

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

IN THE MATTER OF:

) **FINAL ORDER**

)

NEWELL G. CLEAVER

) OAH Case No. 1102253

This matter came before the Commission to consider the Proposed Order issued by ALJ Rick Barber on December 27, 2011. Licensee did not file exceptions to the Proposed Order. After considering the record, the Commission adopts the Findings of Fact, Conclusions of Law and proposed discipline. The Commission has modified the reasoning in the case for imposition of the sanction, and otherwise issues this Final Order.

HISTORY OF THE CASE

On December 13, 2010, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing to Newell G. Cleaver (Licensee). On December 14, 2010, Licensee's attorney, Morgan Smith, requested a hearing.

On March 17, 2011, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Rick Barber was assigned to preside at hearing. A prehearing conference was held on May 2, 2011, to discuss the issues and to set a hearing date. Hearing was initially set for June 27, 2011, then was rescheduled for October 10, 2011.

Motion for Summary Determination. On September 12, 2011, Licensee filed a Motion for Summary Determination in the case. The Commission responded on September 28, 2011, and the motion was denied on October 5, 2011.¹

Hearing was held as scheduled on October 10, 2011, in Salem, Oregon. Licensee appeared and was represented by Mr. Smith. The Commission was represented by Assistant Attorney General Raul Ramirez. Licensee, Grant Union High School (GUHS) Principal Curtiss Shelley, and Commission Legal Liaison George Finch all testified.² The record was held open to obtain a more complete version of Exhibit L8,³ and for written closing arguments. The record closed on

¹ Licensee sought reconsideration of the denial of the motion at hearing. The motion was again denied.

² By agreement of the parties, who had noticed the same witnesses, the testimony Licensee wished to elicit from each witness was accomplished through expanded cross-examination rather than recalling each witness in Licensee's case in chief.

³ The original Exhibit L8, consisting of one page, was replaced with a 64-page replacement. The letter including it was mistakenly dated October 28, 2011, but was actually mailed December 19, 2011.

December 20, 2011.

ISSUES

1. Whether Licensee committed gross neglect of duty by any of the following:
 - a. failing to use professional judgment, violating OAR 584-020-0010(5);
 - b. assigning a position of responsibility beyond professional qualifications and failing to adhere to contract terms and conditions, violating OAR 584-020-0035(2)(a); or
 - c. deliberately assigning an educator in violation of licensure requirements, violating OAR 584-020-0040(4)(i).
2. Whether Licensee committed gross neglect of duty by knowingly falsifying the "corrected PEER form" he submitted on Shelley's behalf, thereby violating OAR 584-020-0040(4)(c).
3. Whether, if Licensee committed gross neglect of duty in either of the ways noted above, his right to reapply for a license should be suspended.

EVIDENTIARY RULINGS

Exhibits A1 through A3, offered by the Teacher Standards and Practices Commission, were admitted into evidence without objection. Licensee objected to Exhibit A4's admission into evidence. That document, a stipulated reprimand involving Licensee, is admitted for the sole purpose of determining the appropriate sanction in this case, if that becomes necessary.

Exhibits L1 through L24 were identified for the record. The Commission initially objected to the completeness of Exhibit L8, and that objection was cured by holding the record open for the complete document. The Commission also objected to Exs. L23 (a letter from Mr. Smith) and L24 (a pleading from a different case). The objection to L23 was overruled, and the objection to L24 was sustained.⁴

FINDINGS OF FACT

1. On May 17, 2007, Licensee sent a letter to Curtiss Shelley, hiring him as Athletic Director and Dean of Students of Grant Union High School. The letter stated in part:

The Grant School District Board of Directors officially hired you to work at Grant

⁴ The Commission also technically objected to Exs. L4-L7, which are sections of administrative rules, because they are not evidence. While all agree that they are not evidence, they were admitted for the ease of the witnesses who would be questioned about them.

Union High School at the board meeting held on May 9, 2007.

In the June 13th board meeting your official position title of Athletic Director/Dean of Students will be approved. You will be placed on a 220 day administrative contract to begin July 1st, 2007.

(Ex. L11).

2. Shelley entered into a contract with the District, effective July 1, 2007, substantially the same as the contract he signed for the following school year, with the exception of the salary.⁵ (Test. of Shelley). The contract stated in part:

PROFESSIONAL CERTIFICATION AND RESPONSIBILITIES OF ADMINISTRATORS:

A: Certification: Administrators shall be continuously working toward obtaining Administrator's certificate. Certificate to be obtained no later than June 30, 2010 unless prior arrangements have been made with the Superintendent.

B: Duties: Administrators shall have charge of the building under the direction of building principal to which they are assigned; shall direct and assign the staff of that building; shall organize, reorganize, and arrange building personnel as best serves the District, subject to the approval of the building principal and/or superintendent; shall suggest policy regulations, rule and procedures deemed necessary for the well ordering of their respective building, and in general perform all duties incident to the Administrative Office prescribed under job description and such other duties as may be prescribed by the building principal and/or superintendent. The Superintendent shall promptly refer all criticism, complaints, and suggestions called to his/her attention to the respective Building Administrator for study and recommendation.

(Ex. L12 at 2).

3. Shelley agreed to the following statement of his job responsibilities as Dean of Students on June 29, 2007:

Performs duties assigned by the supervisor and:

1. In the absence of the High School Principal, assumes follow through of school established policies and procedure.
2. Provides educational leadership, through sharing in the formation

⁵ Exhibit L12 is the 2008 contract. The 2007 contract was not produced at hearing, but was substantially the same as the 2008 contract. (Test. of Shelley).

and interpretation of school procedures.

3. Coordinates the full range of extra-curricular and co-curricular activities including fiscal responsibilities.
 4. Activities – oversees, in concert with the building Principal, all activities at Grant Union High School.
 5. Attendance – implements building attendance standards, coordinates attendance staff and operations; communicates with counselors, teachers and parents concerning attendance problems.
 6. Discipline – implements district and building policies in the area of student supervision and control; coordinates staff supervisors, communicates with parents and staff regarding discipline problems; supervises student campus conduct and bus regulations.
 7. Maintains records and files as necessary or directed.
 8. Participates as an active and contributing member of the District Leadership Team.
 9. Keeps abreast of changes and developments in the profession by attending professional meetings, reading professional journals and discussing problems of mutual interest with others in the field.
- [10] Will be responsible for cleaning and disposal of body fluids as directed.

(Ex. L13).

4. Also on June 29, 2007, he agreed to the following duties as Athletic Director:

Performs duties assigned by the supervisor and:

1. Provides educational leadership, through sharing information and interpretation of school procedures.
2. Coordinates the full range of extra-curricular and co-curricular activities including field and court preparation as well as fiscal responsibilities.
3. Activities – directs, schedules, coordinates officials, and supervises, in concert with building Principal, all athletic activities of GUHS. Acts as

the Athletic League representative for the High School.

4. Supervises, evaluates or causes to be evaluated all GUHS head coaches and assistants.
5. Supervises in conjunction with the building principal all athletic activities.
6. Maintains records and files as necessary or directed.
7. Keeps abreast of changes and developments in the profession by attending professional meetings, reading professional journals and discussing problems of mutual interest with others in the field.
8. Will be responsible for maintaining appropriate first aid supplies & blood spill kits within the athletic department.
9. Submit travel schedules for away trips at least seven (7) days in advance of the season beginning.
10. Oversees and coordinates transportation for athletic events.
11. Must be certified through the NFHS Coaches Certification Program (ASEP) and must be certified to train this program.
12. Needs to attend training/carry a current First Aid Card.
13. Coordinate building facility use for high school athletic activities throughout the district in conjunction with building principals or their designee.
14. Directs the hiring process for coaches within the high school athletic program.
15. All other duties as assigned.

(Ex. L14).

5. On March 9, 2009, Licensee's office sent a Professional Educational Experience Report (PEER Report) to the Commission, listing Shelley as a Vice Principal from "7/01/07 to present." The completed form appeared to contain Licensee's signature. (Ex. L15). The form was submitted by Licensee's secretary without Licensee's knowledge, using a signature stamp. (Test. of Licensee).

6. On April 30, 2009, after reviewing the PEER form, TSPC sent an email to Shelley

which stated in part:

You made application on 04/13/2009 to renew your STANDARD TEACHING LICENSE. The below requires immediate attention.

The PEER form completed by the John Day SD indicates that you have been a Vice Principal since 07/01/2007 to the present (03/09/2009). You do not hold an Administrative License.

In addition, the Grant ESD website indicates that, since 2007 you have been a Vice Principal/Athletic Director/Dean of Students.

If the PEER form is incorrect, please submit a new one clearly labeled CORRECTED PEER FORM along with a written explanation explaining why the two PEER forms are different.

On the same day, Shelley sent an email response to this request:

TSPC,

Can I get a phone call from you. I left a message today. [phone number]. I am currently the Dean of Students/Athletic Director here at GU. I am enrolled in the initial administrative program with Lewis and Clark College. My completion will be in June.

Thanks,

Curt Shelley
Grant Union High School
Vice Principal/Athletic Director
[email and phone numbers added]

(Ex. A2). The use of "Vice Principal" in the email address was set up by a media person for the District, not by Shelley. (Test. of Shelley).

7. On April 30, 2009, after finding out about the error on the first PEER form, Licensee wrote a letter to TSPC with a corrected PEER form attached to it. The letter stated in part:

Attached to this letter of explanation is the corrected PEER form for Curtiss Dean Shelley.

Mr. Shelley serves in our district as our Athletic Director and Dean of Students. Mr. Shelley works with students in our high school, grades 9-12 and does not supervise staff.

Since we were not clear how to show this on the PEER form, we inadvertently filled

the form out incorrectly.

(Ex. L16). When the Commission received the Corrected PEER form, someone wrote on it, "Investigate for false statement." (Ex. L17).

8. On May 6, 2009, the school board issued a correction of Shelley's contract language, as follows:

We have recently become aware that your contract incorrectly refers to you as an Administrator. Under the agreement of SD 3 and your job description, you are employed as a Dean of Students and Athletic Director with a teaching license.

Please consider your contract language to be corrected and insert the word "Dean of Student, Athletic Director" in place of Administrator.

(Ex. L19).

9. On May 11, 2009, the Commission recorded this contact item:

Curtiss called to respond to the email sent to him suggesting he apply for an emergency license for Administrator.

He said he is not serving as an Administrator, he is the Dean of Students, and Athletic director only. He never supervises any staff. He sits in the previous VP office and became aware that his photo and name was placed on their web under the VP spot, he says only because it was plugged into what was already a spot previously filled by someone else and it has since been removed. He did state that many people in the district and community probably believe he is the VP but he is not.

Curtiss is faxing his job description over and will also email more information regarding his current position.

(Ex. L21).

10. Shelley obtained his Emergency Administrative License in Spring 2009, and his Initial Administrative License in August 2009, after completing the Lewis and Clark program. (Test. of Shelley).

11. TSPC presents written "Discussion Items" to be considered by the Commission when it meets. An item for the August 5-7, 2009 meeting raised the question what "exact duties in a school district require an administrator license." The author of the note suggested that "districts are creating special positions and designing them so that they can avoid any administrator licensure requirement." The note included, as an example, an AD job description from another district. The note also indicated that positions such as Athletic Directors, Deans of Students, and

TOSA assignments were in a “gray area” as to whether administrative licenses were needed. (Ex. L9).

12. In the Commission’s meeting in February 2010, the question whether an administrative license was required for the “gray area” positions continued. Questions considered in that meeting included:

The question before the Commission last meeting was what administrative work requires administrative licensure? A common understanding for many districts centers on the evaluation aspect of administrators: [if] you supervise and evaluate teachers, you need an administrative license. However, are there other factors [the] Commission should consider for administrative licensure?

(Ex. L10).

13. Prior to a rule change in 2010 or 2011, OAR 584-005-0005 defined “Administrators” as follows:

“Administrators:” Superintendents, assistant superintendents, principals, vice principals, and such other personnel, regardless of title, whose positions require them to evaluate other licensed personnel[.]

(Ex. L4). After the change, the rule was expanded to require an administrative license to supervise other licensed personnel, discipline licensed personnel, and authorize out-of-school suspension or expulsion of students. (Ex. L6).

14. On December 13, 2010, the Commission issued its Notice of Opportunity for Hearing to Licensee. (Ex. A1).

CONCLUSIONS OF LAW

1. Licensee committed gross neglect of duty by failing to use professional judgment, but did not violate the other sections alleged.
2. Licensee did not falsify the “corrected PEER form” he submitted on Shelley’s behalf.
3. Licensee should be reprimanded.

OPINION

The Commission contends that Licensee committed gross neglect of duty, and has the burden to present evidence to prove 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).

In this case, the Commission has made several allegations against Licensee, primarily contending that he allowed Shelley to perform administrative duties without an administrative license, and that he falsified a PEER form to cover up Shelley's administrative duties. After considering the ALJ's proposed order and the record, the Commission finds that Licensee engaged in gross neglect of duty by allowing Shelley to be held out as Vice Principal.

Shelley was held out to the community as a Vice Principal. While Licensee was Superintendent, Shelley signed an "Employment Contract" that referred to him as an administrator. (Ex L12). Shelley occupied what had previously been the Vice Principal's office, and his district email referred to Shelley as Vice Principal. Shelly himself testified that he would not be surprised if community members thought of him as being the Vice Principal. Even the school secretary identified Shelley as the Vice Principal when contacted by a TSPC employee. (Ex A3).

A. Professional Judgment. The Commission alleges that Licensee failed to use professional judgment in this case with regard to Shelley. OAR 584-020-0010(5) requires the competent educator to use professional judgment. In this case, Licensee was superintendent while Shelley was held out to be Vice Principal on multiple occasions to the public, and when Shelley held himself out as Vice Principal by use of the Vice Principal title on district email communications. This was in addition to Shelley's contract referring to him as an administrator. At all material times Licensee was the head administrator in the district must take responsibility for those errors. Those errors led his assistant to send out the PEER form with incorrect information on it.

The Sanction. As noted above, the evidence established that the While licensee was in charge of the district Shelley was allowed to hold himself out—intentionally or not—as a Vice Principal when he was not. The Commission agrees with the ALJ's conclusion that this was a violation of professional judgment for which Licensee, as the Superintendent, must bear some responsibility.

ORDER

Based on the foregoing, Licensee violated OAR 584-020-0010(5) (professional judgment), and is hereby reprimanded.

Dated this 8th day of July 2016

TEACHER STANDARDS AND PRACTICES COMMISSION

Monica Beane
Monica Beane, 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