

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

IN THE MATTER OF:

) **PROPOSED ORDER**

)

MICHAEL J. ALLISON

) OAH Case No. 1202694

HISTORY OF THE CASE

On November 16, 2011, the Teacher Standards and Practices Commission (TSPC, or the Commission) issued a Notice of Denial of License Reinstatement to Michael J. Allison (Allison). On December 7, 2011, Allison requested a hearing.

On February 23, 2012, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Rick Barber was assigned to the case and held a prehearing conference on April 30, 2012, at which time the hearing was scheduled for September 12 and 13, 2012. The hearing was later postponed at Allison's request, and was rescheduled for January 9 and 10, 2013.

Hearing was held as scheduled on January 9 and 10, 2013, in Tualatin, Oregon. Allison appeared and testified, representing himself. The Commission was represented by Senior Assistant Attorney General Raul Ramirez. The Commission called the following witnesses: Allison; former Assistant Principal Lonnie Wells; former Principal Carol Daiberl; former TSPC Investigator George Finch; Detectives Tony Cobb and Robert Galbreath; and former students TW and JB.¹ Allison called the following witnesses: Gresham High School (GHS) Teacher Mike Molony; former students JK and BW; and Cynthia Basolo, a parent of two students at GHS. The record closed on January 10, 2013.

ISSUE

Whether Allison's Application for Reinstatement was properly denied by the Commission.

EVIDENTIARY RULINGS

Exhibits A1 through A33, offered by the Commission, were admitted into evidence without objection. Exhibits R1 through R65, offered by Allison, were also admitted into evidence.² Procedural documents P1 through P12 were also identified for the record.

¹ Students who testified, and who are mentioned in the written record, are referred to by their initials in this Proposed Order to protect their identity.

² TSPC did not object to the documents (mostly letters of recommendation) for purposes of addressing Allison's character, and Allison agreed that they were offered for that purpose.

FINDINGS OF FACT

1. Allison became licensed as a teacher in Oregon on April 1, 2002. (Ex. A1). Before that, he had taught at Marist High School in Eugene, a private Catholic school. Allison taught at Marist from 1996 through 2004, and then began working at Gresham High School (GHS). (Test. of Allison, Daiberl). In 2005, Allison received endorsements in Basic Health Education and Basic Physical Education. (Ex. A1). Allison was also the head football coach at GHS. (Test. of Allison).

2. While a teacher at GHS, Allison had teaching assistants (TAs) for his various classes. Some were male, and some were female. They included:

- 2004-05: 12 TAs (6 male, 6 female)
- 2005-06: 19 TAs (10 male, 9 female)
- 2006-07: 11 TAs (10 male, 1 female)
- 2007-08: 15 TAs (8 male, 7 female)
- 2008-09: 13 TAs (0 male, 13 female)

(Test. of Allison). The Counseling Office ultimately selected the TAs for teachers. Students could request a TA position based upon availability of free periods. (Test. of Allison). Allison had some input into the selection process, and asked some students to apply for the positions. (Ex. A7 at 12, 15, 23). Student SC was one of Allison's TAs during the 2008-09 school year. (*Id.* at 1).

3. On July 9, 2009, School Resource Officer Taaca, a Gresham police officer, received a report from GHS Principal Daiberl of a possible inappropriate physical relationship between Allison and a 16-year-old female student, SC. Daiberl had been contacted by another educator, DD, who was the parent of student HD. HD's parents had seen a Facebook exchange between HD and another student, BS, about an intimate relationship between Allison and SC. The school district began to investigate the charges but, at the request of Gresham Police, delayed its investigation so that the police investigation could take precedence. (Test. of Daiberl).

4. Police interviewed SC and Allison about their relationship, and both denied a physical or inappropriate relationship of any kind. (Ex. A7 at 1; Test. of Allison). SC admitted that she had sent messages to another student via Facebook, discussing a sexual relationship with Allison, but insisted that she and the other student were playing a fantasy game involving untrue stories. SC also admitted that, when she had heard the police were going to interview her, she phoned Allison to warn him about the police investigation. Based upon SC's demeanor and the content of her statements, the detectives did not believe she was being completely truthful with them. (Test. of Cobb, Galbreath; Ex. A14).

5. During the investigations by school district personnel and by Gresham Police, several students and former students were interviewed about Allison and SC, and also about Allison's interactions with other female students. Students told police and district investigators

the following:

- Student BS stated that SC told her Allison flirted with her (SC), making inappropriate comments and touching her (rubbing her shoulders, rubbing against her playing basketball). SC told BS that Allison "liked it hard;"
- Student HD had seen "really inappropriate" text messages between SC and Allison, and had been told by another friend, AR, that Allison made AR get her hall pass from his lap/crotch area where he had placed it;
- Student SR refused to become a TA for Allison because her friends told her Allison was a "creeper;"
- Student NJ relayed a conversation with SC, where SC stated she "almost got kissed" by Allison. Then, in another conversation, SC told NJ that Allison had "fingered her;"
- Student LC relayed that SC told her that Allison had kissed and "fingered" her;
- Students NH and MG stated that Allison often talked about sex. One time, he put a piece of paper in NH's bra, then pulled it out, brushing her breast. He told NH that he would date her if she was older. Allison showed them sexual images on his cell phone and on the weight room computer. He would talk about past sexual experiences with MG and NH, and ask about their sex lives with their boyfriends. MG stated that, after she showed Allison her belly button piercing, he later told her "I wanted to lay you down on the floor and fuck the shit out of you." MG stopped coming to class after that conversation;
- Student PD stated that Allison told her she was cute, with a perfect-sized body, and that her breasts were a nice size;
- Student AF, when discussing her boyfriend with Allison, reported that Allison said that some guy in college would "treat [her] like a lady and then fuck the shit out of [her]." She stated that Allison also told her he would help her select what to wear for senior pictures if AF would do a "strip tease" for him;
- Student AR stated that Allison was always joking about sexual things. One time, when he was giving her two dollars, she put her hand out for the money but he put it in her shirt pocket "right by my boob."
- Student AS stated that Allison's comments were usually sexual. One time he pulled her into the coach's office, told her she was beautiful, and said she could have any guy that she wanted. Allison showed her nude pictures on his phone, including one where the punch line (in a photo involving two persons in a strange sexual position) was about flexibility. Allison asked AS if she was flexible, too.

(Exs. A7, A17, A18, A22).

6. Daiberl informed Allison about the investigation on July 16, 2009, and indicated she would be taking his statement when she returned from vacation on July 27, 2009. (Ex. A3). Allison resigned as football coach, and resigned his teaching position with GHS on August 24, 2009. In the spring of 2010, when the Commission began its investigation during the ongoing police investigation, Allison decided to voluntarily surrender his Teaching License. He signed the Stipulated Surrender on April 5, 2010. (Ex. A2). At approximately the same time Allison surrendered his license to teach, the criminal investigation ended. (Test. of Allison).

7. As part of Allison's stipulated surrender of his teaching license, he stipulated to the following facts:

1. The Commission has licensed Mr. Allison since April 1, 2002. Allison currently holds a Standard Teaching License, with endorsements in Basic Health and Basic Physical Education, issued May 5, 2005 and valid through October 8, 2010.
2. On or about July 9, 2009, the Gresham-Barlow School District officials received information regarding alleged inappropriate conduct between Mr. Allison and a female student.
3. Friends of the female student reported to school officials that Mr. Allison communicated with the female student via text message and cell phone calls. Friends of the female student characterized this correspondence as flirtatious.
4. Friends of the female student alleged various intimate physical contact between Mr. Allison and the female student. Mr. Allison denied making inappropriate physical contact.
5. A school district investigation uncovered allegations that Mr. Allison was often alone with the female student during athletic training.
6. Mr. Allison did not report to school district officials the romantic notes left on his car by this female student.
7. Gresham-Barlow School District placed Mr. Allison on administrative leave pending the outcome of the district's investigation. Mr. Allison subsequently resigned from Gresham-Barlow School District on August 24, 2009.

(Ex. A2). When Allison reviewed the stipulated facts before signing the document, he pointed out to his attorney that there was an error in the facts. He told his attorney that he had reported the romantic notes left on his car to the assistant principal, Wells. Allison's attorney advised him that, because he was surrendering his license and did not plan to teach again, there was no need to correct the error. On counsel's advice, Allison signed the document. (Test. of Allison). Allison did give the notes to Wells right after the notes were left on his car. (Test. of Wells).

8. After surrendering his license, Allison worked as an assistant football coach for Rex Putnam High School and Portland State University (PSU), and then, in 2011, began teaching and coaching at Archbishop Murphy High School in Seattle. He is currently on paid administrative leave because news of the events at GHS became known to parents and boosters at Archbishop Murphy. (Test. of Allison).

9. On March 30, 2011, and again on May 20, 2011, Allison filed applications for a Teaching License with the Commission. (Ex. A31, A32).

10. On April 1, 2011, Allison underwent a "Fitness for Work Evaluation" with Psychiatrist Don Wiesner. Allison and Wiesner discussed boundaries, but Allison did not tell Wiesner the circumstances of his resignation from GHS or the surrender of his Teaching License. (Ex. A33, Test. of Allison).

11. During the police investigation of the GHS incidents, Gresham Police received phone calls from two women with information about an interaction between Allison and a Marist student in approximately 2001. The women, one of whom was the victim of the reported attack, told police that student JB³ had gone to Allison's office at Marist at his request. JB reported that while in Allison's office in 2001, with no one else around, Allison had kissed her and touched her breasts. JB did not report Allison's actions to her family or to the school, but told her friend, TW. (Test. of JB, TW). Allison denies the event. (Test. of Allison).

CONCLUSION OF LAW

Respondent's Application for Reinstatement was properly denied by the Commission.

OPINION

The Commission contends that Respondent's application for licensure should be denied because he has failed to show the requisite fitness to hold a license. Although Respondent generally has the burden to establish that he possesses the requisite qualifications and fitness to hold a teaching license, TSPC is the proponent of the position that he is unfit and must present evidence in support of its claim. ORS 183.450(2). It must prove its case 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. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

OAR 584-050-0006 states in part:

Criteria for Denying Issuance or Reinstatement of Licenses

(1) The Executive Director may deny issuance of a license, certificate or registration, renewal of a license, certificate or registration; or reinstatement of a license, certificate or registration under the conditions set forth in subsection (3) below.

* * * * *

(3) Notice of denial and right to a hearing may be issued by the Executive Director when any of the following conditions exist:

³ JB are the witness's current initials. Her maiden name was identified at hearing and Allison remembered her, although denying that the event occurred.

* * * * *

(d) The Executive Director has evidence that the applicant may lack fitness to serve as an educator[.]

Under this administrative rule, the Executive Director must determine whether an applicant has the requisite qualifications to be a teacher, including fitness to teach. The Commission contends that Respondent has failed to establish he is fit to teach.

Evidence of Unfitness. As noted, the Commission has the burden of presenting evidence of Allison's unfitness to teach. In this case, the Commission has presented sufficient evidence to establish that Allison's fitness is in question.

At the time Allison surrendered his Teaching License in 2010, both the police and the Commission were investigating the events at GHS. Gresham Police and the District Attorney continued to investigate to determine if there had been an inappropriate sexual relationship between Allison and SC, while TSPC was investigating not only the SC matter but also other possible boundary violations by Allison. Allison testified that he surrendered his Teaching License because the circumstances at GHS had taken away his desire to teach. His surrender of his license ended the TSPC investigation as well as the police investigation, although it is unclear from this record whether the closure of the police investigation was independent, or done in conjunction with the license surrender.

The Commission's challenge to Allison's fitness at the present time is essentially two-pronged, focusing on the alleged inappropriate physical contact between Allison and two students (at GHS and at Marist), as well as on the sexually-charged communications with female students that came to light during the investigations. For both reasons, the Commission would not reinstate Allison's license without strong assurances that he is not a danger to students. Among other things, the Commission would require a psycho-sexual evaluation and some boundary training by experts who are aware of the circumstances and allegations made against Allison. For the reasons that follow, I agree that such evaluations would be essential for the Commission to consider reinstating Allison's license to teach.

Evidence of Inappropriate Physical Contact. The GHS investigation began when others alleged that Allison and SC had inappropriate sexual contact. Both deny that such contact occurred, although several of SC's friends told police and school investigators that SC had told them details of the relationship previously. SC was initially untruthful with police detectives, telling them there was no relationship with Allison but admitting that she had erased all of her text messages and had phoned Allison to tip him off about the investigation. Even after admitting her untruthfulness, however, she continued to deny any inappropriate relationship with Allison.

At hearing, the Commission presented evidence of another possible sexual contact between Allison and Marist student JB in approximately 2001. JB testified to the contact, and Allison denied it.

Under a preponderance standard, the evidence of intimate physical contact between Allison and the two students, JB and SC, is substantial but inconclusive. SC and Allison deny any contact in 2009. JB said there was physical contact at Marist in 2001, but did not contact the school or the police at that time. Allison denies the inappropriate physical contact claimed by JB.

The Commission contends that Allison may not deny having a relationship with SC because the stipulated facts at the time of the 2010 license surrender establish that there was inappropriate physical contact between Allison and SC. I disagree that Allison stipulated to having had such contact with SC,⁴ but agree that the practical effect of the stipulated license surrender, under the cloud of that investigation, means that the Commission may assume that the contact took place.⁵

Thus, the Commission has a valid basis to require a psycho-sexual evaluation of Allison before granting another license. Even the possibility that such conduct took place between Allison and a student is a sufficient basis for the Commission to require assurances that Allison is fit to teach. There is no question, under these facts, that the Commission needs professional assurances that Allison is not a threat and is fit to teach. While the testing does not guarantee the granting of license, it is a reasonable requirement by the Commission.

Inappropriate Communications with Students. That conclusion is only strengthened by the record of Allison's communications with other female students. Although the initial focus of the investigation was on the possibility of an inappropriate physical relationship with SC, the investigation also uncovered countless improper conversations that Allison had with his female students.

At hearing, Allison acknowledged that he had crossed boundaries in his communications with his students. The context of his admission seemed to focus only on the use of text messages and cell phones with students. He has acknowledged that he was too familiar with his students, and recognizes that boundaries were crossed.

However, the evidence from a surprising number of female students, both his teaching assistants and others, establish that the boundary violations were more sexually-oriented than Allison has admitted. A large portion of Allison's conversations with them were sexual in nature. Several students testified to the sexual nature of his communications, as set forth in the bullet points in the Findings of Fact above. Some of the comments attributed to him raise serious concerns. Thus, even if there was never any physical contact with SC, the statements of several unrelated students indicate a pattern of Allison sexualizing many, if not most, conversations with his female students.

Allison denies that he made such comments to his female students, but the evidence

⁴ The stipulated facts record that Allison *denied* the physical contact with SC.

⁵ Similarly, Allison is correct that there is a factual error in the Stipulation; he did, in fact, report the notes from SC to Wells at the time he received them. However, he chose to sign the document knowing there was an error in it, and I will not go beyond the four corners of the document to interpret it differently.

comes from so many independent sources and contains so many similarities that I find his denials to be unreliable. Although it is possible that some of the specific comments were remembered incorrectly, the strong preponderance of the evidence indicates that Allison was inappropriately sexual in his conversations with his female students.

For this reason, the Commission again appropriately wants assurances that such boundary violations would not happen in the future if Allison's license were reinstated. Allison has not presented sufficient evidence of his current fitness to teach, so the denial must be affirmed.

Allison's Offer. At the end of the hearing, during his closing argument, Allison indicated his willingness to undergo a psycho-sexual evaluation with the expert of the Commission's choice, and would be willing to receive additional training in boundaries, to work with a mentor, and to accept probationary status, in order to return to teaching.

From his impassioned plea, and from his demeanor throughout the hearing, it is clear that Allison loves teaching, connects well with students, and has much to offer in the field of education. It is also clear that, at least in the past, he has made serious errors in how he has approached students. I have no doubt that, if Allison had been aware of the Commission's desire for the additional testing, he would have undergone the testing before the hearing. At this time, however, the evidence lacks the testing the Commission would need to consider Allison fit to teach.

The conclusion that Allison has failed to present sufficient evidence of his fitness to teach at this time is not a conclusion that he is unfit to teach, or that he cannot obtain the requisite assurances from appropriate professionals in the future. It is a statement about the present state of the evidence. Allison has the burden to show he is fit to teach, but until he obtains the appropriate professional evaluations, and can otherwise give the Commission assurances that he is fit to teach, he has failed to carry that burden.

ORDER

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

That the Notice of Denial of License Reinstatement dated November 16, 2011 be **AFFIRMED**.

Rick Barber

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.