

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
TEACHER STANDARDS AND PRACTICES COMMISSION**

IN THE MATTER OF THE TEACHING) **PROPOSED ORDER**
LICENSE OF:)
) OAH Case No.: 1102249
JUDE E. LEHNER)

RECEIVED

AUG 20 2012

Teacher Standards &
Practices Commission

HISTORY OF THE CASE

On August 14, 2009, the Teacher Standard and Practices Commission (TSPC) issued a Notice of Opportunity for Hearing to Jude E. Lehner (Licensee), seeking to discipline him for violating laws regarding his license. Licensee filed a request for hearing on August 21, 2009.

TSPC referred the case to the Office of Administrative Hearings (OAH) on September 22, 2009. The case (OAH Case No. 901283) was assigned to Senior Administrative Law Judge (ALJ) Ken L. Betterton. After a final pre-hearing conference on February 26, 2010, the case was scheduled for hearing in December 2010. Shortly before the hearing, TSPC withdrew the case from the OAH.

On March 7, 2011, TSPC filed an Amended Notice of Opportunity for Hearing to Licensee. The Amended Notice included allegations set forth in the original Notice, but added allegations against Licensee.

TSPC referred the Amended Notice to the OAH on March 14, 2011. The case (OAH Case No. 1102249) was assigned to Senior ALJ Betterton.

A telephone pre-hearing conference was held on May 24, 2011. Attorney Ralph E. Wiser represented Licensee. Senior Assistant Attorney General (AAG) Raul Ramirez represented TSPC. The telephone pre-hearing conference was continued to June 21, 2011, for the parties to research a procedural issue. Attorney Wiser represented Licensee. Senior AAG Ramirez represented TSPC. The case was scheduled for a contested case hearing to start on December 8, 2011.

On July 6, 2011, Licensee filed a Motion to Dismiss the Amended Notice. TSPC filed a Response to the Motion on July 22, 2011. Licensee filed a Reply to the Response on July 29, 2011. On August 19, 2011, Senior ALJ Betterton issued a Ruling Denying Motion to Dismiss.

A hearing was held in Salem, Oregon on December 8, 9 and 12, 2011. Attorney Wiser represented Licensee. Senior AAG Ramirez represented TSPC.

The following witnesses testified for TSPC: Licensee; Trish Everson, parent of a former Union-Baker Education Service District (UBESD) student; Nancy Campbell, former UBESD fiscal manager; Janie Radinovich-Brose, former UBESD employee; Donna Valentine, former UBESD employee; and Sherry Diane Cole, former UBESD teacher and home program coordinator. The following witnesses testified for Licensee: Sandy Bushek, former teachers' union official; Jack Adams, Ph.D., former UBESD superintendent; Arnold Coe, former school district superintendent; and Sherry Diane Cole. Licensee also testified in his own behalf.

A telephone status conference was held on December 13, 2011 to schedule closing arguments. Attorney Wiser represented Licensee. Senior AAG Ramirez represented TSPC. TSPC filed its written closing argument on February 1, 2012. Licensee filed his written closing argument on February 14, 2012.

A telephone conference was held on March 9, 2012, for the parties to present oral argument. Attorney Wiser represented Licensee. Senior AAG Ramirez represented TSPC. The record closed on March 9, 2012 and the matter was taken under advisement.

The proposed order was not issued until after the record closed on August 3, 2012 in a companion case, *In the Matter of Sherry Diane Cole*, OAH Case No. 1102248.

ISSUES

(1) Whether, by reporting false and/or erroneous student attendance data in order for the UBESD to receive money the UBESD was not entitled to receive, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); OAR 584-020-0040(4)(o), as it incorporates OAR 584-020-0035(2)(b) (conduct professional business through established lawful and reasonable procedures); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

(2) Whether, by submitting improper claims for travel reimbursement, or in the alternative, by failing to share expenses with another employee traveling to the same site, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b), OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

(3) Whether, by using travel reimbursement forms to be reimbursed for goods purchased at retail stores, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); OAR 584-020-0040(4)(o), as it incorporates OAR 584-020-0035(2)(b) (conduct professional business through established lawful and reasonable procedures); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

(4) Whether, by submitting a false reimbursement request for a set of glass bowls (cost \$29.99), Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

(5) Whether, by purchasing a vehicle for the UBESD and profiting from the transaction, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0035(2)(b) (conduct professional business through established lawful and reasonable procedures); and OAR 584-020-0010(5) (use of professional judgment).

(6) If Licensee committed one or more of the above violations, what discipline should be imposed?

EVIDENTIARY RULING

Exhibits A1 through A10, A12 through A16, A20 and A21, offered by TSPC, were admitted into evidence without objection. Exhibit A22, offered by TSPC, was admitted into evidence over Licensee's objection as to relevance. Exhibits A17, A18 and A19, were excluded from evidence based on Licensee's objections as to relevance and that their prejudicial effect outweighed their probative value. Exhibit A11, a duplicate of Exhibit A19, was also excluded from evidence.

The following exhibits, offered by Licensee, were admitted into evidence without objection: R1 through R14; R16 through R25; R28; R29; R31 through R33; R35 through R37; R39 through R47; R49 through R51; R55 through R61; and R64 through R71

(except for R68, which is left blank). Licensee withdrew the following exhibits marked for identification: R15; R26; R27; R30; R34; R48; R52 through R54; R62; and R63. Exhibit R38 was excluded from evidence based on TSPC's objection as to relevance.

Pleadings P1 through P21 were also made a part of the record.

FINDINGS OF FACT

Factual background.

(1) Licensee started his teaching career in Oregon in 1979 as a high school teacher, shortly after graduating from college. He taught in public school for several years. He then taught and worked in Oregon for several years for the federal bureau of prisons. (Licensee's testimony.)

(2) A school district near La Grande, Oregon hired Licensee as a teacher in the early 1990s. The Union-Baker Education Service District (UBESD) hired Licensee as a teacher in 1997. (Licensee's testimony.) The UBESD is an education service district (ESD) based in La Grande, Oregon. An ESD is a district created by statute to provide regional educational services to constituent school districts.¹ (Dr. Jack Adams's (Adams's) testimony.)

(3) In the early 1990s, the UBESD was a relatively small education service district that contracted with a handful of school districts in northeastern Oregon near La Grande to provide educational services to those districts. (Licensee's testimony.) The UBESD was and is governed by a seven-person board that is elected by the citizens of the UBESD district. Board members are unpaid, but can be reimbursed for expenses associated with their board duties. (Dr. Adams's testimony.)

(4) The UBESD hired Ed Schumacher (Schumacher) as superintendent in 1997, about the same time that Licensee started working for the UBESD. Lyle Mann (Mann) was UBESD's director of alternative education in 1997. He had been a long-time UBESD employee. As director of alternative education, Mann reported to Schumacher. (Licensee's testimony.) Nancy Campbell (Campbell) started working for the UBESD in August 2000. She soon became the fiscal manager for the alternative education program. In that position, she reported to Mann and worked with him until the investigations concluded that led to many individuals leaving the UBESD. (Campbell's testimony; Licensee's testimony.)

(5) Alternative education, programs designed to serve students not served by the traditional school setting, such as students who have dropped out of school, are incarcerated, or are pregnant, as well as home school programs, programs for children

¹ "There is created in each region a district to be known as the education service district to consist of counties and the area of the common school districts as listed in ORS 334.020, with a governing body thereof to be known as the education service district board." ORS 334.010.

whose parents wish to educate them at home, were relatively new in Oregon in the early 1990s. (Licensee's testimony.)

(6) Alternative education and home school programs began to expand significantly in Oregon after the early 1990s. Schumacher and Mann saw an opportunity to expand UBESD's size and scope and influence by aggressively courting school districts over a large area of eastern Oregon to contract with UBESD to provide services to those school districts. By 2004, when the investigations began that led to the notice to discipline being filed against Licensee, UBESD had contracts with approximately 41 school districts in eastern Oregon. (Ex. A12 at 1.) Those school districts ranged from The Dalles in the west, to Enterprise in the northeast, to Malheur County in the southeast, and covered hundreds of square miles over a large area of eastern Oregon. (Licensee's testimony; Dr. Adams's testimony.)

(7) In approximately 1997, Licensee accepted an offer from Schumacher and Mann to become an alternative education coordinator for the UBESD. During the times relevant to this matter, the UBESD had one or two other alternative education coordinators in addition to Licensee. (Licensee's testimony.)

(8) Licensee had no prior experience in alternative education when he accepted the position as coordinator. As an alternative education coordinator, he had responsibility for alternative education programs for approximately 15 sites in Baker, Union, Wallowa, Grant and Malheur Counties. His area covered hundreds of square miles over a large part of eastern and northeastern Oregon. (Licensee's testimony.)

(9) Licensee's home office was in a UBESD office in Island City, a town just northeast of La Grande. His job duties included meeting and coordinating with school district superintendents, working with resource teachers and parents regarding alternative education programs; helping to locate sites for alternative education schools and making certain the sites were properly equipped and supplied; making certain that incarcerated students had GED (General Equivalency Diploma) programs and materials; and overseeing the federal lunch program for the alternative education sites under his responsibility. Licensee's job required a great deal of travel. He earned a monthly salary and was not paid overtime. Although his standard work week was Monday through Friday, 8:00 a.m. to 5:00 p.m., he sometimes worked extra hours during the week. He also sometimes worked on weekends. (Licensee's testimony.)

(10) Sherry Diane Cole (Cole) started working for the UBESD in 1995 as a teacher. Her duties gradually expanded to other areas. By approximately 1999 or 2000, she had become a coordinator for UBESD's home school, school-to-work, and youth corrections programs with the various contracted school districts. Her job duties included developing curriculums for her programs; working with parents and teachers regarding instructional materials; making certain school districts and parents had the materials and supplies they needed; and organizing and presenting in-service training. Cole's job required her to travel extensively. Her territory also covered much of northeastern and

parts of eastern Oregon, and took her to many of the same school districts and towns where Licensee traveled. Her office was also in Island City. (Cole's testimony.)

(11) Cole and Licensee became acquainted at work in the mid-1990s. They started living together in approximately 2001, as Licensee was going through a divorce from his wife. Cole and Licensee have never married, although they have lived together as husband and wife since they first started living together. (Licensee's testimony; Cole's testimony.)

(12) In approximately 2001, a female UBESD employee accused Mann of sexual misconduct. A number of employees, including Licensee and Cole, were interviewed by investigators about their knowledge of the complaint. Licensee and Cole provided information about the matter that was unfavorable to Mann. The UBESD eventually settled the civil action brought by the female employee for a substantial but undisclosed sum of money. Licensee, as well as other employees and individuals connected with the UBESD, noted that Mann's attitude toward Licensee changed after Licensee provided the information and the matter was settled. (Sandy Bushek's (Bushek's) testimony; Licensee's testimony.) Mann acted less friendly toward Licensee and had less contact with him after the sexual misconduct case settled. Mann started excluding Licensee from some meetings that Licensee had attended in the past. (Licensee's testimony.)

(13) In late 2003 or early 2004, a citizen watchdog group in the La Grande area began to look into the UBESD's operations for alleged wasteful spending and mismanagement after Mann purchased an airplane for the UBESD's use for travel. About the same time, for financial reasons, Oregon's governor was selling an airplane owned by the state that the governor and other state officials used for travel. Actions by the watchdog group led to a number of articles in local and regional newspapers that drew attention to the UBESD over alleged wasteful spending and mismanagement. (Dr. Adams's testimony.)

(14) The investigation by the watchdog group and the attendant publicity of alleged wasteful spending and mismanagement led to investigations in 2004 and 2005 of the UBESD by numerous federal agencies, including the Internal Revenue Service, the U.S. Department of Education, and the U.S. Attorney's Office. The watchdog group's efforts also led to investigations by State of Oregon agencies, including the Department of Education, the State Police, the Secretary of State's Office, TSPC, and the Department of Justice. Some UBESD administrators and employees resigned or were terminated as a result of the investigations. Some UBESD board members resigned. Schumacher and Mann were terminated from employment in approximately September 2004 for alleged misconduct. (Dr. Adams's testimony.) UBESD administrators met with Licensee in September 2004 to review his mileage reimbursement records. The administrators told Licensee that they had found nothing wrong with the way he reported his mileage reimbursement requests. (Bushek's testimony; Licensee's testimony.)

(15) A grand jury was convened to look into possible criminal conduct by number of former and current UBESD employees. Licensee testified before the grand

jury in the spring of 2005. He was not indicted for any crime in connection with his involvement with the UBESD. (Licensee's testimony.) Several individuals employed by the UBESD were indicted and prosecuted, including Schumacher and Mann. Both Schumacher and Mann were acquitted after a jury trial. Only one UBESD employee, Matt Combe, was convicted of any crime in connection with the numerous investigations into the UBESD's operations. (Dr. Adams's testimony.)

(16) After Schumacher's discharge, the UBESD hired an interim superintendent, Boyd Swent, who served less than a year. In approximately July 2005, the UBESD hired Jack Adams, Ph.D., as superintendent to restructure the UBESD and put it on a sound financial footing. Dr. Adams had retired in 2003 after approximately 33 years of experience as a school superintendent for a number of school districts in Washington state. (Dr. Adams's testimony.)

(17) The UBESD placed Licensee on administrative leave in September 2004. (Licensee's testimony.) He remained on administrative leave until September 2005, when Dr. Adams brought him back to work for the UBESD. (Dr. Adams's testimony; Licensee's testimony.) Licensee continued to work for the UBESD until he retired in late 2009. (Licensee's testimony.)

(18) Dr. Adams reviewed boxes of UBESD records, talked to current and former employees, talked to UBESD board members, and talked to superintendents of school districts that contracted with the UBESD, in order to grasp the magnitude of the problems facing the UBESD. Dr. Adams sold the UBESD's airplane and many of its vehicles. As a result of the investigations, federal and state funding that the UBESD had received in the past was substantially reduced, which forced the UBESD to reduce its staff. Dr. Adams had to lay off a number of employees for budgetary reasons, including Campbell, the UBESD's fiscal manager for alternative education. Campbell was upset over losing her job and tried to persuade Dr. Adams to keep her on and let employees with more seniority go. Dr. Adams had to follow lay-off protocol in accordance with the collective bargaining agreement and could not accommodate Campbell's request. Campbell left the UBESD. (Dr. Adams's testimony.) She eventually went to work for a local hospital. (Campbell's testimony.)

(19) Dr. Adams spent much of the year following his hiring as superintendent assembling documents to respond to requests and subpoenas from the numerous agencies investigating the UBESD. He filled the back of his personal pickup several times with boxes of records to deliver them to Salem for the various investigations. (Dr. Adams's testimony.)

(20) In the course of examining the UBESD's records, Dr. Adams found a Travel Reimbursement Procedures policy for the UBESD that was last updated in March 1996. (Ex. R17.) The policy stated, in part, that employees would be reimbursed for mileage, for the "most direct and common route," for use of a personal vehicle, meals and lodging, for UBESD travel. (*Id.*) In talking to employees, Dr. Adams learned that the policy was not consistently followed. The policy did not require or expect UBESD employees to

share rides, either in UBESD vehicles or in their personal vehicles, when traveling on UBESD business. In reviewing records and talking to UBESD employees, Dr. Adams learned that it was common practice for UBESD employees traveling to the same town on the same day, to drive separate personal vehicles, and for each to claim reimbursement for mileage from the UBESD. Employees traveling on the same day to the same building in other towns were not required or expected by the UBESD's administration to share rides. (Dr. Adams's testimony.)

(21) Dr. Adams learned that it was a common and acceptable practice for UBESD board members, who often traveled to other cities for conferences or meetings, each to drive his or her own personal vehicle, and each claim reimbursement for mileage from the UBESD. There was no practice of board members car pooling to meetings or conferences to save the UBESD money. Dr. Adams learned that UBESD board members traveled to meetings and conference in other parts of the country, stayed in expensive hotels and spent lavishly on meals, and got reimbursed in full for their expenses. Dr. Adams learned that one UBESD employee from the La Grande area owned a vacation home in the San Juan Islands in Washington state and often drove there. The employee would drive to the Costco store in the Tri-Cities area of Washington state [Kennewick, Pasco and Richland], on his way to the San Juan Islands, purchase a small item at Costco for the UBESD, such as a box of paper towels, drive on to his vacation home and spend time there, return to La Grande through the Tri-Cities, and claim reimbursement from the UBESD for mileage from La Grande to the Tri-Cities and back. The employee's practice was never challenged by the UBESD's administration, and the UBESD paid the employee's mileage reimbursement requests. (Dr. Adams's testimony.)

(22) In 2004, the UBESD board hired Dickey and Tremper, LLP (Dickey and Tremper), certified public accountants and business advisors, in Pendleton, Oregon, to investigate allegations of misappropriation of assets, violation of the UBESD policies and procedures, violation of state and federal laws, and fraudulent reporting, for fiscal years ended June 30, 2002, 2003 and 2004. (Dr. Adams's testimony; Ex. A5.)

(23) Dickey and Tremper issued a 62-page report dated August 22, 2004 (Ex. A5), which concluded, in part, as follows: The UBESD had an enormous amount of travel, with some employees each claiming between 30,000 and 45,000 miles per year (*Id.* at 4.); there was a lack of internal controls regarding district policies; long-time practices conflicted with some written policies; current business managers did not have the power to question expenditures approved by administrators; Superintendent Schumacher did not have complete control of the organization, and that he had particular difficulty controlling the actions of Mann and Williams [another UBESD administrator]. (*Id.* at 5.) Dickey and Tremper recommended, among other things, that the UBESD require that purchases of materials, supplies and equipment be made through the district's normal purchasing procedures; and that reimbursement to employees for purchases of materials, supplies and equipment by employees not be made on travel reimbursement forms. (*Id.* at 12.)

(24) Licensee has been licensed as a teacher with TSPC for approximately 34 years. (Licensee's testimony.)

(1) Reporting false and/or misleading student attendance data.

(25) A primary mission of the UBESD was to provide alternative education services to school districts where the school districts did not provide those services to students in those individual districts. The UBESD contracted with individual school districts to provide those services. School districts would receive money from the Oregon Department of Education (ODE) based on the student attendance that was reported to the ODE. Student attendance was based on a concept called the "Average Daily Membership." (Campbell's testimony; Licensee's testimony.) Average Daily Membership (ADM) represented the average number of students in membership on any given day during an attendance reporting period. (Ex. A12 at 2.) The UBESD was responsible for tracking attendance in its alternative education programs on a monthly basis. School districts reported their student attendance to the ODE. The ODE, in turn, paid each school district for all its students, students in regular school and students in the alternative education programs. School districts, pursuant to their contracts with the UBESD, would then pay the UBESD money for the alternative education students. The higher the ADM numbers that the school districts reported to the ODE for the UBESD's alternative education programs, the more money the UBESD would receive from the school districts with whom the UBESD contracted. (Campbell's testimony; Licensee's testimony.)

(26) Teachers at each UBESD alternative education site were responsible for tracking and recording student attendance. As an alternative education coordinator, Licensee was responsible for monitoring and reviewing ADM attendance data from each of the alternative education sites for which he had coordination responsibilities. He denied that he had a responsibility to independently verify student attendance reported to him by the teachers. Licensee simply forwarded the ADM data he received from teachers to Binnie Kast (Kast), an UBESD employee. Kast would then input the data into a computer spreadsheet. She would then send the spreadsheet data to Mann and Campbell. Mann and Campbell would prepare the ADM monthly reports. Licensee also denied that he participated in preparation of the ADM reports or that he falsified or misreported ADM data. (Licensee's testimony.)

(27) Kast worked for the UBESD from approximately 1997 until she retired in 2005. (Ex. R28 at 1.) She first started working for the UBESD grading student papers. She later moved into food service positions, worked in the athletic department and drove students to facilities, and finally moved in a clerical position. In the clerical position, she worked, in part, as Licensee's secretary. As Licensee's secretary, she had responsibility to enter into a Quattro Pro spreadsheet the ADM data submitted by teachers from the alternative education sites that Licensee oversaw. After she entered the ADM data into the spreadsheet in her computer, she would "lock" the computer and forward the data to Mann and his assistant, Campbell, who would prepare the ADM reports to be sent to the school districts and to the ODE. (Ex. R28 at 2.) Kast denied any knowledge as to how

ADM reports were prepared. She denied that she was ever told to alter the ADM data she received. (*Id.*) Mann would tell her from time to time that the UBESD "needed students for the numbers." (*Id.*)

(28) On February 21, 2009, Kast signed a declaration about her work at the UBESD. (Ex. R27 at 2.) In her declaration, she stated that Mann was her supervisor and boss; that she sent the ADM data she entered into her work computer to Mann and Campbell; that Mann and Campbell would review the ADM data and prepare the student attendance reports that the UBESD would send to the ODE; and that to her knowledge, Licensee did not participate in or influence the ADM figures that were reported to the ODE. (*Id.*) Kast died later in 2009. (Licensee's testimony.)

(29) Campbell regularly sent ADM reports to school districts over her name. (Exs. R38 and R51.) In at least one report, she informed the district that if district had any questions, the district could contact her. (Ex. R38 at 1.)

(30) Arnold Coe (Coe) was superintendent of the Cove School District near La Grande from 1999 until 2003. In that capacity, he had regular dealings with Mann and Licensee about alternative education issues. He found that Mann's focus was primarily on the UBESD getting as much money as possible from the school districts for students in the alternative education programs. (Ex. R66 at 2; Coe's testimony.) This led to instances where Coe believed the UBESD was counting students from his district in the alternative programs when those students should not have been included in the programs. He raised his concerns with Mann. Mann told Coe that he should not worry so long as the district received the ADM money for the students enrolled. Coe found it difficult and frustrating to get Mann to correct ADM and alternative education attendance data. In contrast, Coe found that Licensee's primary focus was providing services to alternative education students, as opposed to dealing with matters involving payments from the ODE or reimbursements to the UBESD for alternative education students. (Coe's testimony; Ex. R66 at 2.) Coe reported his concerns to the ODE about errors in ADM data for his district before the investigations into the UBESD's activities began in 2004. In his opinion, before the investigations began, ODE seemed disinterested in looking into his concerns about the accuracy of ADM data. (Coe's testimony.)

(31) Sandy Bushek (Bushek) worked as a union representative for ESDs, including the UBESD, and for school districts in eastern Oregon, starting in the early 1990s. In working with the UBESD, she worked with and knew Schumacher, Mann, Campbell, Licensee, and Cole. She also knew how the UBESD functioned and operated. She has a good understanding of ADM and the funding relationship between the ODE, school districts and ESDs. In her opinion, it is not uncommon for school districts to deliberately over or under report ADM data. Under-reporting ADM data is used by school districts in the budgeting process as a tool to gain an advantage in contract negotiations with teachers' unions by showing that the district has less money than it actually has or will have. Districts often later go back and revise their ADM data after contract negotiations have concluded to show the actual ADM numbers. The ODE understands and accepts that ADM data is often later revised. (Bushek's testimony.)

District administrators, and ultimately the superintendent, are responsible for reporting ADM data. Teachers are not responsible for reporting ADM data. (Bushek's testimony; Dr. Adams's testimony.)

(32) Bushek had a great deal of contact with UBESD employees and administrators in 2004 and 2005 during the various investigations. She retired in 2006. Investigators arrived at the UBESD main office one day to ask questions about the UBESD's ADM data and reporting procedures. Mann, Schumacher and Campbell were not unavailable to talk to the investigators. An administration staff person directed Licensee to talk to the investigators about the ADM process on behalf of the UBESD. Licensee had Bushek accompany him to the meeting with investigators. Licensee told the investigators he knew about the ADM process. Licensee's name then appeared in one or more investigative report as the spokesman for the UBESD regarding ADM reporting procedures. (Bushek's testimony; Licensee's testimony.)

(33) After the publicity about the problems at the UBESD, and various investigations were conducted, the Oregon Secretary of State's office conducted an audit of the UBESD's alternative education program for the periods 1999-2000 and 2003-2004, and issued a report in June 2007. (Ex. A12.) The Secretary of State's office found that the UBESD was responsible for tracking and reporting ADM to the districts for alternative education services. The districts, in turn, were responsible for reporting the ADM to the ODE. The Secretary of State's office found multiple instances of the UBESD misreporting ADM data; instances of the UBESD inappropriately claiming ADM for students who were not residents of their school district; instances of the UBESD claiming ADM for students who were either younger or older than allowed by state rules; and instances of the UBESD submitting duplicate claims for ADM for the same student. (*Id.* at 1.) As a result of the errors in reporting ADM attendance data, the ODE distributed approximately \$3.4 million in state funds to school districts that contracted with the UBESD to which the districts were not entitled. (*Id.*)

(2) Submitting false or improper mileage reimbursement claims.

(34) Between August 2001 and June 2004, Licensee claimed mileage reimbursement from the UBESD for 95,527 miles of travel. (Ex. A16 at 30.) Between August 2001 and June 2004, Cole claimed mileage reimbursement from the UBESD for 90,171 miles of travel. (*Id.* at 60.) During this time period, the UBESD reimbursed employees at the rate of 30 cents per mile. During this time period, the UBESD reimbursed employees for meals at the per diem rate of \$5.75 for breakfast, \$8.75 for lunch, and \$14.35 for dinner. (Exs. A1, A2.) An amount claimed for meals that exceeded the per diem rate needed to be supported by a receipt. (Licensee's testimony.)

(35) Licensee and Cole submitted their mileage and travel reimbursement requests to Campbell. Campbell reviewed the requests, organized them and forwarded them to Mann for his approval and signature. After Mann approved the requests, the requests were sent to the UBESD's accounting office for payment. (Campbell's testimony.)

(36) Licensee and Cole usually traveled several times a week to various towns and education sites in eastern Oregon in connection with their respective jobs. Sometimes their travel took them to the same town on the same day. Sometimes they rode together in the same vehicle. However, because their job duties and the sites they needed to visit were different, it usually was not practical for them to ride together. Although the UBESD owned numerous vehicles that employees could use for work-related travel, Mann and UBESD administrators did not encourage their use, and did not encourage employees to ride together. Mann, in particular, encouraged employees to be as "efficient" as possible, meaning drive directly to their education sites, do their work, and return to their home station as soon as possible, and not "waste time" trying to coordinate travel plans to share rides. (Licensee's testimony; Cole's testimony.)

(37) TSPC in its Amended Notice accused Licensee on approximately 104 occasions between August 2001 and August 2004, of either claiming reimbursement for mileage when he and Cole actually rode together and each of them separately claimed reimbursement for mileage, or of claiming mileage separately when they should have shared rides and only one of them claim reimbursement for mileage. (P10 at 2-8.)

(38) During the late summer and early fall of 2001, the UBESD established an alternative education school in the Baker City area in a building on the ranch owned by Benny Ruda (Ruda). In addition to operating a ranch, Ruda was a licensed teacher and worked for the UBESD. (Licensee's testimony.) Two teachers with the Baker City School District, Donna Valentine (Valentine) and Janie Radinovich-Brose (Radinovich-Brose), became employees of the UBESD and started working at the school on Ruda's ranch. Licensee and Cole were actively involved in setting up the school at Ruda's ranch and often traveled as many as three times a week from La Grande to Baker City and back to get the school up and running. (Licensee's testimony; Valentine's testimony.) Valentine and Radinovich-Brose observed that Licensee and Cole usually arrived at the school together and left in the same vehicle. (Valentine's testimony; Radinovich-Brose's testimony.)

(39) For the month of August 2001, Licensee claimed reimbursement for mileage from La Grande to Baker City and back on 11 days. (Ex. A2 at 1 and 4.) For August 2001, Cole claimed mileage reimbursement from La Grande to Baker City and back on 10 days. (Ex. A1 at 1.) Of those dates, they each claimed mileage from La Grande to Baker City and back on six days, August 1, 2, 3, 13, 14 and 20. (Compare Exs. A1 at 1 and Ex. A2 at 1-4.)

(40) After a few months at the Ruda ranch, the alternative education school was forced to move to a location in Baker City because of building code problems with the building on the ranch. (Licensee's testimony.)

(41) Licensee claimed reimbursement for 320 miles of travel on August 15, 2001 from La Grande to Baker City/Huntington/Malheur County and back. (Ex. A2 at 4.) Baker City, Huntington and Malheur County are all on or near I-84. Interstate 84 is a

major highway that runs from Portland through Pendleton, La Grande, Baker City, Ontario, Boise, Idaho, and east across the western United States. (Ex. A22 at 2.) Cole claimed mileage reimbursement for 316 miles of travel on August 15, 2001 to Malheur/Adrian/Nyssa and back. (Ex. A1 at 1.) The locations where Cole claimed mileage reimbursement also line up along I-84 and are close to the locations where Licensee requested reimbursement for travel. (Ex. A22 at 2.) Licensee claimed reimbursement for dinner in the amount of \$48.55 on August 15. (Ex. A2 at 4, 7.) Cole did not claim reimbursement for any meals on August 15. (Ex. A1 at 1.) Licensee's reimbursement records show that he claimed mileage of 95 miles from La Grande to Baker City and back on August 14, 2001. (Ex. A2 at 4.) Cole claimed mileage reimbursement of 86 miles from La Grande to Baker City and back on August 14, 2001. (Ex. A1 at 1.)

(42) Licensee claimed reimbursement for 267 miles of travel from La Grande to John Day/Grant County and back on August 21, 2001. (Ex. A2 at 4.) He claimed reimbursement for dinner on August 21 in the amount of \$22.50. He did not claim reimbursement for breakfast that day. (*Id.* at 7.) Cole claimed reimbursement for 252 miles of travel to John Day and back on August 21, 2001. (Ex. A1 at 1.) She claimed reimbursement for breakfast on August 21 for \$31.60, but did not claim reimbursement for dinner. (Ex. A1 at 1; Cole's testimony.)

(43) Licensee claimed reimbursement for 290 miles of travel from La Grande to Malheur and Boise, Idaho and back on August 30, 2001. He claimed reimbursement of \$43.87 for dinner, but claimed no reimbursement for breakfast for August 30. (Ex. A2 at 20, 25.) Cole claimed reimbursement for 410 miles of travel to Malheur/Adrian/Nyssa/Boise and back on August 30, 2001. She claimed reimbursement of \$7.95 for breakfast, but made no claim for dinner on August 30. (Ex. A1 at 1, 3.) Cole also claimed reimbursement for lodging of \$87.68 for double occupancy in a motel in Boise on August 30/31. (Ex. A1 at 1, 6.) The checkout time from the motel was 5:25 a.m. (*Id.* at 6.) On her reimbursement request form, Cole listed the reason for going to Boise as "Costco." (Ex. A1 at 1.) She did not claim reimbursement for any purchases for the UBESD at Costco on August 30 or 31. (*Id.*)

(44) Cole submitted her request for reimbursement for August 2001 on September 11, 2001. (Ex. A1 at 1.) Licensee submitted his request for reimbursement for August 2001 on September 27, 2001. (Ex. A2 at 20.)

(45) Licensee claimed reimbursement for 600 miles for travel from La Grande to Portland on June 16, and back to La Grande on June 18, 2002, to attend an accreditation meeting. (Lehner's testimony.) He claimed reimbursement at the per diem rate for meals for the trip. (Ex. A2 at 63.) Cole claimed reimbursement for 606 miles from La Grande to Salem on June 16 to attend a meeting, and back to La Grande on June 18, 2002. (Ex. A1 at 57.) She claimed reimbursement at the per diem rate for dinner on June 16, claimed reimbursement at the per diem rate for breakfast, lunch and dinner on June 17, and claimed reimbursement at the per diem rate for breakfast and lunch on June 18. She

claimed reimbursement for \$32.40 for dinner on June 18 at 4:29 p.m., for two guests at a restaurant in Hood River. (*Id.* at 61.)

(46) Licensee claimed reimbursement for 252 miles of travel from La Grande to John Day and back on Wednesday, August 7, 2002. (Ex. A2 at 69.) He did not claim reimbursement for mileage, or for anything else, until Monday, August 12, 2002. (*Id.*) Cole claimed reimbursement for 688 miles of travel from La Grande to Lakeview and back, between August 7 and 9, 2002. (Ex. A1 at 64.) A commonly traveled major highway from La Grande to Lakeview passes through John Day. (Ex. A22 at 14.) Cole claimed reimbursement for lodging for \$144.16 at a motel in Lakeview for two guests for the nights of August 7 and 8. (Ex. A1 at 66.)

(47) Licensee claimed reimbursement for 650 miles of travel from La Grande to Salem and back on August 20, 2002, to purchase supplies at Costco in Salem for the UBESD for "alt ed." (Ex. A2 at 69.) He claimed reimbursement for dinner in Baker City on August 19, 2002 at the per diem rate. (*Id.*) Licensee purchased \$2,136 of supplies at Costco in Salem at 6:23 p.m. on August 20. (*Id.* at 70.) He returned to La Grande after making the purchase, and claimed reimbursement at the per diem rate for breakfast, lunch and dinner for August 20th. (*Id.* at 69.) Cole claimed reimbursement for 606 miles from La Grande to Salem/Aurora and back on August 19/20, 2002, for "greenhouse and supplies." (Ex. A1 at 70.) She claimed reimbursement for 252 miles of travel from La Grande to Baker City/Grant County and back on the morning of August 19, 2002. (*Id.*) Cole claimed reimbursement at the per diem rate for dinner on August 19, and claimed reimbursement at the per diem rate for breakfast and for lunch on August 20. She claimed reimbursement for dinner on August 20 at 9:28 p.m. for \$21.55 for two guests at Sharis in Troutdale. (Ex. A1 at 70, 72; Cole's testimony.) Cole did not claim reimbursement for the purchase of any "greenhouse and supplies" on August 19 or 20. (Ex. A1 at 70.)

(48) Licensee claimed reimbursement for 260 miles from La Grande to John Day and back on May 29, 2003 for "senior graduation." (Ex. A2 at 135; Licensee's testimony.) Cole claimed reimbursement for 252 miles from La Grande to John Day and back on May 29, 2003 for a "parent BBQ." (Ex. A1 at 115; Cole's testimony.)

(49) Licensee claimed reimbursement for 252 miles of travel from La Grande to Prairie City/Grant County and back on February 19, 2004, to attend a meeting. (Ex. A2 at 175.) Cole claimed reimbursement for 252 miles from La Grande to Prairie City/Grant County and back on February 19, 2004. (Ex. A1 at 167.)

(3) Using the travel reimbursement form for the purchase of goods.

(50) Between August 2001 and June 2004, the UBESD allowed employees to request reimbursement for the purchase of supplies and equipment on behalf of the UBESD to be made on its standard "Union-Baker Education Service District, Mileage/Expense Reimbursement Form." (Exs. A1, A2; Licensee's testimony; Dr. Adams's testimony.) The UBESD did not require its employees to use a separate

procedure for the purchase of supplies and equipment; nor did the UBESD require employees to use reimbursement forms different from the standard mileage/expense reimbursement form. (Licensee's testimony; Dr. Adams's testimony.)

(4) Submitting a false reimbursement request for purchase of glass bowls.

(51) Radinovich-Brose, during the late summer of 2001, saw Cole and Licensee deliver supplies they had purchased for the alternative education program at Ruda's ranch near Baker City. Among the supplies delivered, she saw sets of Pyrex bowls that she liked. She wanted to buy a set for herself. She asked Licensee to buy her a set of the bowls when he made a future trip to Costco to buy supplies, and advised that she would reimburse him. (Radinovich-Brose's testimony.)

(52) On September 21, 2001, Licensee made a trip to Costco and purchased supplies totaling \$4,021.68 for the alternative education program at the Ruda ranch. The purchases consisted of many food stuffs, cleaning supplies and other household items, including three sets of Pyrex bowls, each set costing \$29.99. (Licensee's testimony.) The lengthy receipt that Costco gave Licensee specifically identified each item purchased. (Ex. A2 at 12-19.) Cole accompanied Licensee on the trip. (Cole's testimony; Licensee's testimony.)

(53) On or about September 24, 2001, Licensee and Cole delivered the supplies to Ruda's ranch. Radinovich-Brose picked up her set of Pyrex bowls. She started to write a check payable to Licensee for the bowls. (Radinovich-Brose's testimony.) As she began writing "J" [for Jude], Licensee told her to make the check payable to Cole. (Ex. A20 at 12.) She then wrote the check to "Sherry Cole" for \$30.00 for the bowls and handed the check to Cole, who was standing next to Licensee. (Radinovich-Brose's testimony; Ex. A20 at 12.) Cole deposited the check shortly after September 21. (Cole's testimony.)

(54) At the end of September 2001, Licensee submitted a reimbursement request form to the UBESD for reimbursement of \$4,021.68 for the purchases he made at Costco on September 21. (Licensee's testimony; Ex. A2 at 12-19) He attached a copy of the lengthy, detailed Costco receipt to his reimbursement request form. He did not deduct \$29.99 from his reimbursement request for the set of Pyrex bowls that Radinovich-Brose took, nor did he ever reimburse the UBESD for the bowls. Licensee received reimbursement from the UBESD for \$4,021.68 shortly after he submitted his reimbursement request. (Licensee's testimony.)

(55) Cole also made purchases at Costco on September 21, 2001. (Cole's testimony.) She wrote a personal check to Costco dated September 21, 2001, for \$461.49 for the purchases she made. (Ex. R41 at 13-14.) Cole did not keep a copy of her receipt. She did not later try to get a copy of her receipt from Costco to verify her purchases. She did not seek reimbursement from the UBESD for any of the purchases she made at Costco on September 21, 2001. (Cole's testimony.)

(5) Profiting from the purchase of the van.

(56) The UBESD often purchased vehicles and equipment for its operations. It usually purchased vehicles from State of Oregon surplus sales, but sometimes purchased used vehicles from private vendors. During 2001, Licensee was in the process of selling personal property in connection with his recently concluded divorce. (Licensee's testimony.)

(57) On August 22, 2001, Licensee attended an auction run by auctioneer David Kramer (Kramer). Kramer was auctioning property for different individuals. Kramer had auctioned some of Licensee's personal property during 2001. Shortly before the auction started on August 22, a 1993 Aerostar van was brought in for sale. Licensee saw that the van was in good condition and believed it would fit the needs of the UBESD's The Dalles alternative education program. Licensee telephoned Mann and got permission to purchase the van for the UBESD. Mann told Licensee to "keep it under \$4,000." (Licensee's testimony.) Mann told Licensee that the UBESD would reimburse him for the purchase of the van. Licensee was the successful bidder and purchased the van. He did not have enough money in his checking account on August 22 to pay Kramer for the van. (*Id.*) Licensee did pay the \$15 title transfer fee to the Oregon Department of Motor Vehicles on August 22, 2001 to have title to the van transferred from the seller to the UBESD. (Ex. A2 at 7; Licensee's testimony.)

(58) On or about August 23, 2001, Licensee submitted a reimbursement form to the UBESD for the month of August 2001 that included, among other items, a request for reimbursement for \$3,900 for the purchase of the 1993 van on August 22, 2001. (Ex. A2 at 4.) The one-page, computer-generated receipt for the purchase of the van that Licensee attached to his reimbursement request has the word "Receipt" and date of "August 22, 2001" at the top left, with Licensee's name and home address at the top right. (*Id.* at 6.) The receipt has the UBESD's address below the date. Below the UBESD's address are the description of the vehicle and the price of \$3,900. Below the description and price, Licensee hand wrote, "Purchased for The Dalles Alternative Education Program." (*Id.*) The receipt does not have Kramer's name or the name of his business on it. Licensee received reimbursement of \$3,900 for the van, as well as reimbursement for the other items on his August 23 reimbursement request, shortly after August 23, 2001. (Licensee's testimony.)

(59) Licensee wrote a check dated September 16, 2001, payable to "David Kramer," for \$3,675.50 for the van. (Ex. R39 at 4; Licensee's testimony.) In the memo section on the front of the check, Licensee wrote: "Remaining owed on ESD Van after sale of personal items." (Ex. R39 at 4; Licensee's testimony.) Kramer negotiated the check on September 17, 2001. (Ex. R39 at 5.) Licensee later sent an email to his brother in which he boasted that he had bought a van for the UBESD and profited from the transaction. (Campbell's testimony; Licensee's testimony.)

(60) Kramer did not testify at the hearing. He signed a "declaration" dated October 2009. (Ex. R39.) In his declaration, Kramer stated that he and his wife had

owned and operated "Kramer's Auction and Appraisal" since 1975. (*Id.* at 2.) He acknowledged that he recalled in approximately 2001 auctioning assets belonging to Licensee and his former wife. He went on in his declaration to state:

* * *. I understand that Jude Lehner had authority to purchase the van for the ESD for a total price of \$3,900.00.

In payment for the van Jude Lehner provided me a check dated 9/16/01 made payable to "David Kramer" in the amount of \$3,675.50. In the note at the bottom of the check Jude Lehner wrote: "Remaining owed on ESD Van after sale of personal items." The total price for the purchase of the van was \$3,900.00.

(*Id.*)

CONCLUSIONS OF LAW

(1) Licensee did not engage in gross neglect of duty under ORS 342.175(1)(b) by reporting false and/or erroneous student attendance data in order for the UBESD to receive money the UBESD was not entitled to receive.

(2) Licensee engaged in gross neglect of duty under ORS 342.175(1)(b) by submitting false claims for travel reimbursement. Licensee did not engage in gross neglect of duty by failing to share expenses with another employee traveling to the same site.

(3) Licensee did not engage in gross neglect of duty under ORS 342.175(1)(b) by using travel reimbursement forms to be reimbursed for goods purchased at retail stores.

(4) Licensee engaged in gross neglect of duty under ORS 342.175(1)(b) by submitting a false reimbursement request for a set of glass bowls (cost \$29.99).

(5) Licensee engaged in gross neglect of duty under ORS 342.175(1)(b) by purchasing a vehicle for the UBESD and profiting from the transaction.

(6) Licensee's teaching license should be revoked.

OPINION

TSPC seeks to revoke Licensee's teaching license. TSPC has the burden of proof to establish its allegations. ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982). The allegations must be proven by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence

means that the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

TSPC is charged with the responsibility of disciplining teachers and administrators in Oregon. ORS 342.175 *et seq.* One basis for disciplining a teacher or administrator is gross neglect of duty. ORS 342.175(1)(b). TSPC has alleged that Licensee engaged in gross neglect of duty by violating three sections in OAR 584-020-0040(4). OAR 584-020-0040(4) defines gross neglect of duty, in relevant 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) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

* * * * *

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

(o) Substantial deviation from professional standards of ethics set forth in OAR 584-020-0035[.]

OAR 584-020-0010(5) states that the "competent educator" demonstrates a commitment to the "use of professional judgment."

OAR 584-020-0035 defines the ethical educator as:

(2) The ethical educator, in fulfilling obligations to the district, will:

(b) Conduct professional business, including grievances, through established lawful and reasonable procedures[.]

OAR 584-020-0035(3) states that the ethical educator, in fulfilling obligations to the profession, will:

(a) Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty[.]

The five allegations against Licensee are addressed in turn.

(1) Whether, by reporting false and/or erroneous student attendance data in order for the UBESD to receive money the UBESD was not entitled to receive, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); OAR 584-020-0040(4)(o), as it incorporates OAR 584-020-0035(2)(b) (conduct professional business through established lawful and reasonable procedures); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

TSPC has accused Licensee of gross neglect of duty by reporting false and/or erroneous data student attendance data in order for the UBESD to receive state education funds from the state to which the UBESD was not entitled. Licensee denies that he had the responsibility to report such data and denies that he committed gross neglect of duty by reporting false and/or erroneous data.

The record contains conflicting evidence on this issue. TSPC's evidence, much of it presented through Campbell, portrayed Licensee as having a major role in the UBESD for putting together ADM data and preparing the ADM reports. Licensee downplayed his role with ADM data, and denied that he was involved in preparing the ADM reports. The ODE based its payment of state funds to the UBESD on the ADM reports. The UBESD was overpaid approximately \$3.4 million in ADM funds over a period of several years, as the Secretary of State's office later determined in its audit report.

Classroom teachers kept track of and reported student attendance in the alternative education programs. As an alternative education coordinator, Licensee reviewed ADM attendance data reported by teachers in the alternative education programs that he oversaw, but did not verify their accuracy.

With respect to who prepared the ADM reports, how much responsibility should be attributed to Licensee, and whether TSPC proved that Licensee engaged in gross neglect of duty for this ground, I find the testimony of Coe, the former superintendent of a school district who dealt with both Mann and Licensee on student attendance issues in the alternative education programs, and the declaration of Kast, most persuasive.

According to Coe, when he challenged Mann's inclusion of students in the alternative education program, Mann dismissed his concerns and refused to adjust the attendance data. Coe found that Licensee was more focused on providing services to alternative education students than with student attendance numbers and reimbursement to the UBESD for alternative education students.

According to Kast, she forwarded the student attendance data she received from Licensee that he received from the teachers to Mann and Campbell for them to prepare

the ADM reports. Campbell worked for Mann as his assistant. Kast did not believe that Licensee participated in or influenced the ADM numbers that were reported to the ODE.

At the hearing, Campbell downplayed her role in the preparation of ADM reports. However, in correspondence with school districts regarding the AMD reports, she informed the districts to contact her if they had any questions about their ADM reports.

As explained by Dr. Adams and Bushek, ultimately the UBESD's administration, in this case Mann and Schumacher (as superintendent), bore the responsibility for the accuracy of the ADM reports that led to the UBESD receiving money it turned out it was not entitled to receive.

In sum, the evidence failed to prove by a preponderance that Licensee knowingly reported false and/or erroneous student attendance data that resulted in the UBESD receiving money that the UBESD was not entitled to receive.

(2) Whether, by submitting improper claims for travel reimbursement, or in the alternative, by failing to share expenses with another employee traveling to the same site, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b), OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

TSPC has accused Licensee of gross neglect of duty by submitting false claims for travel reimbursement, or in the alternative, of failing to share expenses with another employee (*i.e.*, Cole) traveling to the same sites.

Licensee's job duties differed from Cole's job duties. While their travel took them to the same towns or areas on the same days, they needed to be at different locations within those towns or areas at different times. There may have been times when they could have arranged their schedules to ride together, and in fact they did so on occasion. However, the UBESD had no policy that required employees share rides. In fact, the UBESD's administration encouraged employees to do just the opposite. As part of Schumacher's and Mann's goal of building the UBESD into an empire by collecting more and more state money, the administration and the overall culture within the UBESD encouraged employees to take their personal vehicles for travel, and to ride separately and claim mileage separately. TSPC failed to prove that Licensee engaged in gross neglect of duty by not riding together with Cole to share travel expenses when the UBESD had no policy or expectation that employees would do so.

However, whether Licensee and Cole in fact rode together and each claimed reimbursement for mileage is a different matter entirely. Such conduct of "double

billing" would be misappropriation of UBESD funds, and in essence would constitute theft of property, and would clearly constitute gross neglect of duty under the above administrative rules.

The evidence that Licensee and Cole rode together but each claimed reimbursement for mileage is circumstantial. However, TSPC presented evidence establishing more likely than not that on at least several occasions, Licensee and Cole in fact rode together but each separately claimed reimbursement for mileage.

Licensee claimed reimbursement for 290 miles of travel from La Grande to Malheur and Boise and back on August 30, 2001. He claimed reimbursement for \$43.87 for dinner, but claimed no reimbursement for breakfast. The amount of \$43.87, substantially more than the per diem rate for dinner of \$14.35, most likely would have covered two dinners rather than one. It is unclear why Licensee needed to go to Boise, in another state, on business for the UBESD. Cole claimed reimbursement for 410 miles of travel to Malheur/Adrian/Nyssa/Boise and back on August 30, 2001. She listed the reason for traveling to Boise as "Costco." Exhibit A1 at 1. However, she did not submit any request for reimbursement for the purchase of any supplies at Costco for the UBESD on that date. She claimed reimbursement for breakfast in the amount of \$7.95, but made no claim for dinner. She claimed reimbursement for lodging of \$87.68 for double occupancy in a motel in Boise on August 30/31. Based on Cole's reimbursement request, she traveled to Malheur on August 30, went on to Boise, purportedly to shop at Costco for the UBESD, spent the night in Boise with someone (*i.e.*, Licensee), and returned to La Grande early the following morning, yet apparently made no purchases at Costco for the UBESD. The evidence strongly points to the conclusion that Licensee and Cole rode together in one vehicle, but each claimed reimbursement for mileage. Their pattern of one claiming reimbursement for a meal in excess of the per diem rate, and the other not claiming anything for that meal, and then switching their meal reimbursement requests, is consistent with the two of them traveling together. Neither Licensee nor Cole offered any logical explanation to support a conclusion that they took separate vehicles. Consequently, a preponderance of the evidence demonstrates that Licensee and Cole improperly double billed the UBESD for mileage for the August 30/31, 2001 trip.

Licensee claimed reimbursement for 600 miles for travel from La Grande to Portland on June 16 to attend a meeting, and returning to La Grande on June 18, 2002. He claimed reimbursement at the per diem rate for the meals for the trip. Cole claimed reimbursement for 606 miles from La Grande to Salem on June 16 to attend a meeting, and returning to La Grande on June 18, 2002. She claimed reimbursement at the per diem rate for dinner on June 16, claimed reimbursement at the per diem rate for breakfast, lunch and dinner on June 17, and claimed reimbursement at the per diem rate for breakfast on June 18. She claimed reimbursement for \$43.40 for dinner on June 18, for two guests at a restaurant in Hood River at 4:29 p.m. Again, the evidence strongly points to the conclusion that Licensee and Cole rode together on this trip, yet each claimed reimbursement for mileage. More likely than not, Cole dropped Licensee off at his meeting in Portland, drove on to Salem, attended her meeting, then picked Licensee up in Portland on the way back to La Grande. They stopped in Hood River and had dinner

on June 18 at 4:29 p.m. Licensee had no persuasive explanation why he and Cole would have taken separate vehicles and separately stopped and had dinner together at the same restaurant on the way back to La Grande. Neither Licensee nor Cole knew who, other than Licensee, would have had dinner with her in Hood River at that time. Licensee and Cole improperly double billed the UBESD for mileage for the June 16-18, 2002 trip.

Licensee claimed reimbursement for 252 miles of travel from La Grande to John Day and back on Wednesday, August 7, 2002. He did not claim reimbursement for mileage, or for any other expenses, until Monday, August 12, 2002. Cole claimed reimbursement for 688 miles of travel from La Grande to Lakeview and back, between August 7 and 9, 2002. John Day is on a commonly traveled highway between La Grande and Lakeview. Cole claimed reimbursement for lodging for \$144.16 at a motel in Lakeview for two guests for the nights of August 7 and 8. She had no recollection of who shared the motel room with her, but acknowledged it probably was Licensee. It is possible that Licensee and Cole could have driven in separate vehicles from La Grande to John Day on August 7; he could have conducted his business in John Day while Cole waited; he could have left his vehicle in John Day and ridden with Cole from John Day to Lakeview, where she conducted her business for the next two days; both of them could have returned in Cole's vehicle to John Day on August 9, where Licensee picked up his vehicle; and they could have driven back to La Grande in separate vehicles. However, such a scenario is illogical. The more likely scenario is that they rode in the same vehicle from La Grande to Lakeview and back, and each claimed mileage for separate trips to the different locations so as not to arouse suspicion. Licensee and Cole improperly double billed the UBESD for mileage for the August 7-9, 2002 trip.

Licensee claimed reimbursement for 650 miles of travel from La Grande to Salem and back on August 20, 2002, to purchase supplies at Costco for the UBESD. He purchased \$2,136 of supplies at Costco at 6:23 p.m. He returned to La Grande after making the purchase and claimed reimbursement at the per diem rate for all three meals that day. Cole claimed reimbursement for 606 miles from La Grande to Salem/Aurora and back on August 19/20, 2002, for "greenhouse and supplies." Exhibit A1 at 70. She claimed reimbursement for meals at the per diem rate for August 19, and claimed reimbursement at the per diem rate for breakfast and lunch on August 20. She claimed reimbursement for dinner on August 20 for \$21.55 for two guests at Sharis restaurant in Troutdale at 9:28 p.m. She did not claim reimbursement for any purchase of greenhouse and supplies on the trip. Licensee failed to present persuasive evidence why he and Cole would drive separate vehicles on this trip, why Cole would make the trip to purchase greenhouse and supplies, yet not make any such purchases, and why they would happen to stop in separate vehicles to eat dinner at the same restaurant in Troutdale late in the evening on August 20. Again, more likely than not, Licensee and Cole rode together in one vehicle on this trip and each claimed reimbursement for mileage. Licensee and Cole improperly double billed the UBESD for mileage for the August 19-20, 2002 trip.

For August 15 and 21, 2001, May 29, 2003, and February 19, 2004, Licensee and Cole each claimed reimbursement for mileage for traveling to the same town. Given the pattern of the specific locations for their trips and the claimed purpose of the trips, and

given their claims for reimbursement for meals on these trips—one claiming reimbursement in excess of the per diem rate for a meal and the other not claiming anything for that meal, then switching their reimbursement request for other meals on the trip, more likely than not they rode in the same vehicle and each separately claimed reimbursement for mileage. They improperly double billed the UBESD for mileage on these occasions.

Considering the pattern of Licensee's and Cole's travel for approximately three years, and the clear pattern of each claiming reimbursement for mileage on numerous occasions when they rode together, more likely than not they rode together on at least six days in August 2001, when they each claimed reimbursement for mileage from La Grande to Baker City and back to set up the school at Ruda's ranch. Both Valentine and Radinovich-Brose testified that they usually saw Licensee and Cole arrive and leave in the same vehicle during the time period the school at Ruda's ranch was getting established. The evidence demonstrates that Licensee and Cole improperly double billed the UBESD for reimbursement for mileage for at least several days in August 2001.

Licensee and Cole were able to get away with making duplicate claims for mileage for such a long period of time, in part, because of lax oversight by the UBESD's administration.

Licensee testified that in 2004 the UBESD administration reviewed his mileage reimbursement requests and found nothing wrong with how he reported his mileage reimbursement requests. However, no evidence was presented that any review of records by the administration in 2004 was the same as the exhaustive and detailed review of records that TSPC made of Licensee's and Cole's reimbursement and travel records and that TSPC presented at the hearing.

In sum, TSPC proved, more likely than not, that Licensee knowingly claimed and was reimbursed by the UBESD on numerous occasions for mileage worth at least several hundred dollars to which he was not entitled. Licensee's conduct of knowingly submitting false reimbursement forms constituted gross neglect of duty under ORS 342.175(1)(b) and the administrative rules cited above.²

(3) Whether, by using travel reimbursement forms to be reimbursed for goods purchased at retail stores, Licensee engaged in gross neglect of duty under ORS

² In his written closing argument, Licensee asserts that of the approximately 104 dates identified in the Amended Notice of filing false claims for reimbursement or failing to share travel expenses, TSPC presented evidence on only a small number of the dates. Licensee requests that the ALJ "dismiss" the charges against Licensee for all the other dates. Licensee's Written Closing Argument at 14. Licensee cites no authority for an ALJ to grant such a request. It is unnecessary for TSPC to prove each and every allegation for the approximately 104 dates in order to establish a violation. Proof of a single instance of filing a false claim for reimbursement on one date could constitute gross neglect of duty in violation of ORS 342.175(1)(b) and the cited administrative rules. The number of proven allegations might be important in determining the appropriate form of discipline to be imposed, but not whether a violation occurred.

342.175(1)(b); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); OAR 584-020-0040(4)(o), as it incorporates OAR 584-020-0035(2)(b) (conduct professional business through established lawful and reasonable procedures); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

TSPC accuses Licensee of gross neglect of duty by using the travel reimbursement forms to be reimbursed for goods purchased at retail store, such as the purchases he made at Costco.

After exposure of the mismanagement and fraud at the UBESD, Dickey and Tremper, the accounting and business advisory firm hired to investigate the UBESD, recommended that reimbursement to employees for purchases of materials and supplies by employees not be made on travel reimbursement forms.

However, during the period of time TSPC accused Licensee of using the improper form, no evidence was presented that Licensee or any other employee were required by UBESD policy or procedure to use any form other than the travel reimbursement form to seek reimbursement for supplies and equipment. No evidence was presented that Licensee was ever told not to use the travel reimbursement form for reimbursement for the purchase of supplies or equipment. In fact, the UBESD allowed employees to use the travel reimbursement form for reimbursement for purchases of materials and supplies.

In the absence of evidence that TSPC required or expected Licensee or other employees not to use the travel reimbursement to seek reimbursement for supplies and equipment, TSPC failed to prove that Licensee's conduct regarding this issue constituted gross neglect of duty.

(4) Whether, by submitting a false reimbursement request for a set of glass bowls (cost \$29.99), Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

TSPC accuses Licensee of gross neglect of duty by submitting a false reimbursement request and receiving \$29.99 from the UBESD to which he was not entitled. Licensee denies the accusation. He contends that Cole purchased the set of Pyrex bowls that Radinovich-Brose received, and that he did not submit a false reimbursement request, and therefore did not unlawfully profit from the transaction.

Licensee purchased three sets of Pyrex bowls, together with a large number of other supplies for the UBESD, from Costco on September 21, 2001. When he and Cole delivered supplies to the UBESD's alternative education in Baker City on or about September 24, 2001, he gave one set of the bowls to Radinovich-Brose. Licensee submitted his reimbursement request to the UBESD for September 2001 that included the three sets of Pyrex bowls. He did not deduct \$29.99 from his reimbursement request, nor did he ever reimburse the UBESD for one set of bowls. The UBESD reimbursed Licensee for three sets of Pyrex bowls, but only received two sets.

I find Licensee's contention that Cole purchased the set of Pyrex bowls that Radinovich-Brose received, and that he did not submit a false reimbursement request and did not profit from the transaction, is not credible. Cole made purchases at Costco on September 21, 2001 totaling \$461.49. However, no receipt was ever produced showing that Cole purchased any Pyrex bowls. Licensee presented no persuasive evidence why he and/or Cole could not have produced a receipt from Costco showing what purchases Cole made that day and whether they included Pyrex bowls. Given the failure to present credible evidence to support the claim that Cole purchased the bowls for Radinovich-Brose, and given the persuasive evidence that Licensee and Cole knowingly submitted false claims for reimbursement for mileage as described in Section (2) above, it is reasonable to conclude that Licensee, not Cole, supplied the set of Pyrex bowls to Radinovich-Brose.

TSPC has proven, more likely than not, that Licensee knowingly received \$29.99 from the UBESD to which he was not entitled. His conduct constituted gross neglect of duty under ORS 342.175(1)(b) and the administrative rules cited above.

(5) Whether, by purchasing a vehicle for the UBESD and profiting from the transaction, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0035(2)(b) (conduct professional business through established lawful and reasonable procedures); and OAR 584-020-0010(5) (use of professional judgment).

Finally, TSPC accuses Licensee of committing gross neglect of duty by profiting from his the purchase of the 1993 Aerostar van for the UBESD. Licensee denies that he personally profited from the transaction.

Licensee paid the auctioneer \$3,675.50 out of his own money for the van. He claimed and received reimbursement of \$3,900 from the UBESD for purchase of the van. Licensee testified that the difference of \$224.50 was an offset from the sale of his personal property that the auction house owed him. Licensee explained that he did not have enough money in his checking account on the day of the auction to pay for the van. He claimed that he had enough money in his account to write a check for \$3,675.50, that

he paid that sum to Kramer on the day of the auction, and that difference of \$224.50 was money the auction house owed him from the sale of his personal property.

On or about August 23, 2001, Licensee submitted a reimbursement request to the UBESD that included \$3,900 for the van. The reimbursement request listed the purchase of the van as occurring on August 22, 2001. Exhibit A2 at 4. The receipt for the purchase of the van that Licensee submitted to the UBESD with his request for reimbursement showed August 22, 2001 as the date of the purchase. *Id.* at 6. Licensee received reimbursement for the van and the other items on his reimbursement form shortly after August 23. Licensee's check for \$3,675.50 to Kramer is dated September 16, 2001. Kramer negotiated the check on September 17, 2001. Exhibit R39 at 4-5.

When it was pointed out to Licensee at the hearing that it was not logical for him to have sought and received reimbursement for something purchased at an auction that had not yet occurred, he claimed that the auction occurred on September 16, 2001. When it was pointed out that records clearly showed that the auction occurred on August 22, 2001, and asked why his check would be dated approximately three weeks later, when he claimed he had written a check and paid for the van on the day of the auction, Licensee became flustered and gave contradictory, confusing and illogical answers to questions.

Licensee presented no documentation to corroborate his testimony about the sale of his personal property. Such records would have existed and likely could have been obtained from the auction house to support his contention, if in fact he had sold personal property that explained the difference for what he paid for the van and the reimbursement he received. Licensee presented no persuasive reason why he could not have obtained and presented such records.

The receipt for \$3,900 that Licensee submitted to the UBESD to document his purchase of the van is a generic computer generated "receipt" that does not contain the logo or name of the auction house, or Kramer's name or signature. Exhibit A2 at 6. It is impossible to tell from looking at the receipt where it came from.

Kramer did not testify at the hearing. Licensee did produce a declaration dated October 2009 and signed by Kramer to support his (Licensee's) testimony. In his declaration, Kramer states that he and his wife have owned and operated "Kramer's Auction and Appraisal" since 1975. Exhibit R39 at 2. He also acknowledged that he recalled in approximately 2001 auctioning assets belonging to Licensee and his former wife. However, a careful reading of Kramer's declaration does not support Licensee's testimony regarding the purported offset for the personal property. Kramer's declaration states that *Licensee* wrote on the bottom of the check, "[r]emaining owed on ESD Van after sale of personal items." *Id.* The declaration does not say that *he* (Kramer) asserts that the check for \$3,675.50 represented the amount owed after the sale of Licensee's personal property.

Some time after the transaction, Licensee bragged to his brother that he profited from the purchase of the van for the UBESD. Licensee presented no coherent, logical

explanation why he would make such a statement to his brother if the statement were not true.

I find Licensee's testimony and evidence about the van transaction not credible. The more likely scenario is as follows: Licensee purchased the van for \$3,675.50 at the auction on August 22, 2011; he did not have the money in his bank account to pay for the van that day; he worked out an agreement with Kramer to pay for the van when he had enough money to do so; he submitted a request for reimbursement for \$3,900 (he had authority from Mann to bid up to \$4,000 for a van) from the UBESD on August 23; he received his reimbursement check shortly thereafter; and he wrote the check to Kramer on September 16, 2011 for \$3,675.50 (a check that Kramer deposited the next day) to pay for the van.

I believe that Licensee profited from the van transaction in the amount of \$224.50, and that he unlawfully converted that sum of money belonging to the UBESD. Licensee's conduct constituted gross neglect of duty under ORS 342.175(1)(b) and the administrative rules cited above.

(6) If Licensee committed one or more of the above violations, what discipline should be imposed?

ORS 342.177(3) sets forth the form of discipline TSPC may take against a licensee as follows:

* * *. If the decision of the commission is that the charge described in ORS 342.175(1) had been proven, the commission may take any or all of the following disciplinary action against the person charged:

- (a) Issue a public reprimand.
- (b) Place the person on probation for a period not to exceed four years and subject to such conditions as the commission considers necessary.
- (c) Suspend the license or registration of the teacher or administrator for a period not to exceed one year.
- (d) Revoke the license or registration of the teacher or administrator.
- (e) Revoke the privilege to apply for a license or registration.

TSPC seeks to revoke Licensee's teaching license. Licensee denies that he committed any of the alleged violations. However, he requests that if any violations are proven, the factors in OAR 584-020-0045³ be considered to impose a sanction other than revocation of his license.

³ OAR 584-020-0045 states:

Licensee and Cole engaged in a pattern of conduct over approximately three years in which they repeatedly and unlawfully submitted false claims for reimbursement of mileage and other expenses from the UBESD. Licensee essentially committed theft of at least hundreds of dollars of the UBESD's money. Any discipline less than revocation would be inappropriate.

The Commission may consider one or more of the following factors, as it deems appropriate, to determine what sanction or sanctions, if any, should be imposed upon a finding that an educator has violated any standard set forth in OAR 584-020-0040:

- (1) If the misconduct or violation is an isolated occurrence, part of a continuing pattern, or one of a series of incidents;
- (2) The likelihood of a recurrence of the misconduct or violation;
- (3) The educator's past performance;
- (4) The extent, severity, and imminence of any danger to students, other educators, or the public;
- (5) If the misconduct was open and notorious or had negative effects on the public image of the school;
- (6) The educator's state of mind at the time of the misconduct and afterwards;
- (7) The danger that students will imitate the educator's behavior or use it as a model;
- (8) The age and level of maturity of the students served by the educator;
- (9) Any extenuating circumstances or other factors bearing on the appropriate nature of disciplinary sanctions; or
- (10) To deter similar misconduct by the educator or other educators.

ORDER

I proposed TSPC issue the following order:

Revoke Licensee Jude E. Lehner's teaching license.

Ken L. Betterton

Senior Administrative Law Judge
Office of Administrative Hearings

EXCEPTIONS

The proposed order is the Administrative Law Judge's recommendation to the Teacher Standards and Practices Commission. If you disagree with any part of this proposed order, you may file written objections, called "exceptions," to the proposed order and present written argument in support of your exceptions. Written argument and exceptions must be filed **within fourteen (14) days after mailing of the proposed order** with the:

Teacher Standards and Practices Commission
250 Division Street, N.E.
Salem, Oregon 97301

The Commission need not allow oral argument. The Executive Director may permit oral argument in those cases in which the Director believes oral argument may be appropriate or helpful to the Commissioners in making a final determination. If oral argument is allowed, the Commission will inform you of the time and place for presenting oral argument.