

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

IN THE MATTER OF :

) **FINAL ORDER OF SUSPENSION**
) **AND PROBATION**
)
) OAH Case No.: 1303424

ISAAC BASS,
Respondent

This matter came before the Commission during its regularly scheduled meeting of August 1, 2014 to consider the Proposed Order issued by ALJ Dove Gutman on April 16, 2014. Respondent filed exceptions to the Proposed Order on April 29, 2014.

The Commission reviewed Respondent's exceptions to the Proposed Order and finds that they are not persuasive as follows:

Respondent took exception to the Proposed Order, arguing that there was not substantial evidence under *Reguero vs. TSPC*, 312 or 402(1991). Respondent's exception is misplaced. The ALJ made findings and conclusions that Respondent engaged in Gross Neglect of Duty as alleged in the Notice of Opportunity for Hearing when the ALJ granted the Commission's Motion For Summary Determination in part. Specifically, the ALJ determined (and the Commission does as well) that there was no genuine dispute as to any material facts alleged in the Notice. Respondent may have disagreed with how some specific events unfolded, but those alleged facts were not material to the determination that Respondent engaged in Gross Neglect of Duty. The ALJ also made logical inferences from the undisputed facts and the facts established at hearing (including from Respondent's witnesses) to determine that Respondent's conduct was manipulative and an abuse of the teacher/student relationship. Respondent mistakenly asserts that the Commission was required under *Reguero* to call witnesses to establish undisputed facts, and logical inferences based on the facts. Respondent is mistaken

Respondent took exception to Proposed Order, arguing that the ALJ did not specifically discuss the factors in OAR 584-020-0045. The rule cited by respondent specifically provides that the Commission *may* consider *one or more* of the factors contained in the rule. Neither the ALJ nor the Commission is required to analyze each and every factor in the rule prior to imposing discipline. Nevertheless, the ALJ did articulate reasons in the Proposed Order (pp 15-16) why she recommended that a 30 day suspension and 4 years of probation were an appropriate sanction. Specifically, the ALJ reasoned that Respondent's conduct was coercive and manipulative; that it violated trust and caused harm to students, parents and the school district. The Commission also finds that Respondent's conduct had a negative on the image of the public of the school, and the Commission rightfully can deter similar conduct by imposing the discipline it originally proposed. Lastly, as the ALJ pointed out, Respondent failed to establish that

the Commission's proposed sanction was an abuse of discretion. The fact that Respondent disagrees with the Commission's proposal falls short of what he would be required to prove to establish abuse of discretion.

The Commission did not find any of Respondent's arguments in his exceptions to be persuasive.

Based on the foregoing, the Commission adopts the attached Proposed Order as the Final Order, and hereby orders as follows:

1. Respondent's teaching License is hereby suspended for 30 days from the date this order is signed. Respondent must apply for reinstatement of his suspended license as provided in the Commission's rules
2. Respondent is placed on probation for a period of four years upon reinstatement of his license. During his period of probation, Respondent shall comply with the Standards for Ethical Performance of Oregon Educators as promulgated by the Commission under OAR 584-020-0040, Division 20. Violation of any term or condition of probation shall constitute an independent basis for the Commission to revoke Bass's educator license or otherwise impose discipline, after first providing Bass with notice and opportunity for hearing

It is so Ordered this 26th day of August, 2014.



Victoria Chamberlain, Executive Director
Teacher Standards and Practices Commission

NOTICE OF APPEAL RIGHTS

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provision of ORS 183.482 to the Oregon Court of Appeals.

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



IN THE MATTER OF:

) **PROPOSED ORDER**

ISAAC J. BASS,
Respondent

)
) OAH Case No.: 1303424
)

HISTORY OF THE CASE

On March 27, 2013, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing to Isaac J. Bass (Respondent). On April 1, 2013, Ralph Wiser, Attorney at Law, on behalf of Respondent, requested a hearing.

On September 26, 2013, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). Senior Administrative Law Judge (ALJ) Dove L. Gutman was assigned to preside at hearing.

On December 6, 2013, a prehearing telephone conference was held. ALJ Gutman presided. Senior Assistant Attorney General (AAG) Raul Ramirez represented the Commission. Jeff Van Laanen appeared on behalf of the Commission. Ralph Wiser, counsel for Respondent, did not appear. Respondent did not appear.

On December 12, 2013, Mr. Ramirez, on behalf of the Commission, filed the Commission's Motion for Summary Determination, along with Exhibits 1 through 8.

On December 26, 2013, Mr. Wiser, on behalf of Respondent, filed Respondent Bass' Response to TSPC's Motion for Summary Determination, the Declaration of Ralph E. Wiser, Appendices A through C, the Declaration of Isaac Bass, Appendices A and B, and the Declaration of Majalise Tolan.

On December 31, 2013, Mr. Ramirez, on behalf of the Commission, filed the Commission's Reply to Respondent Bass' Response to TSPC's Motion for Summary Determination.

On January 14, 2014, ALJ Gutman issued a Ruling on Motion for Summary Determination, granting the Commission's Motion as to issue #1 and denying the Commission's Motion as to issue #2. The Ruling on Motion for Summary Determination is hereby incorporated into this Proposed Order.

On April 1, 2014, a hearing was held in Salem, Oregon. ALJ Gutman presided. Mr. Ramirez represented the Commission. Mr. Wiser represented Respondent. The following

individuals provided testimony: Respondent, Sonja Ljungdahl, Majalise Tolan, Kim Reed, and Shawna Stobie. The record closed on April 1, 2014.

ISSUES

1. Whether Respondent engaged in gross neglect of duty in violation of ORS 342.175(1)(b); OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1), OAR 584-020-0010(5), OAR 584-020-0015(2)(e), OAR 584-020-0030(2)(b), and OAR 584-020-0035(1)(c)(D).

2. Whether Respondent should be suspended for 30 days and placed on probation for four years.

EVIDENTIARY RULINGS

The Commission's Exhibits A1 through A8 were admitted into evidence without objection. Respondent's Exhibits R1 and R2 were admitted into evidence without objection.

CREDIBILITY DETERMINATION

A witness testifying under oath or affirmation is presumed to be truthful unless it can be demonstrated otherwise. ORS 44.370 provides, in relevant part:

A witness is presumed to speak the truth. This presumption, however, may be overcome by the manner in which the witness testified, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence.

A determination of a witness' credibility can be based on a number of factors other than the manner of testifying, including the inherent probability of the evidence, internal inconsistencies, whether or not the evidence is corroborated, and whether human experience demonstrates that the evidence is logically incredible. *Tew v. DMV*, 179 Or App 443 (2002).

Ms. Ljungdahl and Respondent

Ms. Ljungdahl was called as a character witness for Respondent. On cross-examination, Ms. Ljungdahl was asked about her understanding of the allegations involving Respondent and JM. Ms. Ljungdahl testified clearly and concisely that Respondent had told her that he knew JM had cheated on prior exams; he wanted to challenge JM to see if he would do the right thing; he told WT to take the answers into the final exam and see if JM would cheat; and that JM chose to cheat on the exam.

After being made aware that JM had not cheated on the final exam, Ms. Ljungdahl then attempted to soften her testimony on re-direct, asserting that she did not have a clear recollection of what Respondent had told her regarding the events. However, when questioned further about

her recollection, Ms. Ljungdahl confirmed that Respondent had told her that JM took the answer sheet from WT and looked at it during the exam.

Respondent, on the other hand, testified that he did not tell Ms. Ljungdahl that JM had taken the answer sheet from WT during the exam.

I find that Ms. Ljungdahl's testimony is more reliable than Respondent's testimony. Ms. Ljungdahl's initial recollection regarding what Respondent had told her was clear, concise and logical. In addition, Ms. Ljungdahl's demeanor was direct and without deceit.

It was only after Ms. Ljungdahl was made aware of the truth, that JM had not cheated on the final exam that she then attempted to change her testimony. It was obvious from Ms. Ljungdahl's demeanor at that time that she surprised by the truth and was trying to help Respondent by changing her testimony.

Ultimately, however, Ms. Ljungdahl corroborated her initial testimony by confirming that Respondent had told her that JM took the answer sheet from WT and looked at it during the exam.¹

I find, more likely than not, that Respondent told Ms. Ljungdahl that he knew JM had cheated on prior exams; he wanted to challenge JM to see if he would do the right thing; he told WT to take the answers into the final exam and see if JM would cheat; JM took the answer sheet from WT and looked at it; and that JM chose to cheat on the exam.

I further find that the testimony of Respondent will not be relied upon when it contradicts the reliable evidence presented by the Commission.

FINDINGS OF FACT

Findings of Fact from the Ruling on Motion for Summary Determination

Background

1. Respondent currently holds an Initial II teaching license, which expires on December 15, 2015. (Ex. 2.)

2. During 2009-2013, Respondent was employed as a math teacher with the McKenzie School District in Finn Rock, Oregon. Respondent taught a variety of math classes at McKenzie High School, including Algebra 1, Algebra 2, Geometry, Pre-Calculus, Consumer Math, and Business Math. (Ex. 3; Declaration of Isaac Bass, Appendix A.)

3. During the 2011-2012 school year, students JM and WT were in Respondent's Pre-Calculus class at McKenzie High School. WT was an older student of higher status. WT and

¹ Ms. Ljungdahl's testimony regarding Respondent's inaccurate version of the events at issue is also corroborated in part by Ms. Reed's testimony, who received yet another inaccurate version from Respondent. See Finding of Fact (36).

JM were friends. (Exs. 4, 5; Declaration of Isaac Bass.)

4. Sometime in April 2012, Respondent had questions about JM's character and development. Respondent decided to set up a sting to test JM's character and teach him a lesson in good decision-making. (Exs. 4, 5, 8; Declaration of Isaac Bass.)

5. Sometime prior to May 22, 2012, Respondent persuaded WT to entice JM to cheat on the Pre-Calculus final exam. Respondent gave WT the answers to the final exam.

JM was receiving A's in all of his classes, except for Pre-Calculus. JM was nervous about achieving a passing grade in Pre-Calculus. JM had worked hard all year to learn Pre-Calculus.

Via text messages, WT offered JM the answers to the final exam. JM declined because he did not want to cheat. (Exs. 4, 5; Declaration of Isaac Bass.)

6. On or about May 22, 2012, JM took the Pre-Calculus final exam. During the exam, WT offered JM the answer sheet. JM pushed the sheet away and told WT, "No." (Exs. 4, 5.)

7. JM and his parents subsequently found out about Respondent's sting. (Exs. 4, 5.)

8. On May 24, 2012, JM's parents filed a complaint with Sally J. Storm, Ph.D., Superintendent of McKenzie School District, regarding Respondent's behavior. In the complaint, Mr. [M] stated, in part:

I am so proud of my son for showing such good character and refusing to cheat, even though he was harassed for at least two straight days by [Respondent] and [WT].

I am disgusted at [Respondent's] actions against my son and that he used another child to do something so evil, in the name of the school.

(Exs. 4, 5.) Ms. Storm initiated an investigation and spoke with the individuals involved. (Ex. 4.)

9. On May 29, 2012, following her investigation, Ms. Storm issued a Letter of Reprimand to Respondent that stated, in part:

Dear Isaac,

On Thursday, May [24], I received a phone call and email from Mr. and Mrs. [M], parents of [JM]. They were extremely distraught, and described that their son [JM] has been quite stressed about his math class all year. They said he has worked hard at the class and homework at home all year, and they would

not let him quit the class as all the other students you had in that class had. They described a perceived ongoing negative relationship between you and their son, and said that he did not trust you had his best interests at hand throughout the year. They reported that [JM] has As in all of his other classes except your math class, and that he was very nervous about passing the final to get a passing grade, and that much rested on his being successful on his final examination.

They then went on to describe your part in a plan wherein you offered another student, [WT], extra credit in order for him to “get [JM] to cheat” on his pre-calculus final examination. Not realizing the plan you had put in motion, [JM] received text messages from [WT] enticing him to cheat; [JM] told him no. On Tuesday, May [22], while taking his final, [JM] saw [WT] hold up the answer sheet to enable him to cheat. [JM] pushed it away and again told [WT] no. When I spoke with [JM], he verified everything the parents had told me. He described the incident and emailed me the texts which he received from [WT] enticing him to cheat. [WT] verified the story as well, also saying you offered him extra credit if he “got [JM] to cheat.” He also said you told him it would not affect [JM’s] grade if he did cheat.

In speaking with you, you admitted that you had set up the sting with [WT]. You said you had not offered extra credit. Your demeanor throughout the meeting, and your comments led me to the conclusion that you did not understand the gravity of your actions, defending what you had done, saying [JM] wasn’t going to get in trouble if he cheated and labeling the incident and your directing it as “fumbling the ball.”

Your part in setting this up is abusive and is manipulative of the trust that both students and parents placed in you as their *teacher*, and as an *adult* in whose care the students are found. It was cruel to have a student realize that his teacher would be part of such a horrific ruse, not to mention how unsafe that student will feel in your classroom from this day forward. It resulted in parents losing trust in our school and teachers, and harmed the friendship between the parents. Additionally, the two students’ friendship is harmed, if not broken.

In setting up this cheating sting, you developed the idea, coerced an older student of higher status to lie to his friend, participated in unethical behavior, and you tried to get a student to cheat for some inexplicable reason. Your actions violate numerous standards set forth in the Standards for Competent and Ethical Performance of

Oregon Educations adopted by the Teacher Standards and Practices Commission, at Division 20, Oregon Administrative Rules, 584-020-0000 through 584-020-0045, attached. This behavior on your part constitutes gross neglect of duty.

This letter of reprimand will be placed in your personnel file. I am also revoking the offer of the position of Head Teacher for the 2012-13 school year. As directed by OAR 584-020-0041, I will be reporting your conduct and this incident to the Teacher Standards and Practices Commission this week.

Let me make it very clear to you that you are never to do anything like this with your students again. If you do, you will be subject to discipline up to and including dismissal.

You have severely misplaced the trust we all had placed in you.

(Ex. 4; emphasis in original.)

10. On May 30, 2011, Ms. Storm notified the Commission that she had determined that Respondent had committed gross neglect of duty. (Ex. 3.)

11. At some point in time, Respondent submitted a formal letter of apology to Ms. Storm that stated, in part:

I would like to formally apologize for my part in the events that took place on May 30 & 31. After constant reflection I see that I displayed poor judgment in trying to ascertain if a student learned a lesson in the importance of good decision making. I have learned my lesson of needing to not just think things through but to collaborate with my superiors if such a lesson is appropriate. I should have not involved another student in any manner. I am ashamed of the stress and harm I have caused the students and families involved. I am sorry I have put you in this situation. Please accept my sincere apology.

I appreciate the opportunity to rebuild any lost trust over the next school year. I have hope that this will in fact take place as you have commented that you believed that there was no malicious intent on my part. I have always tried to do what is best for students throughout my years at McKenzie, and will look to reestablish this president [sic]. It is my goal to repair any damage to the relationships to the parties involved. I will work tirelessly to make this goal a reality next academic year. I look forward to the end of next year in order to look back and reflect on how we have recovered from this unfortunate incident. Thank you for your

continued support and guidance.

(Ex. 7.)

12. On October 25, 2012, Tanya Figgat, investigator for the Commission, interviewed Respondent in the presence of his attorney. During the interview, Respondent made the following statements:

- Respondent explained that the plan was to encourage WT to entice JM to cheat on his exam, and that after JM refuses to cheat he would be commended for his good decision making.
- Respondent admitted that this "lesson" had nothing to do with math, but was instead intended to be a lesson on good decision making.
- Respondent admitted that this plan was a lapse in judgment, and as a result Respondent harmed students and his reputation.
- Respondent admitted that "there was fault in his logic" and should not have done what he did.

(Ex. 8.)

Other information

13. Respondent is currently employed as a math teacher with the Lincoln County School District. (*Respondent Bass' Response to TSPC's Motion for Summary Determination; Declaration of Majalise Tolan.*)

14. On December 19, 2013, Majalise W. Tolan, Principal at Taft High School, wrote a declaration on Respondent's behalf that stated, in part:

1. I am the principal at Taft 7-12 and have been an administrator in the Lincoln County School District for five and a half years.
2. I have observed Isaac in the classroom, at parent-teacher conferences, in staff meetings, and at professional development workshops.
3. I have reviewed observation notes from his evaluator, Kelly Hart, and find them to reflect satisfactory performance in the classroom.
4. Isaac appears to be complying with all LCSD policies and expectations, and I have no concerns about his conduct.

(Declaration of Majalise Tolan.)

Findings of Fact from the Contested Case Hearing and Exhibits

Respondent

15. During the 2011-2012 school year, Respondent had two encounters with JM that caused him concern:

- The first encounter involved an off-campus basketball game. During the game, JM made a cross-over move to pass a defender. Respondent complimented JM on the move. JM told Respondent to "fuck off."
- The second encounter involved a game of chess in class. JM lost the match to Respondent. JM gave Respondent the finger and threw the chess pieces.

(Ex. R1.)

16. During the 2011-2012 school year, Respondent taught Pre-Calculus by the chapter in the math book, in accordance with Oregon State Standards. Each chapter constituted a unit. After each unit, Respondent gave a test.

In one of the tests, students were allowed to use a graphing calculator. After that particular test was completed, Respondent found a graphing calculator that contained a cheat sheet. Respondent determined the calculator belonged to JM. Respondent spoke to JM who denied knowing about or using the cheat sheet. JM told Respondent the graphing calculator had been his sister's calculator. (Ex. R1.) When interviewed by Ms. Figgat, Respondent reported that the test results indicated that either JM did not know how to use the cheat sheet or the calculator really was not his. (Ex. A8.)

17. One or two days prior to the Pre-Calculus final exam, Respondent came up with the idea of the cheating sting. Respondent made the decision in a "moment." Respondent did not take time to reflect on his decision. Respondent contacted WT and gave him the answer sheet to the final exam. Respondent asked WT to tell JM that he had the answers to the final exam, and to offer JM the answer sheet prior to the exam. Respondent told WT that JM would not be harmed if he cheated. Respondent did not check with anyone to see if the cheating sting was a good idea. (Test. of Bass; Ex. R1.)

18. On May 21, 2012, one day prior to the final exam, WT sent numerous text messages to JM, informing JM that he had the answers to the final exam and pressuring him to use the answers to cheat on the exam. JM told WT, "No." (Ex. A7.)

19. On May 22, 2012, the day of the final exam, a substitute teacher was in the math classroom. Respondent was elsewhere, job-shadowing the Dean of Students. Respondent does not recall if the substitute teacher knew about the cheating sting. (Test. of Bass.) During the test, WT held up the answer sheet and tried to entice JM to cheat. JM pushed the sheet away and said, "No." (Ex. 4.)

20. Following the exam, Respondent congratulated JM for not cheating. Respondent

rewarded JM by giving him a "Respect, Initiative, and Personal Space" (RIP) ticket. The RIP principles are part of the Student Code of Conduct. The RIP ticket can be used as currency to purchase items off the RIP cart. (Test. of Bass; Ex. R1.)

21. On or about May 24, 2012, Dr. Storm received a complaint from JM's parents. Dr. Storm initiated an investigation and spoke to the individuals involved, including Respondent. Dr. Storm directed Respondent not to talk to JM, WT, or their parents regarding the matter. (Exs. A5, A8, R1.)

22. On the last day of school for seniors, Dr. Storm asked Respondent to give a public apology to the students in his math class. Respondent located some of the students that were still on campus, including JM and WT, and went into the teacher's lounge. Respondent then apologized to the students for his behavior. JM accepted Respondent's apology. WT looked confused and upset by the apology. (Test. of Bass; Exs. A8, R1.)

23. At Respondent's request, Dr. Storm arranged a meeting with JM's parents at the district offices. Respondent met with JM's parents and Dr. Storm. Respondent apologized to JM's parents for his behavior. JM's parents vented their anger at Respondent. (Test. of Bass; Ex. R1.)

24. Respondent subsequently apologized to WT's mother. (Test. of Bass.)

25. Respondent has not had the opportunity to talk to WT and explain the fault in his logic. (Ex. A8.)

26. Respondent chose JM for the cheating sting because of JM's decision making and because he wanted JM to "be successful." (Test. of Bass; Ex. A8.)

27. JM did not register to take a math class from Respondent the following year. (Test. of Bass; Ex. R1.)

28. Respondent believes that his decision regarding the cheating sting involved a fault in logic. Respondent does not reflect on his decisions all of the time. Respondent makes decisions and moves on. Respondent believes that 99.9 percent of the time his decisions have been "right on." (Test. of Bass.)

29. Respondent believes that JM's parents had the right to be angry but that their anger got in the way of JM's future. Respondent believes that the parents' characterization of his conduct regarding the cheating sting "went far beyond." (*Id.*)

30. Respondent believes that his actions have caused a negative impact on JM and WT. Respondent believes that JM now has trust issues with his teachers. Respondent believes that he caused damage to WT. (*Id.*; Ex. A8)

31. Dr. Storm reprimanded Respondent for his behavior and revoked Respondent's promotion to head teacher. Respondent lost the \$10,000 stipend that went with the position.

(Test. of Bass; Exs. A4, R1.)

Ms. Ljungdahl

32. In 2012, Sonja Ljungdahl was a teacher at McKenzie High School. Ms. Ljungdahl and Respondent were colleagues and friends. They spent time together and spoke regularly about teaching, core content, and the educator. Ms. Ljungdahl and Respondent formed an Equity Club for students at the high school. They also co-taught a course together to assist students in preparing for life after high school.

Ms. Ljungdahl observed Respondent's teaching methods. Ms. Ljungdahl observed that Respondent was caring and empathetic to the students while maintaining his position as a teacher. Ms. Ljungdahl also observed that Respondent spent three days a week during his lunch hour assisting students with math. In Ms. Ljungdahl's opinion, Respondent is one of the best educators she has ever seen. (Test. of Ljungdahl.)

33. Sometime after the Pre-Calculus final exam, Respondent spoke to Ms. Ljungdahl about the incident involving JM. Respondent told Ms. Ljungdahl that he knew JM had cheated on prior exams; he wanted to challenge JM to see if he would do the right thing; he told WT to take the answers into the final exam and see if JM would cheat; JM took the answer sheet from WT and looked at it; and JM chose to cheat on the exam. Respondent admitted to Ms. Ljungdahl that his handling of the situation was not ideal. (*Id.*) At some point in time, Dr. Storm spoke with Ms. Ljungdahl about the incident. Dr. Storm did not go into details, but indicated that Respondent had done a terrible thing to JM and that she did not trust Respondent. (*Id.*)

34. Ms. Ljungdahl firmly believes that Respondent was trying to help JM be successful in life after school. Ms. Ljungdahl believes that the damaged trust between Respondent and JM can be repaired. (*Id.*)

Ms. Reed

35. Kim Reed is currently employed as a school psychologist with the Lincoln County School District. Ms. Reed works with Respondent in IEP meetings. Ms. Reed characterizes Respondent as a "warm demander." Ms. Reed has observed that Respondent is reliable, responsible, and respectful. Ms. Reed has two children in Respondent's math class. Ms. Reed's son likes Respondent. Ms. Reed's son has stated that Respondent goes over things so he can understand them. (Test. of Reed.)

36. Sometime prior to the Contested Case Hearing, Respondent spoke with Ms. Reed about the allegations. Respondent told Ms. Reed that "there was a student he made a comment to." Ms. Reed does not recall the specific details about the student or the comment. (*Id.*)

Ms. Stobie

37. Shawna Stobie is the parent of GW, a former student of McKenzie High School. Ms. Stobie believes that Respondent assisted GW in math and with discipline. Ms. Stobie believes

that Respondent is a wonderful math teacher. Ms. Stobie believes that the education at McKenzie High School deteriorated after Respondent left. Ms. Stobie transferred GW to another school district following Respondent's departure. (Test. of Stobie.)

Ms. Tolan

38. Majalise Tolan is the principal of Taft High School. Ms. Tolan has observed Respondent's impact on the math department. Ms. Tolan believes that Respondent is the strongest math teacher she has seen. Ms. Tolan believes that Respondent is a "leader" in math. Ms. Tolan has observed that Respondent is thoughtful, reliable, responsive, and respectable.

Ms. Tolan believes that if Respondent is gone from his class for 30 days, it will have a negative impact on his students (approximately 115). Ms. Tolan also believes that because Respondent provides math assistance to two other teachers, his absence will have a negative impact on their students (approximately 315). (Test. of Tolan.)

39. The Lincoln County School District (LCSD) is underperforming in math. LCSD has hired consultants to provide training to the math teachers. LCSD's expectation is that Respondent will take part in the training. (*Id.*)

40. Students at Taft High School are on summer break from June 16, 2014 through September 1, 2014. (*Id.*)

CONCLUSIONS OF LAW

1. Respondent engaged in gross neglect of duty in violation of ORS 342.175(1)(b); OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1), OAR 584-020-0010(5), OAR 584-020-0015(2)(e), OAR 584-020-0030(2)(b), and OAR 584-020-0035(1)(c)(D).

2. Respondent should be suspended for 30 days and placed on probation for four years.

OPINION

The Commission contends that Respondent engaged in gross neglect of duty. The Commission further contends that Respondent should be suspended for 30 days and placed on probation for four years. The Commission has the burden of proving the allegations by a preponderance of evidence. ORS 183.450(2), *Reguero v. Teacher Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on TSPC in disciplinary action); *Cook v. Employment Division*, 47 Or App 437 (1980) (the standard in administrative hearings is preponderance of the evidence). 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 (1987). As set forth below, the Commission has met its burden.

1. Whether Respondent engaged in gross neglect of duty.

As set forth in the Ruling on Motion for Summary Determination issued on January 14, 2014, I found that Respondent engaged in gross neglect of duty in violation of ORS 342.175(1)(b); OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1), OAR 584-020-0010(5), OAR 584-020-0015(2)(e), OAR 584-020-0030(2)(b), and OAR 584-020-0035(1)(c)(D).

2. Whether Respondent should be suspended for 30 days and placed on probation for four years.

The Commission contends that Respondent should be suspended for 30 days and placed on probation for four years. Respondent contends that he should receive only a reprimand.

ORS 342.175 provides, in pertinent part:

(1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator or suspend or revoke the right of any person to apply for a license or registration if the licensee, registrant or applicant has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176 based on the following:

(b) Gross neglect of duty[.]

ORS 342.177 provides, in relevant part:

(3) The commission shall render its decision at its next regular meeting following the hearing. If the decision of the commission is that the charge described in ORS 342.175(1) has 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.

OAR 584-020-0045 is titled "Factors for Imposing Disciplinary Sanctions" and provides:

The Commission may consider one or more of the following factors, as it deems appropriate, in its determination of 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 a disciplinary sanction; or
- (10) To deter similar misconduct by the educator or other educators.

As indicated above, the Commission may discipline a teacher for gross neglect of duty by taking any or all of the disciplinary actions set forth in ORS 342.177(3).

After reviewing the record in its entirety, I find that the sanction proposed by the Commission is completely appropriate in this matter and is supported by the reliable evidence in the record. Accordingly, Respondent should be suspended for 30 days and placed on probation for four years.

Respondent contends that the sanction is without any rational basis. I disagree.

The evidence in the record establishes that Respondent used his position as a teacher to manipulate and coerce two students in his math class in order to teach one of them a lesson; a lesson which had nothing to do with the subject matter of the class. The evidence further establishes that Respondent's actions violated the trust of and caused harm to the students, their parents, and the school district. As such, Respondent's argument is unpersuasive.

Respondent next contends that the sanction is an abuse of discretion. I disagree.

As set forth previously, the Commission may discipline a teacher for gross neglect of duty by taking any or all of the disciplinary actions set forth in ORS 342.177(3), including suspending a license for a period not to exceed one year and/or placing a teacher on probation for a period not to exceed four years. Thus, the proposed sanction in this matter, which I have determined to be appropriate, is within the Commission's authority to impose. Therefore, Respondent's argument is unpersuasive.

Respondent finally contends that a reprimand is more appropriate in this case. Respondent cites to *In the Matter of Julie A. Hamilton*, OAH Case No. 1202758, Corrected Final Order (April 29, 2013); *In the Matter of Barbara Larson*, Final Order of Reprimand (January 24, 2012); and *TSPC v. Bergerson*, 342 Or 301 (2006) in support of his contention.

However, the cases cited by Respondent are factually different than the case at issue. Moreover, as indicated above, I have determined that the proposed sanction is appropriate and supported by the reliable evidence in the record. Consequently, Respondent's argument is unpersuasive.

ORDER

I propose the Teacher Standards and Practices Commission issue the following order:

1. Respondent engaged in gross neglect of duty in violation of ORS 342.175(1)(b); OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1), OAR 584-020-0010(5), OAR 584-020-0015(2)(e), OAR 584-020-0030(2)(b), and OAR 584-020-0035(1)(c)(D).
2. Respondent should be suspended for 30 days and placed on probation for four years.

Dove L. Gutman

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 NE
Salem OR 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.