

BEFORE  
**TEACHER STANDARDS AND PRACTICES COMMISSION**

IN THE MATTER OF:

**Mark Paul Allen,**

) **FINAL ORDER**

)

) OAH Case No. 700215

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This matter came before the Teacher Standards and Practices Commission during its regularly scheduled public meeting on May 15 and 16, 2008 to consider the Proposed Order issued by Administrative Law Judge John Mann. Mr. Allen, though counsel, requested an extension to file exceptions. Counsel for Mr. Allen later notified the Commission that no exceptions would be filed. After considering the Proposed Order and the record herein, the Commission adopts the ALJ's Findings of Fact and Conclusions of Law. The Commission also adopts the reasoning of the ALJ, except as otherwise noted in the Final Order.

**HISTORY OF THE CASE**

On August 15, 2007, the Commission (TSPC) issued a Notice of Denial of Reinstatement of Revoked License and Opportunity for a Hearing to Mark Paul Allen. On August 20, 2007, Mr. Allen requested a hearing.

On September 5, 2007, TSPC referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) John Mann was assigned to preside at the hearing. A pre-hearing conference was held on November 27, 2007. Mr. Allen was represented by his attorney, John Bishop. TSPC was represented by Assistant Attorney General Raul Ramirez.

A hearing was held on February 12, 2008 at the Office of Administrative Hearings in Salem, Oregon. Mr. Allen was present at the hearing and was represented by his attorney, Cathy Highet.<sup>1</sup> TSPC was represented by Mr. Ramirez. George Finch, TSPC's Coordinator of Professional Practices, was present on behalf of TSPC. Mr. Allen testified in the hearing, as a witness for TSPC and on his own behalf. TSPC did not provide testimony from any other witness. Mr. Allen presented testimony from three witnesses: Peter Shannon, a licensed professional counselor, Ron Carpani, Director of Bay Area Community Band, and Laura Eschler, a resource room teacher at Coquille High School. The record closed at the end of the hearing.

**ISSUE**

Whether Mr. Allen's application for reinstatement of his revoked teaching license should be approved. OAR 584-050-0015

**EVIDENTIARY RULING**

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<sup>1</sup> Ms. Highet is a member of the same law firm as Mr. Bishop. On January 29, 2008 Ms. Highet notified the Office of Administrative Hearings that she was replacing Mr. Bishop in the case.

Exhibits A1 through A6, offered by TSPC, and Exhibits R1 through R5, offered by Mr. Allen, were admitted into the record without objection.

Exhibit A3 is a Final Order issued by TSPC following a hearing in 2005. In the Final Order, TSPC adopted a Proposed Order that I issued in October of 2005 upholding TSPC's denial of Mr. Allen's application for reinstatement. The Findings of Fact in this Proposed Order regarding the actions that led to the revocation of Mr. Allen's teaching license are based primarily on the Findings of Fact in that Final Order.

### **FINDINGS OF FACT**

1. From July of 1984 until March of 2004, Mark Paul Allen held a Standard Oregon Teaching License with an endorsement in music. (Ex. A1 at 1; Ex. A2 at 4.) From 1993 through March of 2004, Mr. Allen was employed by the Coos Bay School District. (Ex. A2 at 2.)

2. From 1998 through September of 2000, Mr. Allen served as District Treasurer for the South Coast Chapter of the Oregon Music Education Association (OMEA). While serving in that capacity, Mr. Allen misappropriated approximately \$14,000 for his personal use. (Ex. A1 at 2.) Based on that conduct, on August 2, 2002, TSPC issued an order, with Mr. Allen's stipulation, which suspended Mr. Allen's teaching license for five months and placed him on probation for three years. (Ex. A1.) TSPC reinstated Mr. Allen's teaching license on December 9, 2002. (Ex. A2 at 2.)

3. On November 27, 2002, Lawrence Flanagan, Ph.D., a psychologist, prepared a psychological evaluation of Mr. Allen. In the evaluation, Dr. Flanagan noted that Mr. Allen had been receiving psychotherapy from Jeremy Howell, a Licensed Clinical Social Worker, from October 11, 2000 through April 9, 2001. Based on a review of Mr. Howell's notes, Dr. Flanagan concluded that Mr. Allen had made "significant progress" in understanding the behavior that led to his misuse of OMEA funds. Dr. Flanagan noted that results of testing and a Mental Status Examination did not show "any evidence of a psychological process or character disorder that would interfere with Mr. Allen's performance of his duties as a music teacher and band director." Dr. Flanagan also observed that Mr. Allen's then supervisor called him "an exceptional teacher." The supervisor believed that Mr. Allen's misuse of OMEA funds was an aberration and that Mr. Allen could be trusted not to engage in illegal or dishonest actions in the future. Dr. Flanagan concluded that there was "a high probability that [Mr. Allen would] not engage in dishonest or fraudulent activity \* \* \* in the future." (Ex. A6.)

4. In the summer of 2003, Mr. Allen was employed as a high school band instructor at Marshfield High School (Marshfield.) On August 14, 2003, the owners of a local music store told Dale Inskeep, the Assistant Principal at Marshfield, that the parents of a former student had agreed to purchase a saxophone from Mr. Allen. The saxophone was the property of the school and had been loaned to the student while he attended Marshfield. (Ex. A3 at 4.)

5. On August 13, 2003, Mr. Allen cashed a money order given to him by the parents in the amount of \$800. (Ex. A3 at 5; test. of Allen.)

6. On August 15, 2003, Mr. Inskeep spoke to the parents of the former student. The parents confirmed that they had purchased a saxophone from Mr. Allen. The parents told Mr. Inskeep that they agreed to pay Mr. Allen \$1,100 for the instrument and had already given Mr. Allen a money order for \$800. The parents also confirmed that the saxophone was the same instrument the student had borrowed from the school. (Ex. A3 at 4.)

7. Later on August 15, 2003, Mr. Allen called Mr. Inskeep and stated that he was unaware of any school policy with regard to selling band instruments. Mr. Allen asked if he could get the saxophone back from the parents, return the money order, "and then run it through proper channels." Mr. Allen admitted that he had the parents pay in the form of a money order made payable to him. (Ex. A3 at 4.)

8. On August 18, 2003, Mr. Allen provided a written memorandum to Marshfield regarding the alleged sale of the school's saxophone. The memorandum was dated August 15, 2003. Mr. Allen wrote that he had a conversation with the parents regarding their desire to purchase a saxophone. According to the memorandum, Mr. Allen gave the parents some advice about where they could purchase an instrument and told them that their son could use the school's instrument until he got a new one or until he left for college in September. The memorandum also refers to a phone conversation with Mr. Inskeep in which Mr. Allen denied selling a saxophone to the parents. Mr. Allen also denied knowledge of a money order and denied receiving any money from the parents for the sale of an instrument. (Ex. A3 at 4-5.)

9. On February 26, 2004, Lester Simons, a local music store owner, prepared a letter for Mr. Allen. Mr. Simons noted that Mr. Allen had approached him sometime between May and July of 2003 and asked about the availability of a Yanagisawa brand saxophone for a former student. Mr. Allen told Mr. Simons that the parents had only \$1,100 to spend. Mr. Simons told Mr. Allen that he could sell the parents a saxophone at his cost, but that \$1,100 was not enough to cover those costs. Mr. Simons notes that he was later contacted by the parents who told him that they had found a saxophone on the internet for \$200 more than the cost that Mr. Simons would charge. Mr. Simons advised the parents to purchase the instrument from the internet so that they could get it before their son went to college. The parents then told Mr. Simons that they had already given Mr. Allen the \$1,100 they had to spend on the instrument. Mr. Simons was surprised that Mr. Allen had taken money from the parents. Mr. Simons wrote that Mr. Allen returned the money when the parents decided to purchase the saxophone from the internet. (Ex. A3 at 11.)

10. On February 25, 2004, Mr. Allen entered into a stipulation with TSPC agreeing to surrender his teaching license based on the allegation that he had attempted to sell the school's saxophone. Mr. Allen did not admit to the allegations, but stipulated that there was sufficient evidence in the record to support TSPC's allegations. (Ex. A2 at 1-2.)

11. Based on Mr. Allen's stipulation, on March 5, 2004, TSPC issued an order revoking Mr. Allen's license. The order found that Ms. Allen attempted to sell a saxophone that was owned by the Coos Bay School District. The order also found that Mr. Allen received an \$800 money order for the saxophone and that he provided a written statement to the school district in

which he denied receiving the money order. The order concluded that Mr. Allen's conduct constituted gross unfitness in violation of OAR 584-020-0040(5)(e). It also concluded that Mr. Allen's statement to Marshfield's principal that he had not received the money order from the parents of a former student was false and constituted gross neglect of duty in violation of OAR 584-020-0040(4)(c). The order found that both violations constituted violations of the terms of Mr. Allen's probation which required him to comply with all professional standards under OAR Chapter 584 Division 020. The order stated that Mr. Allen had the right to apply for reinstatement after one year. (Ex. A2.)

12. In February of 2005, Mr. Allen applied for reinstatement of his teaching license. His application was denied. Following a hearing, TSPC issued a final order affirming the denial. (Ex. A3.)

13. On May 20, 2005, Mr. Allen was interviewed by Cheryl A. Gifford, PhD. Dr. Gifford prepared written Personal Assessment Inventory in which she wrote:

In the summer of 2003, Mr. Allen states that he attempted to purchase a saxophone from a music store of the exact kind that a student had been using so that he would have an instrument to continue using as he went on to college.

The school somehow got the idea that Mr. Allen was trying to sell to the student the same instrument, owned by the school that the student had been using during the school year. The school further believed that Mr. Allen was pocketing the money in this exchange." (Ex. A5 at 2.)

In a section of the report labeled "Recommendations," Dr. Gifford wrote:

Mr. Allen maintains that he was not involved in any fraudulent or dishonest activity, but was foolish to try and find an instrument for his student without discussing it with his administration given his probationary status. He avers that he was trying to find an instrument similar to the one the student had been using and therein lay the confusion about whose instrument was being sold, the school's one or one from Mr. Simon's store.

\* \* \* \* \*

Mr. Allen is not guilt[y] of fraud or dishonesty, but a lack of foresight, and a failure to protect his own interests. I continue to find that Mr. Allen is highly unlikely to engage in fraudulent or dishonest activity or other inappropriate behavior now or in the future. (Ex. A5 at 4.)

14. On January 30, 2007, Mr. Allen again applied for reinstatement. In an affidavit submitted with his application, Mr. Allen attributed his misappropriation of funds from OMEA to a troubled relationship with a younger woman. He admitted that he "made poor choices and misused funds." (Ex. A4 at 7.)

15. In his affidavit, Mr. Allen also addressed the circumstances that led to the revocation of his teaching license. Mr. Allen wrote that he initially thought he had done nothing wrong and had been mistreated. He wrote that he now understands that he was solely responsible for his situation. He asserted that the incident stemmed from his desire to help a recently graduated student to obtain a new instrument. He wrote that he had been attempting to arrange a purchase through a private dealer, but acknowledged how "someone outside of the situation" could have assumed that he was trying to sell an instrument owned by the school district. Mr. Allen also acknowledged that he lied to school administrators when confronted about the sale. He wrote that he has since learned that "forthright answers and truthfulness are qualities all must display and live by." (Ex. A4 at 7-8.) Mr. Allen lied because he did not trust his supervisor. Because he was on probation for diverting money from the OMEA, Mr. Allen was afraid that he could be disciplined if the allegation against him was believed. (Test. of Allen.)

16. Since August of 2004, Mr. Allen has worked as an instructional aide for the Coquille School District. Initially, Mr. Allen worked in the music program at Coquille High School. More recently, he has worked as an aide in the school's resource room and in the school's credit recovery program. (Ex. A4 at 7-8; test. of Allen.) Mr. Allen is popular with the students, many of whom have difficulty in school, and is respected by the resource room teacher, Laura Eschler. (Test. of Eschler.)

17. In June of 2006, Mr. Allen received an Evaluation Report from the principal of Coquille High School. The principal wrote:

Mark has yet again done an outstanding job directing the music program at a high level here at CHS. Mark is [a] gifted and knowledgeable instructor who relates to his students very well. Mark is well like[d] by staff and students and has a great sense of humor. I look forward to many more years working with Mark.

(Ex. R2 at 1.)

18. In June of 2007, the principal prepared another evaluation of Mr. Allen's performance. The principal wrote:

This is Mark's 3<sup>rd</sup> year working in the Coquille School District. He has done an excellent job once again with our bands. The performances are excellent and well attended. Mark has the support of his peers, his students and the community. It is my hope that Mark is successful in obtaining his Teaching License so he can continue working with the Coquille School District as a Certified Staff member.

(Ex. R2 at 2.)

19. Mr. Allen has the support of many members of the community. In June and July of 2006, Mr. Allen received four letters of support from teachers and school administrators in support of his reinstatement. The letters speak highly of Mr. Allen's professionalism and ability as teacher. In February of 2007, Jeanine Walker of North Bend High School wrote a letter of support similarly noting Mr. Allen's skill as a teacher. In July of 2006, 39 members of the Bay

Area Concert Band, with which Mr. Allen is associated, signed a petition in support of Mr. Allen's reinstatement. (Ex. R1.)

20. On April 26, 2007, Jeremy Howell, L.C.S.W., prepared a letter on Mr. Allen's behalf in support of his application for reinstatement. In the letter, Mr. Howell noted that he had been counseling Mr. Allen "at various times since October, 2000." Mr. Howell opined that Mr. Allen's past acts of dishonesty resulted from becoming overly involved in personal relationships. Mr. Howell believed that Mr. Allen was applying Mr. Howell's advice to establish appropriate boundaries between his personal and professional lives. Mr. Howell declined to offer an opinion on Mr. Allen's fitness to work as an educator. Mr. Howell noted the difficulty of predicting future behavior and encouraged Mr. Allen to continue in counseling. (Ex. R3.)

21. On April 28, 2007, Peter Shannon, a Licensed Professional Counselor, wrote a letter at the request of Mr. Allen's attorney. Mr. Shannon noted that he had not completed a formal evaluation of Mr. Allen, but that he had reviewed the evaluations completed by Dr. Flanagan and Dr. Gifford and had spoken with Mr. Howell. Mr. Shannon also interviewed Mr. Allen on April 16, 2007 and administered a Minnesota Multiphasic Personality Inventory – Second Edition (MMPI-2). The test showed "significant clinical elevation in scale #4 (psychopathic deviance) and scale #6 (paranoia)." According to Mr. Shannon, these results "suggest elements of an antisocial personality disorder" although they did not necessarily mean that Mr. Allen has a formal diagnosis of such a disorder. (Ex. R4.) In the most extreme context, Mr. Shannon believes that an elevated scale #4 score can indicate criminal intent. However, that is usually accompanied by an elevated score in scale #9, which is not present in Mr. Allen's test results. The elevated score in scale #4 could indicate a person who is individualistic and indifferent to the impact of actions on others. The result is consistent with a person who is dishonest. (Test. of Shannon.)

22. Mr. Shannon endorsed the reinstatement of Mr. Allen's teaching license with the conditions that Mr. Howell incorporate the results of the MMPI-2 test into his counseling work with Mr. Allen and that Mr. Allen undergo regular polygraph examinations over the next two to three years. (Ex. R4.) Mr. Shannon's practice primarily involves the treatment of sexual offenders and persons with sexual addiction. He uses polygraph examinations as a way to monitor treatment of these individuals. Mr. Shannon is unsure how a polygraph examination of Mr. Allen would be structured in the absence of specific allegations. Mr. Shannon met Mr. Allen on only one occasion and spent a total of four hours with him. Mr. Shannon did not complete a formal evaluation of Mr. Allen. (Test. of Shannon.)

### **CONCLUSION OF LAW**

Mr. Allen's application for reinstatement of his revoked teaching license should be denied.

### **OPINION**

In March of 2004, the Teacher Standards and Practices Commission (TSPC) issued an order revoking Mark Allen's teaching license. Mr. Allen denied the allegations contained in the

order, but conceded that there was sufficient evidence to support them. Mr. Allen therefore stipulated to the revocation. In February of 2005, Mr. Allen sought to have his license reinstated. That request was denied. Following a hearing, TSPC upheld its denial. In January of 2007, Mr. Allen again applied for reinstatement and TSPC once again denied that request.

ORS 342.175(3) sets forth the statutory basis for reinstating a previously revoked license. That statute provides:

Except for convictions for crimes listed in ORS 342.143(3)<sup>2</sup> and subject to subsection (4) of this section, any person whose license or registration has been suspended or revoked or whose privilege to apply for a license or registration has been revoked may apply to the commission for reinstatement of the license or registration after one year from the date of the suspension or revocation. The commission may require an applicant for reinstatement to furnish evidence satisfactory to the commission of good moral character, mental and physical health and such other evidence as the commission may consider necessary to establish the applicant's fitness. The commission may impose a probationary period and such conditions as it considers necessary upon approving an application for reinstatement.

TSPC has adopted administrative rules consistent with ORS 342.175 that apply to the reinstatement of a surrendered or revoked license. OAR 584-050-0018 provides, in relevant part:

(1) Any revocation for conviction for crimes listed in ORS 342.143(3) is permanent and the license or registration is not eligible for reinstatement. All other revocations of a license, registration or right to apply for a license or registration are eligible for application for reinstatement.

(2) Application for reinstatement of a license or registration revoked for any reason other than those cited in ORS 342.143(3) may be submitted at any time after the period of revocation has expired for the license, registration or right to apply for a license or registration.

(3) The burden will be on the educator to establish fitness for reinstatement.

(4) The application for reinstatement must include:

\* \* \* \* \*

(c) A personal notarized affidavit attesting that:

(A) All the conditions of the order for revocation have been met; and

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<sup>2</sup> Mr. Allen has not been convicted of any crime listed in ORS 342.143(3). Mr. Allen has not been convicted of any crime in connection with the conduct that led TSPC to discipline him and revoke his license.

(B) That the educator has not violated any laws of the states, including ethical violations related to licensure or registration; and

(d) Any additional documentation, sufficient to establish convincingly that the educator possesses all of the qualifications required for renewal or reinstatement of a license or registration of that type.

TSPC has not adopted a rule defining "fitness" within the context of an application for reinstatement. However, ORS 342.143(2) provides:

The Teacher Standards and Practices Commission may require an applicant for a teaching, personnel service or administrative license or for registration as a public charter school teacher or administrator to furnish evidence satisfactory to the commission of good moral character, mental and physical health, and such other evidence as it may deem necessary to establish the applicant's fitness to serve as a teacher or administrator.

(Emphasis added.)

Because Mr. Allen has the burden to show that he is fit to serve as an educator, he must demonstrate that he meets the criteria of ORS 342.143(2) to demonstrate his fitness. TSPC has adopted a rule defining "good moral character" within the meaning of ORS 342.143(2). OAR 584-020-0040 provides, in relevant part:

(2) An applicant fails to meet the requirement of ORS 342.143 "good moral character" if the applicant engages in gross neglect of duty, gross unfitness, in violation of section (4) of this rule or other acts which are in violation of sections (1) or (3) of this rule.

(3) The Commission may initiate proceedings to suspend or revoke the license or registration of an educator under ORS 342.175 or deny a license or registration to an applicant under ORS 342.143 who:

\* \* \* \* \*

(d) Is charged with gross unfitness[.]

\* \* \* \* \*

(5) Gross unfitness is any conduct which renders an educator unqualified to perform his or her professional responsibilities. Conduct constituting gross unfitness may include conduct occurring outside of school hours or off school premises when such conduct bears a demonstrable relationship to the educator's ability to fulfill professional responsibilities effectively. The following may be admissible as evidence of gross unfitness. Consideration may include but is not limited to:



\* \* \* \* \*

(b) Fraud or misrepresentation[.]

Under the above rule, a person fails to meet the criteria of having "good moral character" if the person has committed an act of fraud or misrepresentation. Because the acts that led to the revocation of Mr. Allen's license involved dishonesty, it is reasonable to conclude that to establish fitness, Mr. Allen must demonstrate that he is currently sufficiently honest and trustworthy to serve as a teacher.

OAR 584-050-0018(3) imposes the burden on Mr. Allen to establish his fitness for reinstatement. Mr. Allen has not met that burden. The events that led to the revocation of Mr. Allen's license included dishonesty and self-serving behavior. Because Mr. Allen stipulated to the revocation of his license, the issue of whether or not Mr. Allen tried to sell a school instrument has never been fully litigated. At the hearing in 2005 and at the hearing on the present matter, Mr. Allen consistently denied trying to sell a school instrument. He provided evidence at the prior hearing, in the form of a letter from a music dealer, that tends to support his denial. If, as he has consistently claimed, Mr. Allen did not engage in that conduct, it would be unreasonable to require him to admit that he attempted to sell a school instrument as a condition of reinstatement. Nevertheless, Mr. Allen is required to establish his fitness for reinstatement.

As Mr. Allen now admits, when he was confronted with the allegation by school officials, he lied. His explanations were often misleading and contradictory. Despite the fact that he received \$800 for a saxophone on August 13, 2003, he prepared a written memorandum two days later denying that he had received any money. At the hearing in the present case, he testified that he lied because he did not trust his supervisor and was concerned about the impact of the allegation that he tried to sell a school instrument. At the time, Mr. Allen was still on probation for using OMEA funds for his own benefit. His fear is understandable; his reaction was not. Rather than offer what Mr. Allen contends is the true explanation for his actions, Mr. Allen denied any involvement in trying to procure an instrument for the student. In the hearing in the present case, Mr. Allen contended that he was actually attempting to arrange the purchase of an instrument for \$2,200, which he intended to sell to the parents for \$1,100. He testified that the parents had been very involved in the music program, and that the student was very deserving. He did not want to embarrass the parents by letting them know that he was picking up half of the cost. If this was indeed Mr. Allen's intention, it is baffling why he would not have disclosed that fact to school administrators. Mr. Allen's multiple, inconsistent and shifting stories made it impossible for anyone to know exactly what he intended to do when he accepted money from the parents. Furthermore, his admitted dishonesty casts doubt on his contention that he was acting out of altruistic motives.

Mr. Allen contends that he now understands the importance of being honest. However, the evidence he provided in support of that new understanding is equivocal at best. Mr. Allen's counselor, Jeremy Howell, L.C.S.W., provided a letter in support of Mr. Allen's application for reinstatement. In the letter, Mr. Howell provided some explanation for Mr. Allen's past behavior, but he specifically declined to comment on Mr. Allen's fitness to work as an educator.

Mr. Howell offered no solid opinion as to whether he believed that Mr. Allen would engage in dishonest conduct in the future.

Mr. Allen also provided a letter and testimony from Peter Shannon, a Licensed Professional Counselor, who met with Mr. Allen on one occasion in April of 2007. Although Mr. Shannon was supportive of Mr. Allen's reinstatement, he suggested a two to three year course of regular polygraph examinations to monitor Mr. Allen's trustworthiness. He also testified that Mr. Allen had personality test scores consistent with dishonesty and paranoia. Mr. Shannon minimized the results of the test scores and suggested that the results could also be consistent with a person who was simply an individualist. Nevertheless, Mr. Shannon's evaluation did little to establish that Mr. Allen had the requisite trustworthiness to serve as an educator.

The evaluations by Mr. Howell and Mr. Shannon also need to be considered in light of previous assessments by mental health professionals. In May of 2005, Cheryl A. Gifford, Ph.D., concluded that Mr. Allen was "highly unlikely" to engage in dishonest conduct in the future. But that appeared to have been based upon Dr. Gifford's acceptance of Mr. Allen's previous denials of any improper behavior. In fact, Dr. Gifford believed that Mr. Allen had not engaged in *any* acts of dishonesty. This is despite the fact that Dr. Gifford made this assessment after Mr. Allen had deliberately lied to school officials when confronted with the allegation that he was attempting to sell a school instrument. If Mr. Allen had informed Dr. Gifford of his deception, it would have been impossible for her to conclude that Mr. Allen had not engaged in dishonest behavior. It thus appears that Mr. Allen was less than forthcoming with Dr. Gifford.

In November of 2002, before the events that led to the revocation, Lawrence Flanagan, Ph.D., a psychologist, prepared a psychological evaluation of Mr. Allen. At that time, Dr. Flanagan concluded that Mr. Allen had made "significant progress" in understanding the behavior that led to his misuse of OMEA funds. Dr. Flanagan concluded that there was "a high probability that [Mr. Allen would] not engage in dishonest or fraudulent activity \* \* \* in the future." Dr. Flanagan's prediction was incorrect.

The ALJ noted evidence that he believed tended to support Mr. Allen's reinstatement. Specifically, the ALJ noted as follows:

"[Mr. Allen] has worked in a school setting, working as an aide, but in many respects performing the functions of a teacher, since August of 2004. He has received glowing reviews from his supervisors. There is no evidence that he has engaged in any dishonest acts in that role. He also has the support of members of the community who view him as an inspirational and extremely talented teacher. Given his presence in the classroom, apparently without incident, it is doubtful that reinstatement of his teaching license would create any additional risk of dishonesty. However, the support of the community members speaks more to Mr. Allen's undisputed talent as a teacher. It does not directly address Mr. Allen's honesty."

The Commission acknowledges the ALJ's comments, but does not adopt the conclusion that these support reinstatement. For example, Mr. Allen presented the testimony from Ron

Carpani, Director of Bay Area Community Band, and Laura Eschler, a Resource Room teacher at Coquille High School. Both of these witnesses were unwilling to acknowledge that Mr. Allen had engaged in prior misconduct, and generally blamed others for Mr. Allen's troubles. Neither Mr. Carpani nor Ms. Eschler truly knew the circumstances of Mr. Allen's prior misconduct because they relied on what they heard from others. Neither ever questioned Mr. Allen about his prior misconduct to make an educated assessment of his involvement or any remorse. Both chose to blindly trust him because in their opinion Mr. Allen was a talented band teacher.

Mr. Allen, through counsel, noted that there are numerous cases involving far more egregious conduct in which TSPC has chosen to impose less severe sanctions than revocation. For example, on January 13, 2005, TSPC issued a final order *In the matter of Lemont Pouret Quiring*. In that case, TSPC found that a teacher had engaged in sexually explicit conversations with students over the internet and improperly allowed a student to spend the night at his home. TSPC imposed a six-month suspension followed by three years of probation. Mr. Allen argues that the allegations that led to the revocation of his own license were less severe and that he has been deprived of his license for nearly four years. The ALJ noted that Mr. Allen's argument for leniency had some appeal, and that Mr. Allen is a talented teacher who should not have a lifetime ban on teaching.

The ALJ correctly concluded that while Mr. Allen's argument was misplaced. The issue of the appropriateness of the sanction was something that could have been litigated at the time of the proposed revocation. Mr. Allen chose not to litigate the sanction and stipulated to the revocation of his license. Now that his license has been revoked, he bears the burden of establishing that he has the requisite fitness to serve as a teacher. The evidence he produced in support of his application was not sufficient to meet that burden. Therefore, his application for reinstatement should be denied. Moreover, the Commission disagrees with Mr. Allen's comparison of the *Lemont Pouret Quiring* case to this. Specifically, that case involved the Commission disciplining an actively licensed educator. In the present case, there is no question about the severity of the sanction. Rather, the question is whether Mr. Allen has established his fitness to have his teaching license back. The Commission's determination that he has not met his burden cannot be equated with whether a licensed educator receives, *e.g.*, a suspension or reprimand for engaging in misconduct when there is no unfitness.

The ALJ also noted that Mr. Allen should not have a lifetime ban on teaching. The Commission has not stated that a lifetime ban exists, or that it is imposing a lifetime ban. Were that the case, Mr. Allen would be precluded from periodically reapplying and having the Commission consider each application on its merits. The Commission's denial of reinstatement can only be interpreted as being a denial based on the current record.

## FINAL ORDER

For the foregoing reasons, the Commission hereby orders as follows:

Mark Paul Allen's application for reinstatement of his revoked teacher's license is denied.

It is So Ordered this 19<sup>th</sup> day of May 2008.

TEACHER STANDARD AND PRACTICES COMMISSION

By   
Victoria Chamberlain, Executive Director

**NOTICE:** You are entitled to judicial review of this Final Order pursuant to the provisions of ORS 183.480. Judicial review may be obtained by filing a petition in the Oregon Court of Appeals. The petition must be filed within 60 days from the date of service of this Final Order.