0040(4)(c).

Programs for TAG students.

OAR 581-022-2500 identifies the state standard for programs and services for TAG students and provides in pertinent part:

- (1) Each school district shall submit to the Oregon Department of Education a written plan of instruction for talented and gifted children on a date and in a format provided in guidance documents provided by the Oregon Department of Education. The plan shall include, but not be limited to:
 - (a) A statement of school district policy on the education of talented and gifted children;
 - (b) An assessment of current special programs and services provided by the school district for talented and gifted children;
 - (c) A statement of school district goals for providing comprehensive special programs and services and over what span of time the goals will be achieved;
 - (d) A description of the nature of the special programs and services which will be provided to accomplish the goals; and
 - (e) A requirement that each talented and gifted child and the child's parents have the opportunity to discuss with the school district the programs and services available to the child and to provide input on the programs and services to be made available to the child[.]

* * * * *

(3) The instruction provided to identified students shall be designed to accommodate their assessed levels of learning and accelerated rates of learning.

As stated in the above rule, school districts must maintain a written plan identifying the district's policies and procedures for identification and education of TAG students. The uncontroverted evidence revealed that, during the 2020-21 school year, ASD did not have a current program in place to identify or serve the needs of TAG students, or to notify parents of available TAG services. After Licensee's departure, the interim superintendent discovered that ASD had been operating under an outdated plan that did not address all areas required by ODE. More likely than not, as the superintendent responsible for the day-to-day operations of the school district, Licensee knew ASD did not have an appropriate program in place to serve the needs of TAG students. Yet, Licensee reported that ASD was in compliance with the state standard when he presented the Division 22 report to the school board for the 2020-21 school year.

TSPC concludes that Licensee falsely reported that ASD met the state standard for programs and services for TAG students. The misrepresentation and Licensee's failure to implement a program to serve TAG students was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5), -0015(3)(c), -0025(3)(a), and -0030(2)(b).

Unlike the requirements for identifying TAG students found in OAR 581-022-2325, OAR 581-022-0104 did not waive the state standards pertaining to programs and services to be provided to TAG students. Thus, OAR 581-022-2500 applied to ASD for the 2020-21 school year. Licensee's failure to develop and implement an appropriate plan identifying the programs and services available to TAG students at ASD demonstrates a lack of professional judgment, a lack of skill in implementing the instructional component of the TAG program, a lack of necessary leadership skills in managing ASD, and a lack of communication skills with parents and the school board required of a competent administrator under OAR 584-020-0010(5), -0015(3)(c), -0025(3)(a), and -0030(2)(b). As such, Licensee's conduct amounts to a substantial deviation from TSPC's professional standards of competency and thus constitutes gross neglect of duty under OAR 584-020-0040(4)(n). Moreover, Licensee's intentional falsification of the Division 22 report for the 2020-21 school year constitutes gross neglect of duty under OAR 584-020-0040(4)(c).

Alternative education programs.

OAR 581-022-2505 sets forth the state standard for alternative education programs and provides, in part:

(2) In order to provide innovative and more flexible ways of educating children, school districts may establish alternative education options within the public school system.

(3) School districts must adopt policies and procedures for the approval and at least annual evaluation of public and private alternative education programs under ORS 336.615-336.665 * * * that receive public funds. Those policies and procedures must provide that:

(a) The district's approval and at least annual evaluation must require that a public alternative program complies with all state statutes, rules and federal law applicable to public schools;

(b) Before contracting with or distributing any public school funds to a private alternative education program, the district must document that:

* * * * *

(C) Before contracting with or distributing any public school funds to any private alternative education program for special education services identified in a child's IEP, the program is approved by the Department in compliance with OAR 581-015-2270;

(D) The program complies with the individual education plan for each student who is eligible to receive special education services[.]

For the 2020-21 school year, ASD maintained multiple alternative education programs, including special education programs and remote learning programs. Nonetheless, many of those programs failed to provide the required supports for each student, including students with an IEP requiring supports or related services to access their education. Additionally, as previously discussed, Licensee permitted students to take courses earning junior high school level credit but directed staff to record the course completed at the high school level on the students' transcripts. As the long-term superintendent of ASD and the developer of at least one distance learning program, Licensee was more likely than not aware of the deficiencies in ASD's alternative education programs.

Despite these deficiencies, Licensee reported to the school board that ASD was in compliance with the state standard when he submitted the Division 22 report for the 2020-21 school year. A preponderance of the evidence reveals that, as the long-term superintendent of ASD, Licensee knew the school district was not in compliance with the relevant state standard because it was not providing alternative education programs that met the needs of its students, particularly those requiring special education supports or related services or those requiring high school level credit courses for alternative education.

TSPC concludes that Licensee falsely reported that ASD met the state standard for alternative education programs during the 2020-21 school year. This misrepresentation and failure to ensure appropriate education and supports for special education and other alternative education programs was a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5), -0015(3)(c), -0025(3)(a), and -0030(2)(b). On this record, TSPC has satisfied its burden.

Licensee's failure to develop and implement appropriate alternative education programs at ASD demonstrates a lack of professional judgment, a lack of skill in implementing the instructional component of the those programs, a lack of necessary leadership skills in managing ASD, and a lack of communication skills with parents and staff, regarding alternative education programs, required of a competent administrator under OAR 584-020-0010(5), -0015(3)(c), -0025(3)(a), and -0030(2)(b).

As such, Licensee's conduct amounts to a substantial deviation from TSPC's professional standards of competency and constitutes gross neglect of duty under OAR 584-020-0040(4)(n), and his intentional falsification of the Division 22 report for the 202-21 school year constitutes gross neglect of duty under OAR 584-020-0040(4)(c).

*Suicide prevention plan.*⁹

OAR 581-022-2510 requires that each district school board adopt a policy requiring a plan on student suicide prevention for all students. That plan must include supports for those students at higher risk of suicidal ideation, including racial minorities and LGBTQ+ students. OAR 581-022-2510(2), (3). For the 2020-21 school year, ASD did not have a current policy in place. Instead, ASD was operating under an outdated policy that did not provide necessary supports for LGBTQ+ students experiencing suicidal ideation.

The requirement to adopt current plans for suicide prevention, responsive to each area of need set forth in the rule, is a responsibility of the school board. Nonetheless, it is difficult, if not impossible, for a school board to address a deficiency of which it is unaware. In this matter, Licensee reported to the school board that ASD was in compliance with the state standard pertaining to suicide prevention in the Division 22 report at issue. Thus, Licensee failed to alert the school board to any deficiency in the suicide prevention plan, depriving school board members of the opportunity to address and rectify the deficiencies. More likely than not Licensee knew ASD's suicide prevention plan was outdated and did not comply with the requirements of OAR 581-022-2510 at the time he completed the Division 22 report.

TSPC concludes that Licensee falsely reported that ASD met the state standard for suicide prevention plans. This misrepresentation amounts to a substantial deviation from professional standards of competency set forth in OAR 584-020-0010(5), -0015(3)(c), and -0025(3)(a).

As set out above, Licensee's failure to notify the school board of any deficiency in ASD's suicide prevention plan deprived the board of the opportunity to meet its obligations of adopting an appropriate plan. Accordingly, Licensee failed to demonstrate professional judgement and necessary leadership skills in managing ASD as required by OAR 584-020-0010(5) and -0025(3)(a).¹⁰ Thus, TSPC has shown that Licensee's conduct amounts to gross neglect of duty

⁹ The Commission has modified this section to remove discussion regarding OAR 584-020-0015(3)(c) because the Commission does not find gross neglect of duty in connection with this rule, and the discussion does not affect the Commission's decision in the case.

under OAR 584-020-0040(4)(n). In addition, Licensee's intentional falsification of the Division 22 report for the 2020-21 school year pertaining to ASD's suicide prevention plan constitutes gross neglect of duty under OAR 584-020-0040(4)(c).

3. Proposed Sanction.¹¹

As set forth above, the Commission has shown, by a preponderance of the evidence, that Licensee engaged in gross neglect of duty by falsifying the Division 22 report submitted to the school board and ODE and by sexually harassing multiple female employees during the 2020-21 school year. OAR 584-020-0040(c), (l), and (n). Pursuant to ORS 342.175(1)(b) and OAR 584-020-0040(3)(c), Licensee is subject to discipline — up to and including revocation of his Oregon educator license — for the established violations.

The record persuasively establishes that, during the period in issue, Licensee sexually harassed at least three employees, falsified 20 sections of the Division 22 report for the 2020-21 school year, and engaged in substantial deviations from the standards of competency set forth in OAR 584-020-010(4), (5), -0015(3)(b), (c), -0025(3)(a), (b), (e), and -0030(2)(b). The Commission concludes that sexual harassment of each employee provides an independent basis to impose revocation, as is the conduct related to Licensee's falsification related to the Division 22 standards discussed above. Thus, TSPC has established it is authorized to revoke Licensee's Oregon educator license. Based on the egregious and pervasive nature of the established violations, the proposed discipline is appropriate.

¹¹ The Commission has modified this section to clarify its reasoning regarding the appropriate sanction.

FINAL ORDER

For the foregoing reasons, the Teacher Standards and Practices Commission issue the following order:

Marc Thielman's professional administrator license is hereby REVOKED.

IT IS SO ORDERED THIS 2 day of July, 2026.

TEACHER STANDARDS AND PRACTICES COMMISSION

By: _____

A handwritten signature in blue ink that reads "Rachel Alpert". The signature is written in a cursive style with a long horizontal stroke at the end.

Rachel Alpert, Executive Director

YOU ARE ENTITLED TO JUDICIAL REVIEW OF THIS ORDER. JUDICIAL REVIEW MAY BE OBTAINED BY FILING A PETITION FOR REVIEW WITHIN 60 DAYS FROM THE SERVICE OF THIS ORDER. JUDICIAL REVIEW IS PURSUANT TO THE PROVISIONS OF ORS 183.482 TO THE OREGON COURT OF APPEALS