

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

In the Matter of the Educator)
License of)
KELLY BRENT KUBICEK)

On June 28, 2013, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing to Kelly Brent Kubicek (Kubicek) in which the Commission charged him with Gross Neglect of Duty. The Notice was sent via U.S. First Class Mail and U.S. Certified Mail Receipt 7011 2000 0001 1282 3763 to the address on file with the Commission. The Notice designated the Commission file as the record for purposes of proving a prima facie case. The Certified Mail receipt was returned, signed to the Commission on July 1, 2013. The regular mail was not returned to the Commission. The Notice of Opportunity of Hearing, dated June 28, 2013, and signed by Victoria Chamberlain, Executive Director, stated:

“IF A REQUEST FOR HEARING IS NOT RECEIVED WITHIN THIS 21-DAY PERIOD, YOUR RIGHT TO A HEARING SHALL BE CONSIDERED WAIVED UNLESS YOUR FAILURE TO REQUEST A HEARING WAS BEYOND YOUR REASONABLE CONTROL. IF YOU DO NOT REQUEST A HEARING OR IF YOU FAIL TO APPEAR AT A HEARING, THE COMMISSION WILL ADOPT AN ORDER OF DEFAULT WHICH MAY INCLUDE THE REVOCATION OR SUSPENSION OF YOUR LICENSE OR OTHER DISCIPLINE.”

Kubicek did not request a hearing. The Commission, therefore, finds Kubicek to be in default and enters the following findings of fact, conclusions of law, and final order, based on the files and records of the Commission concerning this matter.

FINDINGS OF FACT

1. Kelly Brent Kubicek made application to the Commission and was approved for his Student Teaching / Practicum on December 13, 2011. Kubicek does not currently hold a Teaching License. During all relevant times, Kubicek was not known to be employed by any Oregon School District.
2. On June 5, 2012, the Commission learned that on June 3, 2012, Kubicek had been arrested for Possession of a Controlled Substance II, a class C felony, Failure to perform the duties of a driver, and Resisting Arrest. The Commission further learned that on August 22, 2012, Kubicek was convicted of Failure to Perform the Duties of a

1 Driver as a violation; Kubicek was given a conditional discharge for the charge
2 Possession of a Controlled Substance; and the charge of Resisting Arrest was
3 dismissed. Records indicate Kubicek also has a prior arrest record for Unlawful
4 Possession of Marijuana, Reckless Driving, and Attempting to Elude Police on March
5 20, 2008. On August 8, 2008, Kubicek was convicted of the Attempt to Elude Police
6 charge as a felony, while the other charges were dismissed. Kubicek was sentenced to
7 ten days in jail and 18 months probation. On March 22, 2011, Kubicek's felony
8 conviction was reduced to a Misdemeanor offence. Commission investigators
9 attempted to contact and interview Kubicek regarding these incidents. Official
10 written requests for an interview were sent to Kubicek both by certified and regular
11 mail. The certified receipt was returned signed for on September 4, 2012, and the
12 regular mail was not returned and assumed delivered. Kubicek failed to contact or
13 cooperate with the investigators as required.

14 CONCLUSIONS OF LAW

15 Kubicek's conduct constitutes gross neglect of duty in violation of ORS 342.175(1)(b);
16 OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5) (*Use professional*
17 *judgment*). This conduct also constitutes gross unfitness in violation of ORS 342.175(1)(c);
18 OAR 584-020-0040(5)(p) (*Subject to the exercise of any legal right or privilege, failure or*
19 *refusal by an educator under investigation to respond to requests for information, to*
20 *furnish documents or to participate in interviews with a Commission representative*
21 *relating to a Commission investigation*), and OAR 584-020-0040(5)(c) (*Conviction of*
22 *violating any federal, state, or local law. A conviction includes any final judgment of*
23 *conviction by a court whether as the result of guilty plea, no contest plea or any other*
24 *means*). Kubicek's past criminal conduct is also evidence that Kubicek lacks good moral
25 character or mental/physical fitness to serve as an educator as required under ORS
26 342.143(2).

27
28 The Commission's authority to impose discipline in this matter is based upon ORS
29 342.175.

1 **FINAL ORDER**

2 The Commission hereby revokes Kelly Brent Kubicek's Right to Apply for an
3 Educator license.

4 IT IS SO ORDERED THIS 22nd day of October, 2013.

5 TEACHER STANDARDS AND PRACTICES COMMISSION



6 By: _____
7 Victoria Chamberlain, Executive Director
8

9 **NOTICE OF APPEAL OR RIGHTS**

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