

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

In the Matter of the)
Teaching License of) FINAL ORDER
)
SEAN MICHAEL CALLAHAN) Case No. 901190

On December 10, 2009, Senior Administrative Law Judge (ALJ) A. Bernadette House issued a Proposed Order in this case.


On May 14, 2010, the Teacher Standards and Practices Commission issued an Amended Proposed Order that modified the ALJ's Proposed Order. The Amended Proposed Order adopted the ALJ's Finding of Fact and Conclusion of Law regarding OAR 584-020-0010(5), but otherwise rejected it. The Commission also rejected Conclusion of Law 2.

ORDER

The Commission adopts the Amended Proposed Order attached hereto and incorporated by reference in its entirety and revokes Sean M. Callahan's right to apply for a license in Oregon for a period of one year effective May 14, 2010.

Dated this 25 day of April 2011.

TEACHER STANDARD AND PRACTICES COMMISSION

By: 
Victoria Chamberlain, Executive Director
Teacher Standards and Practices Commission

NOTICE: 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.

ISSUES

1. Whether Licensee's comments written on a student's paper on or about May 8, 2008, constituted a gross neglect of duty in violation of ORS 342.175(1)(b); OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0015(1) (stimulating the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of goals), OAR 584-020-0015(2)(c) (subject matter appropriate to the needs of the student) and (e) (skill in the selection and use of teaching techniques), and OAR 584-020-0010(5) (use of professional judgment).
2. If so, whether the Commission's proposed revocation of License's Restricted Substitute Teaching License is appropriate. ORS 342.177

EVIDENTIARY RULING

Exhibits A1, A2, and A4, offered by the Commission, were admitted into the record without objection. Exhibits A3 and A5 were admitted following withdrawal of Licensee's objections. The Commission objected to Exhibits R1 through R8, offered by Licensee, on the basis of relevancy. The Commission's objections to Exhibits R1 through R3 were overruled and the exhibits were admitted. The Commission's objections to Licensee's Exhibits R4 through R8 were sustained.

FINDINGS OF FACT

1. On March 17, 2008, the Commission issued Licensee a Restricted Substitute Teaching License. (Ex. A1 at 1.)

2. The license was restricted to 60 days total use during each school year within the co-applicant district that applied jointly with Licensee for the licensee on the following bases:

Licensee had never held an unrestricted license for full-time teaching in any state or completed an approved teacher education program in any state.

(Ex. A1.) HDESD was the co-applicant district for Licensee for the March 17, 2008 license. Licensee is restricted to teaching under the restricted license to schools served by HDESD. (Test. of Licensee; Ex. A2.)

3. Licensee had signed the list to substitute teach for La Pine High School, which is included within the education district served by HDESD, in December 2007. (Ex. A3 at 1.) On May 8, 2008, Licensee was assigned to substitute for an English teacher at the high school. During 1st period, which was a class preparation period, Licensee was asked to review and edit student papers for the teacher who was absent. The papers were to be reviewed by the regular teacher before being given back to the students. (Test. of Licensee.)

4. Licensee reviewed the papers as requested, made comments, and left the edited papers for the teacher to review. (Test. of Licensee.) Prior to returning the edited papers to the students, the regular teacher read them and became concerned at the comments Licensee had

made on one student's paper. The teacher brought the paper to the principal, Jay Mathisen, for review. (Test. of Mathisen.)

5. Licensee wrote comments on the student's paper, entitled "Pet Detective," that included grammar and spelling corrections and other general comments. (Test. of Licensee; Ex. A4.) In addition, Licensee wrote the following comments at the end of the paper:

I don't know whether to praise you for being inside a vicious animal's head so well or to recommend a Psychiatrist. The "evil" cat definitely needed more character development, it looks to me like he was put to death for not knowing how to be a Christian to a particular church.

You are one scary little dude, I guess I better join your church if I want to live.

Get help if that dog is a reflection of you. I don't think your priest or minister would approve. As public school educators, we must respect the 1st Amendment which states that "Congress may pass no law respecting the establishment of a religion or prohibit the free exercise thereof." However, in 1986 there was a Supreme Court Justice whom declared that breeches of the 1st Amendment will continue to occur on a regular basis and it shouldn't get to courts every time or else religion and government may become suspicious of one another.

I do not like the hostile tone of this paper. If you or your family have something to say over this matter then call me at [number omitted] so that I can talk with you personally. [signature of Licensee]

I do hope to hear from you, I'm wondering if I need to meet your priest as well.

(Test. of Licensee; Ex. A4 at 4,5.)

6. Following review by Principal Mathisen, La Pine High School determined that Licensee would be excluded from substituting at the high school in the future. Principal Mathisen then notified HDESD of the incident and requested that Licensee not be assigned to La Pine High School in the future. (Test. of Mathisen.) As a school administrator, Principal Mathisen was permitted to exclude substitute teachers at any time and for any reason that was not discriminatory in nature. (Ex. A3.) At that time, Mathisen had been principal of La Pine High School for approximately three years. (Test. of Mathisen.)

7. Principal Mathisen considered the comments unprofessional and inappropriate based on the following: Licensee's comments regarding the 1st Amendment did not have any relation to the content of the student's paper; the paper did not appear to address religion, the constitution, or a priest at all; the comments regarding student being a "scary little dude," were unacceptable, especially where there was no established professional relationship between the student and Licensee which could possibly lessen the impact of the statement, and where the feedback was in a written form; and the comment regarding the need for a psychiatrist was made without Licensee having any knowledge of a possible personal situation for that student where such a comment could have a potential for more serious repercussions. (Test. of Mathisen.)

8. La Pine High School holds substitute teachers to the same standard of professional conduct as regular teachers. Licensee's conduct in writing the comments in question did not meet the standard for professional conduct expected of licensed teachers for La Pine High School.

9. Principal Mathisen requested Becca Scott, the systems operator at HDESD, by email to exclude Licensee from assignment to La Pine High School. (Ex. A5.) Scott forwarded the email to Judy Scales, the human resources director of HDESD at that time. It was the practice of HDESD to inactivate a substitute teacher if it received notification that a substitute had been excluded by a school administrator, in order to investigate the matter. (Test. of Scales, Ex. A3.)

10. When Scales received the forwarded email regarding Licensee, Scales placed Licensee on inactive status. Scales then contacted Mathisen and requested a copy of the paper which included the comments. Scales reviewed the comments with the attorney for HDESD. As an employee of HDESD, Licensee was an at-will employee. After conferring with legal counsel, Scales decided that Licensee was no longer eligible to work as a substitute teacher for HDESD. (Test. of Scales; Ex. A3.)

11. The incident was Licensee's first exclusion from any school within the District served by HDESD, but the incident was considered severe enough to warrant exclusion from all schools served by HDESD. Scales determined that the comments demonstrated a lack of professional judgment and were highly inappropriate, due in part to the religious and demeaning tone of the comments. Scales's opinion was based in part on her prior experience working as a teacher before she assumed her position at HDESD. (Test. of Scales; Ex. A3.)

12. At the time Scales informed Licensee of HDESD's decision, she added that HDESD did not think Licensee was ready to work as a teacher. When Licensee informed her that he was working on his master's degree, Scales told him that when he completed his coursework, he could reapply. (Test. of Licensee.)

13. Judy Scales is currently semi-retired and is no longer the director of human resources for HDESD. Scales opined that Licensee, who had not completed his studies to become a licensed teacher at the time of the incident, could be considered for employment at HDESD. Scales opined that consideration for employment would depend on whether Licensee had taken steps to address the stress that he testified to having contributed to his conduct, whether he had completed his course of studies, whether he had additional incidents, and whether he had become a certified teacher in Oregon. (Test. of Scales.)

14. By May 2008, Licensee had completed most but not all of the coursework necessary for his master's degree in education. Licensee had taken two of four tests required for licensure as a teacher in California and Nevada but Oregon had additional requirements that Licensee had not yet met. (Test. of Licensee.)

15. Licensee had substituted within the HDES D for two to three months prior to the incident at La Pine High School. Licensee had quit smoking on his own as of February 17, 2008, without the use of smoking-cessation aides. After quitting smoking, Licensee experienced symptoms of nicotine withdrawal, including nervousness and edginess, which made it difficult for him to work in a classroom situation. In addition, Licensee was studying for exams and was not getting sufficient sleep. He was driving to different areas, in some instances approximately 30-minutes each way, for substitute teaching assignments. (Test. of Licensee.)

16. Licensee believes the lack of sleep, long commutes to and from different schools, the stress of studying, and withdrawal from nicotine combined to affect his judgment at the time he made the May 8, 2008 comments on the student's paper. (Test. of Licensee.)

17. Licensee is embarrassed at the content of the comments he wrote on the student's paper. He attributes the content of the comments in part to a legal course he was taking at the time. Licensee also felt that, at the time he wrote the comments, there was pressure from the community for him to identify himself with a church, including threats from students to report him to the principal. (Test. of Licensee.)

18. When he wrote the comments, Licensee was concerned about the state of the student's mental health. Licensee believed that the student, although writing about animals, was demonstrating his feelings about people. Licensee interpreted passages of the student's paper to refer to religious matters and Licensee thought that the student showed hostility and violence towards someone who was not of the same religion. If presently faced with a similar situation, Licensee would not act on a single incident but would observe a student for additional signs that the student needed help. He would also report his concerns to the school administration, rather than address any concerns through direct feedback to a student. (Test. of Licensee.)

19. Licensee completed his master's degree coursework at Sierra Nevada College (the college). (Test. of Licensee.) Francesca Bero is a full professor of 12-years at the college. She holds a doctorate degree in education, a master's degree in special education and philosophy. Dr. Bero is an accredited teacher in regular and special education in Nevada and in California. (Test. of Bero.)

20. Dr. Bero taught Licensee while he attended the college. During his coursework, Licensee completed an assignment student-teaching in a very tough middle school and performed well. Licensee was always very pleasant and there were no complaints regarding his conduct while he was at the college. (Test. of Bero.) Licensee is now qualified to teach in Nevada. (Test. of Bero and Licensee.)

CONCLUSIONS OF LAW

1. Licensee's conduct, his written comments on a student's paper, which occurred on or about May 8, 2008, constituted a gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5), OAR 584-020-0015(1), and OAR 584-020-0015(2)(c) and (e).¹

The proper sanction for Licensee's conduct is revocation of his right to apply for a license.²

OPINION

The ALJ's reasoning appears below in *italics*.

The Commission proposes to revoke the Restricted Substitute Teaching License, issued March 17, 2008, to Licensee. The Commission alleged that comments written by Licensee, on a student paper on May 8, 2008, individually or collectively constituted gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0015(1), OAR 584-020-0015(2)(c), OAR 584-020-0015(2)(e) and OAR 584-020-0010(5).

Burden and Standard of Proof

The burden of presenting evidence to support a fact or position rests with the proponent of that fact or position. ORS 183.450(2); Harris v. SAIF, 292 Or 683 (1982). There was no dispute that the conduct, writing the comments in question, occurred. At issue is whether the Commission's met its burden to prove that Licensee's conduct constituted a gross neglect of duty because it was a serious and material inattention to or breach of professional responsibilities in violation of ORS 342.175(1)(b). Cook v. Employment Div., 47 Or 683 (1982). In the absence of contrary legislation, the standard of proof in administrative hearings is preponderance of the evidence. "Preponderance of 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).

Commission's Authority to Act

The Commission is authorized to regulate licensure and registration of teachers in Oregon. ORS 342.121 (1) provides:

The Teacher Standards and Practices Commission shall issue licenses to teachers and administrators who possess the minimum competencies, knowledge and skills to teach and administer in the public schools of the state.

¹ The Commission has modified Conclusion of Law 1 to conclude that Licensee violated OAR 584-020-0015(1) and OAR 584-020-0015(2)(c) and (e). The modification to this Conclusion of Law is explained in the Commission's reasoning below.

² The Commission modified the sanction proposed in Conclusion of Law 2 from reprimand to revocation. The modifications are explained in the Commission's reasoning below.

ORS 342.175(1) states the grounds upon which the Commission may discipline a teacher. That statute states in pertinent part:

*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 person 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; * * **

The Commission's rules regulating the standards of conduct for licensed teachers and the grounds upon which it may take disciplinary action to enforce those rules are found in OAR Chapter 584 division 020. Pertinent to the current matter, a licensed educator may be sanctioned for the gross neglect of duty, further defined under OAR 584-020-0040(4) as "any serious and material inattention to or breach of professional responsibilities," which may be evidenced by "[s]ubstantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030." OAR 584-020-0040(n).

Particular to the allegations in this case, the Commission offered evidence to show that Licensee's conduct substantially deviated from the professional standards of competency set out in OAR 584-020-0015(1) and (2), OAR 584-020-0015(2), and OAR 584-020-0010(5). OAR 584-020-0015, entitled "Curriculum and Instruction," provides in relevant parts:

(1) The competent educator measures success by the progress of each student toward realization of personal potential as a worthy and effective citizen. The competent educator stimulates the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of goals as they are appropriate for each individual.

(2) The competent teacher demonstrates:

** * * * **

(c) Use of current subject matter appropriate to the individual needs of students[.]

OAR 584-020-0010 addresses additional expectations for competency. Entitled, "The Competent Educator," OAR 584-020-0010 provides, in relevant part, as follows:

The Competent Educator

The educator demonstrates a commitment to:

** * * * **

(5) Use professional judgment[.]

The Commission alleged that Licensee failed to meet the requirements of OAR 584-020-0015, including subsections (1) and (2). The record does not support the Commission's argument. "Curriculum and Instruction," the title of section 0015 of division 20, while not considered part of the law,³ does indicate the focus of the particular subsection, in this case on the development and use of curriculum and instruction. Licensee worked as a substitute teacher under a restricted license. He had not completed his degree in education and he was not licensed teacher. There was no evidence that Licensee, as a substitute teacher with a restricted license, was responsible for development or implementation of curriculum or a course of instruction. His assignment for that particular period for that day was to edit student papers to be given back to the regular teacher for review. The evidence does not support a finding that OAR 584-020-0015 subsections (1) and (2) apply to the specific conduct in this case, where Licensee was acting as a substitute teacher under a restricted license editing papers for the primary teacher's review prior to returning them to the students. However, the record does support the Commission's determination that Licensee's conduct was a substantial deviation from the expectations for the use of professional judgment by an educator.

The Commission's witnesses testified to the standard of conduct expected regarding the use of professional judgment by educators. As an administrator, Principal Mathisen, was in part responsible for supervising individuals and ensuring compliance with the Commission's standards and for ensuring his own compliance with those standards. It was the opinion of Principal Mathisen that Licensee's conduct deviated from the standard such that it warranted Licensee's exclusion from substituting at La Pine High School. Principal Mathisen based his decision, in part, on concern that the feedback was in a written form, intended to be read by the student without verbal explanation at the time it was provided to the student. He was also concerned with the nature of Licensee's comments. Principal Mathisen was concerned that Licensee wrote the comments, including the recommendation that the student see a psychiatrist, to a student with whom he had no previous relationship, about whom Licensee knew nothing, without consideration of the impact those statements could have on the student, at school and at home. Also, the principal noted that the comments seemed to be unrelated to the content of the student's paper, including Licensee's references to the 1st Amendment, religion, Christianity and a priest.

Judy Scales had previously been a teacher, and was the HDESD human resources director, responsible for employing substitute teachers, at the time of the conduct in question. Ms. Scales discharged Licensee on the basis that Licensee's conduct did not meet the standards for the use of professional judgment that was expected of teachers or substitute teachers employed by HDESD. In Ms. Scales's opinion, it was inappropriate for any teacher or substitute

³ ORS 174.540, entitled "Parts of printed statute editions not to be a part of the law," provides that:

Title heads, chapter heads, division heads, section and subsection heads or titles, and explanatory notes and cross-references, * * * in parts of Oregon Revised Statutes, do not constitute any part of the law.

By analogy, the titles within an administrative rule would not be considered part of the rule but can be considered as guidance.

teacher to provide written feedback, such as Licensee's comments which included political and religious overtones, that unconnected to the student's assignment.

The Commission's witnesses either have been or are currently bound by the Commission's standards and each supervised educators bound by those standards. The Commission met its burden of proof to show that Licensee's conduct in writing the comments constituted a gross neglect of duty, a violation of ORS 342.175(1)(b), in that it substantially deviated from expectation that Licensee show a commitment to use professional judgment, in violation of OAR 584-020-0010(5) as it is incorporated by OAR 584-020-0040(n).

Proposed Penalty

The Commission bases its determination on 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 584-020-0000(3). When a violation occurs, the Commission may consider mitigating factors when determining an appropriate sanction. OAR 584-020-0045.

OAR 584-020-0045 provides as follows:

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.

Licensee admitted that he exercised poor discretion in the content of his comments written to the student. However, Licensee argued that consideration of the factors set out in the rule above supports the imposition of a lesser sanction rather than a revocation of his license.

Specifically, Licensee argued that his concern over the mental health of the student, based on the content of the paper, was justified. His conduct during his years of study prior to the incident was exemplary. There was no evidence of a pattern of prior inappropriate conduct and Licensee argued that his conduct did not create a danger to other educators or the public. Licensee argued that the danger to the student in question was low, in that it was only a potential harm because the student never saw the comments. Licensee also argues that he was under stress from financial pressures, physical withdrawal from nicotine, and lack of sleep, at the time of the conduct, conditions that were unique to that period of time, and which have been remedied. Licensee was influenced by classes he was taking at the time relating to religion and 1st Amendment rights. He argued that his conduct could not serve as a model for students because the comments were not published to the students. Licensee noted that he taught students at many different levels but admitted that his comments were inappropriate for the age of the student involved. Finally, Licensee argued that any disciplinary action taken against Licensee could not act as deterrence to other educators as there has been no public disclosure or discussion of the matter.

In consideration of the record as whole, I find consideration of the factors above mitigates the severity of the conduct and weighs against revocation as the appropriate sanction. In addition to the mitigating factors above, although the Commission proved that Licensee's conduct violated OAR 584-020-0010(5), Licensee did not violate OAR 584-020-0015 subsections (1) or (2)(c) or (2)(e) as alleged in the Notice. Therefore, I propose that, in lieu of license revocation, the Commission issue a Letter of Reprimand to Licensee and require Licensee to complete a course of professional counseling or of additional educationally related coursework as the Commission deems appropriate.

The Commission rejects the ALJ's reasoning on the applicability of OAR 584-020-0015 in this case. The ALJ concluded there wasn't sufficient evidence to conclude that the rule applied to the facts in this case because Licensee was "not a licensed teacher" and because "there was no evidence that Licensee, as a substitute teacher with a restricted license, was responsible for development or implementation of curriculum or a course of instruction." The ALJ's reasoning has misconstrued the Commission's interpretation of the rule and its applicability to Licensee's conduct. All licensed educators are responsible for carrying out the district's curriculum and instruction, whether they are veteran educators or one-time substitutes. In this case, Licensee was assigned to comment on student papers. The student papers were part of the school's curriculum. In making comments on the student papers, the Commission expects that Licensee would have made appropriate comments that advance the district's curriculum and instruction of students. As Principal Mathisen testified, substitute teachers are held to the same standard of conduct as other licensed staff.

Here, Licensee's conduct violated OAR 584-020-0015(1) because the comments he put on the student's papers did not stimulate the spirit of inquiry, acquisition of knowledge or understanding. Instead, comments about recommending a psychiatrist, calling the student a "scary little dude", or commenting about the student's religion or priest were only critical of the student as a person and the student's mental health. There was no relationship between Licensee's comments and the subject matter of the student's paper from which the student could learn anything meaningful.

Likewise, Licensee's conduct violated OAR 584-020-0015(2) because Licensee's comments demonstrated an inability to choose subject matter that was appropriate for the student. Licensee did not personally know the student or the student's personal circumstances. Licensee was asked to comment on the student's paper. Licensee should have limited his comments to the composition of the paper. Instead, Licensee raised subject matter speculating about the student's mental health and religion, subjects which were inappropriate to discuss in the context of the student's paper.

The Commission also rejects the ALJ's proposed sanction in this case. The specific sanction imposed in any given case is a matter that is within the Commission's discretion. In this case, the Commission finds that Licensee's conduct showed very poor judgment. While he recognized at the hearing that he exercised poor judgment, he nevertheless minimized his conduct by testifying that his concern for the student was justified. If it's true that Licensee was concerned for the student, Licensee could have notified the principal of this concern in order that someone else who knew the student personally could properly address the issue. Moreover, calling the student a "scary little dude" and commenting about his religion does not show any concern; it shows a disregard for what Licensee speculated was the student's personal situation at the time. Both the school and Licensee's employer believed that Licensee's comments were serious enough that it warranted exclusion from the school and substitute list. The Commission agrees with that assessment, and for purposes of licensing believes that a more serious sanction will serve to deter this type of conduct in the future.

EXCEPTIONS

Licensee filed four emails with the Commission that the Commission considers exceptions to the Proposed Order. Licensee's email of March 24, 2010, explained that the comments were the result of him misrepresenting himself as an anti-Christian. He appeared to justify the conduct by indicating that he was going through quitting smoking and that children in the district threatened to tell the principal things about him that were not true. He also explained that he has now learned that it is important to be accepted by Christians. Licensee's email of April 2 also raised issues about religion and about things "calming down" since joining the Foursquare church. He implied that people removed him from education because he was not a Christian role model, but that he was now ready to teach and was willing to be a role model that "they want."

Licensee's explanations for his conduct are not persuasive, but in fact raise more concerns about his state of mind when he wrote the statements on the student's paper.

ORDER

For the foregoing reasons, it is hereby ordered that Licensee's right to apply for a license is revoked for one year from the date of this Order.

It is so Ordered this 14th day of May, 2010.

TEACHER STANDARDS AND PRACTICES COMMISSION STATE OF OREGON

By 
Victoria Chamberlain, Executive Director

EXCEPTIONS

The amended proposed order is the Commission's anticipated Final Order. If you disagree with any part of this proposed order, you may file written objections, called "exceptions," to the amended proposed order and present written argument in support of your exceptions. The Commission will then consider your exceptions in entering a final order. 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 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.