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In the Matter of the Application)	DEFAULT ORDER OF
for Student Teaching Authorization)	PUBLIC REPRIMAND
AVIGAIN HERNANDEZ-CRUZ)	AND PROBATION

On July 15, 2015, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing to Avigain Hernandez-Cruz (Hernandez-Cruz) in which the Commission charged him with Gross Neglect of Duty. The Notice was sent via U.S. First Class Mail and U.S. Certified Mail Receipt 7015 0640 0004 7539 5512 to the address on file with the Commission. The Notice designated the Commission file as the record for purposes of proving a prima facie case. The Certified Mail receipt was returned to the Commission “signed” on July 21, 2015. The first class mail was not returned to the Commission. The Notice of Opportunity of Hearing, dated July 15, 2015, and signed by Victoria Chamberlain, Executive Director, stated:

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

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

FINDINGS OF FACT

1. Hernandez-Cruz has never been licensed by the Commission. On November 19, 2014, Hernandez-Cruz made application to the Commission for Student Teaching or Practicum via a PA-1 application form. The Commission has jurisdiction over Student Teaching applicants.
2. Hernandez-Cruz's application was referred to Professional Standards for investigation due to affirmative answers to character questions 1, 3, 8, and 10 on his application. Background investigation determined Hernandez-Cruz had a criminal record including the following history:

- March 3, 2011 – arrested for Reckless Driving-Misdemeanor
- December 1, 2012 – arrested for DUII-Misdemeanor (Diversion January 2014)
- November 26, 2013 – arrested for Theft 2nd Degree-Misdemeanor - November 14, 2014, the case was discharged
- May 22, 2014 – arrested for Assault IV – Domestic Abuse and two counts Strangulation, October 14, 2014, convicted of Assault IV domestic.
- September 30, 2014 – arrested bench warrant, failure to appear, Misdemeanor

On May 22, 2014, Hernandez-Cruz was arrested on charges stemming from a law enforcement investigation in regard to Hernandez-Cruz physically assaulting his then live-in girlfriend. The original criminal charges included Assault in the fourth degree (ORS 163.160), a class A misdemeanor; two counts of Strangulation (ORS 163.187), a class A misdemeanor; Menacing (ORS 163.190), a class A misdemeanor; and two counts of Harassment (ORS 166.065(3), a class B misdemeanor. On October 14, 2014, Hernandez-Cruz pled guilty to and was convicted of Assault in the fourth degree (ORS 163.160), a class A misdemeanor. The remaining charges were deferred pending completion of Hernandez-Cruz's sentence and were later dismissed. Hernandez-Cruz was sentenced to 14 days in jail, two years' probation, required to pay fines, and complete domestic violence treatment. This conviction arose from allegations that on May 22, 2014, Hernandez-Cruz physically assaulted his girlfriend, causing physical injury.

CONCLUSIONS OF LAW

Avigain Hernandez-Cruz engaged in unprofessional conduct as described above. Hernandez-Cruz's convictions detailed above, and the conduct underlying Hernandez-Cruz's charges and convictions constitutes gross neglect of duty in violation of ORS 342.175(1)(b); OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5) (*Use professional judgment*), and OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(3)(a) (*Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty*). This conduct also constitutes gross unfitness in violation of ORS 342.175(1)(c); OAR 584-020-0040(5)(c) (*Conviction of violating any*

1 *federal, state, or local law. A conviction includes any final judgment of conviction by a*
2 *court whether as the result of guilty plea, no contest plea or any other means), and OAR*
3 *584-020-0040(5)(e) (Admission of or engaging in acts constituting criminal conduct, even*
4 *in the absence of a conviction).*

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6 The Commission's authority to impose discipline in this matter is based upon ORS
7 342.175(2).

8 **FINAL ORDER**

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- 10 1. Avigain Hernandez-Cruz is hereby publicly reprimanded.
 - 11 2. Should Hernandez-Cruz ever successfully apply for any teaching license from the
12 Commission, the Commission further Orders as follows:
 - 13 a. Hernandez-Cruz shall be placed on probation for a period of (3) years from
14 the date he receives a license from the Commission.
 - 15 b. As part of the probation, Hernandez-Cruz shall comply with the Standards
16 for Competent and Ethical Performance of Oregon Educators under
17 Oregon Administrative Rules Chapter 584, Division 020.
 - 18 c. Violation of any term or condition of probation shall constitute an
19 independent basis for the Commission to revoke Hernandez-Cruz's
20 teaching license or otherwise impose discipline, after first providing
21 Hernandez-Cruz with notice and opportunity for hearing.

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1 IT IS SO ORDERED THIS 21st day of October, 2015.

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3 TEACHER STANDARDS AND PRACTICES COMMISSION



4 By: _____
5 Victoria Chamberlain, Executive Director
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7 NOTICE OF APPEAL OR RIGHTS

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