

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

In the Matter of the Teaching License of:)	FINAL ORDER
)	
CHAD MICHAEL WESTOVER)	Office of Administrative
)	Hearings Case No. 117883

On March 11, 2005, Administrative Law Judge Peter A. Rader issued a Proposed Order in this case.

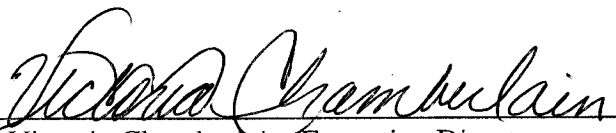
The Teacher Standards and Practices Commission adopts the Findings of Fact, Conclusions of Law and sanction contained in the attached Proposed Order.

ORDER

The Commission adopts the Proposed Order and revokes Chad Michael Westover's teaching license.

Dated this 28th day of April 2005.

TEACHER STANDARDS AND PRACTICES COMMISSION

By: 
Victoria Chamberlain, Executive Director

NOTICE: If you are dissatisfied with this Order you may not appeal it until you have asked the agency to rehear the case or to reconsider the Order. To obtain agency rehearing or reconsideration you must file a petition for rehearing or reconsideration pursuant to OAR 584-019-0045 within 60 days from the day this Order was served on you. If this Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the date of service was the day it was *mailed*, not the day you received it. If you do not file a petition for rehearing or reconsideration within the time limits provided, you will lose your opportunity for rehearing or reconsideration and you will lose your right to appeal to the Oregon Court of Appeals.

If, after you have filed a petition for rehearing or reconsideration, the agency issues an Order that you are dissatisfied with, you have a right to appeal that Order to the Oregon Court of Appeals pursuant to ORS 183.482.

If, 60 days after you have filed a petition for rehearing or reconsideration, the agency has not issued an Order, your petition will be considered denied and at that time you will have the right to appeal the original Order to the Oregon Court of Appeals pursuant to ORS 183.480 and ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day that your petition for rehearing or reconsideration is deemed denied. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

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

IN THE MATTER OF THE REVOCATION) **PROPOSED ORDER**
OF THE TEACHING LICENSE OF)
) OAH No. 117883
CHAD MICHAEL WESTOVER)

RECEIVED

MAR 14 2005

Teacher Standards &
Practices Commission

HISTORY OF THE CASE

On May 13, 2004, the Teacher Standards and Practices Commission (TSPC) served Chad Michael Westover (Mr. Westover), with a Notice of Opportunity for Hearing and Notice of Contested Case Rights and Procedures alleging that he engaged in professional misconduct while teaching in Oregon's public school system. Mr. Westover timely requested a hearing on May 27, 2004.

On September 23, 2004, the TSPC filed an Amended Notice of Hearing and, the following day, referred the matter to the Office of Administrative Hearings (OAH), for a contested case hearing. On December 7, 2004, the OAH filed a Notice of Hearing and assigned the case to Administrative Law Judge (ALJ) Peter A. Rader.

The hearing was held in Salem, Oregon on January 5, 2005. Mr. Westover appeared without counsel and testified on his own behalf. He waived his right to a private hearing pursuant to Oregon Revised Statutes (ORS) 342.177(1). The TSPC was represented by Assistant Attorney General, Joe Gordon McKeever. Testifying in person for the TSPC was former Harold Oliver Elementary School Principal Charlene Harris, and TSCP Investigator Susan Nisbet. Testifying via telephone for the TSPC was Fernwood Middle School Principal Linda Kapranos, Alternative Placement Specialist Shauna Hormann, Sunnyside Elementary School Principal Larry Whitson, and Harold Oliver Middle School Principal Kimberly Tomlinson.

ISSUES

1. Whether Mr. Westover's conduct, while substitute teaching for the Multnomah Education District in April 1998, was a gross neglect of duty in violation of OAR 584-020-0040(4)(d) and OAR 584-020-0040(4)(n)¹.

2. Whether Mr. Westover's conduct, while teaching a physical education class at Sunnyside Elementary School in the Portland Public School District in April 2002, was a gross neglect of duty in violation of OAR 584-020-0040(4)(d) and OAR 584-020-0040(4)(n).

¹ OAR 584-020-0040(4)(n) incorporates OAR 584-020-0030(2) by reference.

3. Whether Mr. Westover's conduct, while teaching a physical education class at Beach Elementary School in the Portland Public School District on March 7, 2002, was a gross neglect of duty in violation of OAR 584-020-0040(4)(d).

4. Whether Mr. Westover's conduct, while substitute teaching at Harold Oliver Intermediate School in the Centennial School District on December 1, 2003, was a gross neglect of duty in violation of Oregon Administrative Rules (OAR) 584-020-0040(4)(d).

EVIDENTIARY RULING

Exhibits A-1 through A-23 were offered by the TSPC at hearing and admitted into the record without objection. At hearing, the TSPC filed a Second Amended Notice, Exhibit A-24, which was admitted into the record without objection from Mr. Westover. The hearing concluded on January 5, 2005, but the record remained open to allow for the submission of additional evidence, including Exhibit A-25, the TSPC's Notice of Opportunity for Hearing and Notice of Contested Case Rights and Procedures, dated May 13, 2004, which was admitted into the record without objection. Mr. Westover's performance evaluations, identified as Exhibits R-1 through R-6, were also admitted into the record after the hearing without objection. The record closed on January 26, 2005.

FINDINGS OF FACT

1. The Teacher Standards and Practices Commission (TSPC), is a State agency with jurisdiction over licensing and discipline matters involving teachers and school administrators in Oregon. (ORS chapter 342.175 – 190, OAR chapter 584, division 20, test. of S. Nisbet).

2. At all relevant times in this matter, Mr. Westover was duly licensed as a either a basic contract teacher or a substitute teacher in Oregon's public school system. (Ex. A-1, test. of S. Nisbet and C. Westover).

3. Between 1998 and 2004, Mr. Westover worked a total of 56 days as a substitute teacher and two years as a full time contract physical education teacher at Beach and Sunnyside Elementary Schools. (Ex. A-3, test. of S. Nisbet).

4. In April of 1998, while substitute teaching in the Multnomah Education District's Early Childhood and Special Education Program at David Douglas School, Mr. Westover lifted an autistic child from the floor in order to stop the child's tantrum. That same day, Mr. Westover twirled an autistic child around while waiting for the bus, after twice being told not to do so by a teacher's aide and mockingly referred to the student as a vegetable and a carrot. Autistic children require greater care in their physical handling than regular children. (Ex. A-22, test. of S. Hormann).

5. As a result of these incidents, Mr. Westover was removed from the list of eligible substitute teachers for this school district. (Ex. A-21). Later that month, Mr. Westover submitted his resignation letter from the Multnomah Education School District. (Ex. A-20).

6. In April 2002, while employed as a contract physical education teacher at Sunnyside Elementary School, Mr. Westover became impatient with a student who was taking her time climbing down from playground equipment. He yelled at the student and proceeded to pull her off the climbing bar by the waist, leaving a temporary red mark around her mid-section, but did not otherwise physically injure the student. (Ex. A-18, test. of L. Whitson and C. Westover).

7. As a result of this incident, Mr. Westover received a verbal reprimand from the school's principal, directing him not to yell at, or put his hands on, students for disciplinary purposes. (Ex. A-18, test. of L. Whitson and C. Westover).

8. On March 7, 2002, while employed as a contract physical education teacher at Beach Elementary School, Mr. Westover planted his hand firmly on the back of a chair to stop a student who was making it bounce. Sensing that she was in trouble, the student slid off the chair, whereupon Mr. Westover shoved it across the room, a distance of around 25 feet, causing it to clatter and fall over. (Ex. A-19, test. of L. Kapranos and C. Westover). As a result of this incident, Mr. Westover received a letter of reprimand from the school's principal. (Ex. A-19, test. of L. Kapranos).

9. Frustrated by what he perceived as the school administrators' failure to impose student discipline, and the undue influence of certain parents on school policies, Mr. Westover resigned from the Portland Public School District, effective June 14, 2002, but re-applied and was re-registered as a substitute teacher on or about October 7, 2002. (Exs. A-1, A-17, test. of S. Nisbet).

10. On November 21, 2003, while working as a substitute teacher at Centennial Middle School, Mr. Westover asked a student if his mother drank while pregnant with him; a remark prompted by the student's facial anomaly. The question was interpreted by the school's staff as suggesting that the student suffered from alcohol fetal syndrome. (Exs. A-11, A-12, A-14, test. of K. Tomlinson). In response to questioning by the school's principal, Mr. Westover admitted lying about the incident. (Test. of C. Westover).

11. As a result of this incident, Mr. Westover was removed from that school's list of eligible substitute teachers. (Exs. A-11, A-12, A-14, test. of K. Tomlinson).

12. On December 1, 2003, the following incidents occurred while Mr. Westover was working as a substitute teacher at Harold Oliver Intermediate School in the Centennial School District of Portland:

(a) Before entering class that day, Mr. Westover was provided a written lesson plan that included instructions for dealing with a particular 6th grade student, who was subsequently diagnosed as a special education candidate with emotional problems. The regular teacher's lesson plan advised against cornering this student. The school's principal also advised him not to touch this student and that if there were problems he was to call for assistance. (Exs. A-7, A-15, test. of C. Harris).

(b) The student was later caught using rubber bands to shoot paper wads at other students. When he refused to turn them over, Mr. Westover squeezed his hand until he was forced to release them, leaving a red mark on the student's hand. (Exs. A-7, A-13 pages 4 – 6, A-15, A-16, test. of C. Harris and C. Westover).

(c) Later that day, in a gesture meant to provoke, the same student refused to stop tapping his pencil on his desk. When Mr. Westover reached over to stop the activity, the student reacted by striking Mr. Westover, who then applied an immobilizing wrestling hold on the student (called a cradle hold), and carried him across the room before calling for assistance on the intercom. (Exs. A-7, A-13, A-15, A-16, test. of C. Harris and C. Westover).

(d) The student management specialist working in the classroom that day overheard Mr. Westover telling students to shut up, and was observed by students and staff using a cell phone for personal business during school hours; a violation of school policy. (Ex. A-7, test. of C. Harris).

13. Mr. Westover was advised of the inappropriateness of his conduct and the incidents were recorded in a January 26, 2004, memorandum by the principal. As a result of these incidents, Mr. Westover was removed from the list of eligible substitute teachers in the Centennial School District. (Exs. A-7, A-10, test. of C. Harris).

14. During the course of this investigation, Mr. Westover was referred by the TSPC to a qualified therapist for an evaluation regarding possible anger management issues. (Ex. A-4, test. of S. Nisbet). Mr. Westover was dissatisfied with the comments and findings of that therapist and sought out Clinical Psychologist Paul Brown, Ph.D. (Exs. A-6, A-8, A-9, test. of C. Westover and S. Nisbet).

15. Dr. Brown's report states that Mr. Westover acknowledged his difficulties in the classroom, particularly as they related to the issues of discipline as enforced by the schools, and that he did not have an effective method for dealing with students or administrators with whom he might disagree. The report found behavioral, rather than psychological, issues, including lack of skills dealing with others' behavior, and recommended remedial education in "How to Discipline in the Classroom" and "Anger Management" to protect him and children under his care.² (Ex. A-9).

16. Mr. Westover, who was in his twenties during the periods complained of, supplied performance evaluations during the period 1996 – 2002, which show generally favorable interactions with students, parents and faculty and a teacher interested in doing a good job in the classroom. (Exs. R-1 – R-6).

² It is unclear from the report whether these are classes offered by Dr. Brown or whether they are publications. In any case, Dr. Brown recommended remedial education in these areas but Mr. Westover presented no evidence that he had enrolled in or completed any classes.

CONCLUSIONS OF LAW

1. Mr. Westover's conduct, while substitute teaching for the Multnomah Education District in the Early Childhood and Special Education Program in April 1998, was a gross neglect of duty in violation of OAR 584-020-0040(4)(d) and OAR 584-020-0040(4)(n).

2. Mr. Westover's conduct, while teaching a physical education class at Sunnyside Elementary School in the Portland Public School District in April 2002, was a gross neglect of duty in violation of OAR 584-020-0040(d) and OAR 584-020-0040(4)(n).

3. Mr. Westover's conduct, while teaching a physical education class at Beach Elementary School in the Portland Public School District on March 7, 2002, was a gross neglect of duty in violation of OAR 584-020-0040(4)(d).

4. Mr. Westover's conduct, while substitute teaching at Harold Oliver Intermediate School in the Centennial School District on December 1, 2003, was a gross neglect of duty in violation of OAR 584-020-0040(4)(d).

OPINION

The TSPC has the burden of proving by a preponderance of evidence that Mr. Westover's conduct amounts to a gross neglect of duty as alleged in the Second Amended Notice. ORS 183.450(2), (5), *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).

Authority for the TSPC to regulate the conduct of educators and administrators is found in ORS 342.175, which provides in relevant part:

- (1) The Teacher Standards and Practices Commission may suspend or revoke the license of a teacher or administrator, discipline a teacher or administrator or suspend or revoke the right of any person to apply for a license if the person has held a license at any time within five years prior to issuance of the notice of charges under ORS 342.176³ based on the following:

- (b) Gross neglect of duty;

³ ORS 342.176(1) provides in relevant part:

Upon receipt of a complaint or information that a person has violated ORS 342.143 or 342.175, the Teacher Standards and Practices Commission shall promptly undertake an investigation.

The TSPC adopted Standards for Competent and Ethical Performance of Oregon Educators, as codified in OAR chapter 584, division 20, to help determine whether an educator's performance is ethical or competent in light of all the facts and circumstances surrounding the educator's performance as a whole. OAR 584-020-000(3).

OAR 584-020-0040(4)(d) defines gross neglect of duty:

(4) 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:

(d) Unreasonable physical force against students, fellow employees, or visitors to the school, except as permitted under ORS 339.250⁴

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

OAR 584-020-0030(2), which is incorporated in OAR 584-020-0040(4)(n), provides guidelines for competent educators and administrators:

(2) The competent teacher demonstrates:

(a) Willingness to be flexible in cooperatively working with others; and

(b) Skill in communicating with students, staff, parents, and other patrons.

In considering disciplinary action against a teacher, the TSPC may consider any of the following factors set out in OAR 584-020-0045 in its determination:

(1) If the misconduct or violation is an isolated occurrence, part of a continuing pattern, or one of a series of incidents.

⁴ ORS 339.250(2) provides in part that a teacher "may use reasonable physical force upon a student when and to the extent the individual reasonably believes it necessary to maintain order in the school or classroom or at a school activity or event, whether or not it is held on school property." Mr. Westover concedes that there may have been less intrusive methods for gaining control over his elementary and middle school students than using physical force.

- (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 student, 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.

The TSPC argues that Mr. Westover has shown a pattern of deviating from professional standards of competency, including the lack of communication skills and his use of physical force to impose discipline on elementary and intermediate school students. It seeks to revoke his teaching license. Mr. Westover does not contest many of the facts contained in the Notice, but requested a hearing to give his version of events and to provide mitigating evidence of his character and ability to teach children. Each allegation is addressed separately.

April 1998

In April of 1998, while substitute teaching for the Multnomah Education District's Early Childhood and Special Education Program, Mr. Westover worked with a mixed class of students with various disabilities, including autism. When an autistic student threw himself on the floor in a tantrum, Mr. Westover lifted him off the floor. Mr. Westover denies lifting the child by the shirt collar, as alleged, and contends that it was his practice to lift someone from under the arms, but the manner that he lifted the child is of no consequence. Autistic children require different handling than regular children. Teacher aides were available in the classroom if assistance was needed, but Mr. Westover appears to have acted without seeking guidance or considering the impact of his actions.

An incident later that day occurred at the bus stop when Mr. Westover was twirling an autistic student around in circles. When asked to stop the activity by a teacher's aide, Mr. Westover allegedly replied by asking whether he was supposed to treat the students like they were vegetables and mockingly referred to the student as a vegetable or carrot, although it is not clear if the student heard this. Both incidents amount to a serious and material breach of professional duties and a gross neglect of duty in violation of OAR 584-020-0040(4)(d) and OAR 584-20-0040(4)(n) as it incorporates OAR 584-020-0030(2).

April 2002

In April of 2002, while teaching physical education at Sunnyside Elementary School in Portland, Mr. Westover yelled at a child who was taking too long to climb down from playground equipment. He lifted her off, leaving a temporary red mark around her mid-section in the process. While there is no suggestion that the child was permanently harmed by the incident, the action was unwarranted under the circumstances.

Mr. Westover contends that he became impatient waiting for the child to take her time climbing down, in part because he sensed that she was enjoying the attention, but this is no excuse for handling a student in this manner. A student who is holding up the rest of the class is frustrating, but allowing his anger to overcome his training and control his actions was a gross neglect of duty in violation of OAR 584-020-0040(4)(d) and OAR 584-020-0040(4)(n).

March 7, 2002

On March 7, 2002, while Mr. Westover was teaching physical education at Beach Elementary School in Portland, he used inappropriate force to impose discipline on a class. Specifically, when an unruly child who was bouncing her chair did not immediately comply with his directions to stop, he firmly placed his hand on the back of the chair to stop the activity. Sensing she was in trouble, the child slid off the chair, whereupon Mr. Westover shoved it across the room, a distance of around 25 feet, causing it to clatter and fall over. Although order was restored, this is an inappropriate use of force to achieve discipline in a classroom and a gross neglect of duty in violation of OAR 584-020-0040(4)(d).

November 21, 2003

While not used as the basis for the TSPC's proposed action, the incident of November 21, 2003 was cited as evidence of Mr. Westover's continuing pattern of inappropriate interactions with students. While substituting for an 8th grade teacher at Centennial Middle School, Mr. Westover asked a student if his mother drank while she was pregnant with him. The child had a birth defect that left him with deformed eyelids. Apart from the acutely embarrassing and inappropriate nature of this remark, the staff interpreted the question as implying that the student was impacted by fetal alcohol syndrome. This insensitive remark shows a serious lack of judgment and a failure to recognize the dignity of the student.

December 1, 2003

The events of December 1, 2003, show that Mr. Westover inappropriately applied physical force to a student at Harold Oliver Intermediate School. Prior to entering class that day, he was counseled by the school's Principal about a particular student with emotional or behavioral problems and the regular teacher's lesson plans advised against backing this student into a corner.

When a student who was shooting wads of paper with rubber bands refused to turn them over, Mr. Westover applied enough pressure to the student's hand to force their release, leaving a red mark on the student's hand in the process. Later that day, in a defiant gesture, the same student refused to stop tapping his pencil on his desk. When Mr. Westover reached over to stop the activity, the student struck him. Mr. Westover reacted by placing the student in an immobilizing wrestling move and carried him across the room before requesting assistance over the intercom.

Mr. Westover's interactions with this student were undoubtedly challenging, but he was given prior warning about this student and when, predictably, the student acted out, Mr. Westover did not follow the procedures brought to his attention prior to entering the classroom. He merely reacted, and in this case, showed poor judgment. The use of physical force twice in one day to impose discipline on the same student is not only a clear violation of school policy, but a gross neglect of duty in violation of OAR 584-020-0040(4)(d).

Other complaints that day about Mr. Westover's conduct include using his cell phone for personal business during class hours and telling students to shut up, both of which were violations of school policy. When confronted by the school's Principal about all of these incidents, Mr. Westover expressed his frustration with the lack of discipline in the public school system.

The foregoing incidents demonstrate that Mr. Westover is quick to act over perceived discipline issues. His anger also caused him to forget his training and the advice of his peers and administrators. In fairness to Mr. Westover, who was in his late twenties when these incidents occurred, his teacher evaluations dating back to his student teaching days in 1996 contain favorable reports about his interactions with students, faculty and parents. They show a teacher with an interest in doing a good job. By Mr. Westover's own admission, however, his teaching experience became frustrated by what he perceived as a lack of discipline imposed by administrators and the undue influence of certain parents on teaching policies. This may be a common experience for many teachers, but there are rules in place for dealing with disruptive students. Under those rules, the use of physical force is not permitted.

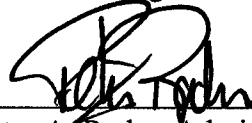
Dr. Brown's report is significant in that it identified Mr. Westover's anger management issues as they relate to discipline. The evidence here shows that the behavior dates back to 1998 without apparent improvement.

Taken together, Mr. Westover has shown a pattern of deviating from professional standards of competency, including the inappropriate use of force to impose discipline on students. The TSPC has demonstrated by a preponderance of the evidence that Mr. Westover engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(d), OAR 584-020-0040(4)(n) and OAR 584-020-0030(2).

ORDER

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

Chad Michael Westover's teaching license is revoked.



Peter A. Rader, Administrative Law Judge
Office of Administrative Hearings

MAILING AND ISSUE DATE: March 11, 2005

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
465 Commercial Street, NE
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.

APPENDIX A
LIST OF EXHIBITS CITED

Ex. A-1	TSPC license information for Chad Westover
Ex. A-2	Transcript of telephone message from Dr. Brown
Ex. A-3 at 1 of 8	Record of days worked as a substitute teacher
Ex. A-4	April 5, 2004 letter from S. Nisbet regarding evaluation by Dr. Brown
Ex. A-6	Memo from Mr. Westover re: therapists
Ex. A-7	January 26, 2004, memo from Charlene Harris re: December, 2003 incident
Ex. A-8	CV of Clinical Psychologist Paul Brown
Ex. A-9	March 11, 2004 report of Dr. Brown
Ex. A-10	Letter from Centennial School Superintendent Robert McKean
Ex. A-11	January 21, 2004 letter from David Cook of Centennial School District
Ex. A-12	January 21, 2004 memo from Kimberly Cadigan, Assistant Principal of Centennial Middle School
Ex. A-13	32 page transcript of January 20, 2004 interview with Chad Westover by TSPC Investigator, Susan Nisbet
Ex. A-14	January 5, 2004 memo from Doug Cook
Ex. A-15	January 15, 2004, letter from parents of student at Harold Oliver School
Ex. A-16	December 2, 2003 letter from HR Director David Halstead to TSPC
Ex. A-17	June 26, 2002, letter from Portland Public Schools accepting Mr. Westover's resignation.
Ex. A-18	Notation of verbal reprimand from Larry Whitson
Ex. A-19	March 13, 2002 written letter of reprimand from L. Kapranos, Principal of Beach School

- Ex. A-20 April, 1998 letter of resignation by Chad Westover from Multnomah Education District
- Ex. A-21 April 1998 letter from N. Fain removing Mr. Westover's name from list of eligible substitute teachers in M.E.S.D.
- Ex. A-22 April 1998 memo from Shauna Hormann re: autistic child incident
- R-1 – R-6 Teacher evaluations of Mr. Westover from 1996 - 2002