

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

In the Matter of the)
Teaching License of) FINAL ORDER
DAVID RICHARD SAMMONS)
) Case No. 107870

On May 19, 2004, Administrative Law Judge Ella D. Johnson issued an Amended 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, except as set forth below.

ORDER

The Proposed Order contains an apparent typographical error in listing the Case Number. The Case Number in the Proposed Order is changed to 107870.

The Commission adds the following additional Conclusion of Law to the Proposed Order:

(6) Either the violation of the district's "zero tolerance" policy or the violation of ORS 339.315 is sufficient standing alone to justify the sanction of revocation of Mr. Sammons' teaching license.

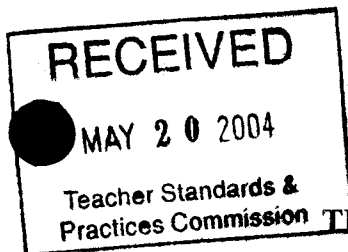
Except for these changes, the Commission adopts the Proposed Order in its entirety. The Oregon Teaching License of David Richard Sammons is hereby revoked.

DATED this 29th day of July 2004.

TEACHER STANDARD AND PRACTICES COMMISSION

By: 
Victoria Chamberlain, Executive Director

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 service of this order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.



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

In the Matter of the Teaching License of:) **AMENDED PROPOSED ORDER**
)
DAVID RICHARD SAMMONS) OAH Case No. 107970
)
)

HISTORY OF THE CASE

David Richard Sammons (Respondent or Sammons) challenges the Teachers Standards and Practices Commission's (Commission) Amended Notice of Hearing (Amended Notice) which proposed to suspend or revoke or impose other discipline under ORS 342.177 through 342.190 and the Standards for Competent and Ethical Performance of Oregon Educators, OAR 584, Division 020. The Commission proposed this action because it had reason to believe that Respondent's conduct in failing to respond to a student's report that another student had a gun on the school grounds constituted gross neglect of duty under OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0020(2)(d) and 584-020-0025(2)(e); and OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(2)(b). Respondent timely requested a hearing challenging the Amended Notice.

On April 18, 2003, the Commission referred this matter to the Hearing Officer Panel¹ for hearing. On November 24, 2003, Administrative Law Judge Ella D. Johnson convened a hearing in Salem, Oregon. Halfway through the first day of hearing, the Commission moved to amend its Amended Notice by adding and/or changing the legal bases for the proposed action. Respondent argued that he was prejudiced by the Commission's proposed amendment because his defense was based on the allegations set forth in the Amended Notice. Consequently, to address any prejudice, I continued the hearing to allow the Commission the opportunity to amend its Amended Notice and to allow Respondent the opportunity to modify its defense to respond to the Second Amended Notice. The Commission issued a Second Amended Notice on November 25, 2003, which alleged that Respondent's conduct in failing to report the information about the gun violated school district policy and ORS 339.315 and that this conduct constituted gross neglect of duty under OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0020(2)(d) and 584-020-0025(2)(a), and (2)(e); and OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(2)(b) and 584-020-0035(3)(a).

I reconvened the hearing on to February 3, 2004. The remainder of the hearing was held on February 3 and 4, 2004. Assistant Attorney General Joe Gordon McKeever represented the

¹ The name of the Hearing Officer Panel was changed to the Office of Administrative Hearings by House Bill 2526 which became effective with the Governor's signature on May 22, 2003.

Commission. Attorney at law Thomas Doyle represented Respondent. The Commission called Salem City Police Corporal Andrew Connelly, Grant Community School Counselor Aaron Bremiller, Salem-Keiser School District Assistant Director of Elementary Education Kathleen Bebe, former Sunrise Elementary School Principal Dawn Tarziane, former Sunrise Elementary School Principal Sara Ticer (formerly Saxton),² Respondent, Grant School Teacher Randy Wiley and TSPC Investigator Susan Nisbet as witnesses. The record was kept open until March 13, 2004 to allow the parties to submit closing briefs and closed that date.

On April 27, 2004, ALJ Johnson issued a Proposed Order which affirmed the Notice. On May 4, 2004, TSPC requested that the Proposed Order be amended to correct a scrivener's error on page 14 of the order. TSPC also noted that its rule governing the submission of exceptions has been amended to provide that the parties have 14 days (not 30 days) to file written exceptions to the Proposed Order. This Amended Proposed Order is issued to correct the scrivener's error on page 14 of the order and to correct the period of time the parties have to file written exceptions to the Proposed Order. These corrections to the Proposed Order are set out in bold.

ISSUES

(1) Whether Respondent had "reasonable cause to believe" that a student in his fourth grade class had a gun on school property based on the report and note from another student in the class.

(2) If so, whether Respondent's conduct in failing to report the information violated school district policy.

(3) If so, whether Respondent's conduct in failing to report the information violated ORS 339.315.

(4) Whether this conduct also constituted gross neglect of duty under OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0020(2)(d), 584-020-0025(2)(a), and (2)(e); and OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(2)(b) and 584-020-0035(3)(a).

(5) If proven, whether these violations warrant revocation of Respondent's Oregon teaching license.

EVIDENTIARY RULING

The Commission's Exhibits A1 through A2, A4, A6, A7, and A15 through A28 and A32 through A36 were admitted into the record without objection. Exhibits A4, A6, and A7 were admitted over Respondent's hearsay objection. Respondent objected to Exhibits A11 and A12 based on foundation but later withdrew the objection following testimony which laid the

² Ticer is now employed as the Principal at Prairie Mountain Elementary School in the Albany School District. (Test. of Ticer.)

foundation for the exhibits. Respondent objected to Exhibits A29 through A31 based on authenticity and relevancy. I held my ruling on the admission of Exhibits A29 through A31 in abeyance until the order was issued. I now admit Exhibits A29 through A31 inasmuch as I find they are an authentic part of the police report generated at the time of the incident and are relevant in that they consist of written statements by students who were shown the gun by RH.

FINDINGS OF FACT

(1) Sammons completed a teacher training program, including a B.S. Degree plus 80 hours, at Syracuse University in Long Beach, California. He was first licensed by the Commission to teach in Oregon in 1977. Sammons holds a Basic Elementary teaching certificate with a reading endorsement. He has not completed a Masters Degree. Sammons taught reading in Grants Pass, Oregon for four years and then began teaching Title I reading in the Albany School District (Albany) in the fall of 1981. The reading classes were primarily in small groups or were one-on-one instruction. He taught in Albany for a total of 14 years. During his final two years in Albany, he taught first and fourth grades. (Ex. A1 at 1-2; test. of Sammons and Tarzian.)

(2) During the 1995-1996 school year, the reading program in Albany changed and Sammons moved from teaching reading full-time to a half-time reading and a half-time regular first grade teaching position. Sunrise Elementary School Principal Tarzian became concerned about the problems in Sammons' regular classroom, including complaints from parents and students about his practice of yelling at and physically redirecting students.³ She put him on a Plan of Assistance (POA) for one year. The goals of the POA were to improve his classroom management and curriculum/instructional strategies. (Exs. A1, A33; test. of Tarzian.) Tarzian spent a substantial amount of time working with Sammons on lesson plans and providing suggestions concerning her observations in his classroom on a daily and weekly basis. She hired a mentor to assist Sammons, released him from his teaching duties to observe other classroom teachers in the school district and provided him with extra funds to purchase materials. (Ex. A33; test. of Tarzian.) On May 14, 1996, Tarzian evaluated Sammons' performance as a first grade teacher, rating his performance as "unsatisfactory." She noted that he had not met teaching standards in several areas, including the areas of developing positive student-teacher relations, establishing appropriate classroom management and providing appropriate instruction and evaluation. Principal Saxton (now Ticer) thereafter replaced Principal Tarzian. (Ex. A23 at 1-7; test. of Ticer and Tarzian.)

(3) On December 15, 1996, Saxton informed Sammons that although he now met the basic standards for classroom management, he still needed to monitor and remediate student behaviors that interfered with learning. After January 22, 1997, Saxton implemented a second POA, which focused on his curriculum/instructional strategies because Sammons' skills in that area remained below basic standards. The second POA had several specific requirements, including that Sammons' lesson plans were to be prepared and reviewed in advance by Saxton.

³ In one instance, Sammons injured a child's arm when he redirected the child by physically moving him. (Test. of Tarzian.)

The POA also provided him with a great deal of support. (Exs. A21, A27, A34-A36.) Sammons did not complete the school year. On March 12, 1997, he entered into a resignation agreement in lieu of termination effective June 12, 1997. He resigned by letter dated March 13, 1997 and thereafter took early retirement. (Exs. A1, A2, A19, A20.) Before his resignation, Sammons felt under a great deal of stress, but tried to address the problems identified by his supervisors. He also felt that the POA was very intense. Prior to this, he had never had any disciplinary problems and had never been placed on a POA. (Test. of Sammons.)

(4) During the 1998-1999 and 2000-2001 school years, Sammons worked as a substitute teacher in the Salem-Keizer School District (the District). Substitutes do not receive formal evaluations in the District. He substituted a substantial amount in the District in elementary, middle and high schools. He had complements by the teachers he substituted for and had many call backs from those teachers. (Test. of Sammons and Wiley.) In the fall of the 2001-2002 school year, he continued to substitute in the District. The District subsequently offered him a contract as a long-term substitute in a newly formed class of 26 fourth and fifth graders at Grant Community School (Grant), which was formed due to overcrowding. The classroom was a former music room converted into a classroom and Sammons had to bring in a lot of materials to make it functional. There was no structure and the students were all "at risk" students who were two to three grade levels behind. The students did not feel connected and, as a group, was very dysfunctional. A long-term substitute teacher had previously been hired to teach the class, but had quit after the first two weeks in January. Sammons substituted short-term in the class and then he was hired as the long-term substitute teacher beginning on February 28, 2002. (Ex. A1 at 6-10; test. of Sammons.)

(5) After his assignment to the new class, Sammons worked very hard, coming in early before the school began, staying late and working weekends and holidays. He was under extreme stress and pushed himself physically and emotionally. The principal was not very connected and was out of the school a lot. Sammons did not feel that he had much support. (Ex. A1 at 7-8.) The class was comprised of students who were having problems in the bilingual program and were transferred into Sammons' new class which was taught in English only. Sammons had difficulty dealing with the students' behavior problems and the class was out of control. The students were disrespectful to each other and Sammons and took no responsibility for their own learning. Bremiller tried to work with Sammons to address the behavior problems and to reestablish control but was not in the classroom much. Sammons felt that Bremiller tried but could have done more. Bremiller mainly "put fires out" and developed behavior plans for problem students.⁴ (Test. of Bebe, Bremiller, Sammons, and Wiley.)

(6) The District has a "zero-tolerance" policy concerning threats and weapons, which was adopted after the school shooting at Thurston High School in Springfield, Oregon and mirrors ORS 339.315. (Ex. 25.) The policy requires staff to report and address any threat. (Exs. A4, A6, A25.) The District's expectation is that teachers will report information immediately if they

⁴ On a scale of 1 to 10 with 10 being the most difficult class, Bremiller rated Sammons' new class as an 8 or 9. Sammons thought it was a 6 or 7 to begin with but by the end was a 3 or 4. (Test. of Bebe, Bremiller, Sammons.)

have reason to believe that a student has brought a gun to school so the allegation can be investigated and addressed quickly. (Test. of Bebe.) Sammons was not aware of the Oregon statute or the District's "zero tolerance" policy, requiring him to immediately report and address students with weapons on school grounds. (Test. of Sammons.)

(7) On March 13, 2002, the principal at Grant was at a conference and counselor Bremiller was appointed as the acting principal. At 8:30 am, Sammons confronted RH, an 11-year-old male student who was often angry and had disputes with other students, about his broken student chair. RH thought Sammons was calling him a liar. RH was angry and upset, left the classroom and the school grounds before class started and went to his nearby home without authorization.⁵ (Test. of Bremiller.)

(8) At recess, Sammons went to Bremiller's office to ask about RH but Bremiller was not in his office. (Test. of Sammons.) RH came back to school about 10:15 am and returned to class with Bremiller after the counselor called RH's home and spoke to RH about his feelings and determined that RH was ready to return to class.⁶ RH had his mother's unloaded handgun concealed in his pocket but did not tell Bremiller about the gun. He later showed the gun to several students. (Test. of Connelly and Bremiller.) At recess, RH told AD, an 11-year-old female student who often fought with RH, that he had a gun and was going to shoot her and Sammons. He also told her that his stepfather had recently given him some bullets for the gun. After recess, at about 10:30, AD wrote Sammons a note and told him about RH's threat.⁷ She said, "Here's a note" and handed him the note.⁸ The note said on the front of the notebook paper "read it is very important" and on the back side said "[RH] hide⁹ a pistol (gun) in the garbage can

⁵ RH had an anger problem and had a behavior plan which authorized him to leave the classroom when he became upset and to see Bremiller. He left school once before without authorization and was suspended until the principal and counselor met with RH and his parents. RH was told that if he left again without authorization, the police would be called and he would be suspended. (Test. of Sammons.)

⁶ Bremiller testified that, after he talked to AD, he spoke to RH about his stepfather's threat to shoot RH's dog if it got up on the couch again, which upset RH a great deal. His stepfather apparently showed RH the hand gun so RH would know that the stepfather was serious about shooting the dog. Bremiller thought that RH's concern about the gun was the welfare of the dog. Bremiller concluded that RH did not pose a threat because he did not find a gun where AD said RH had hidden it and RH denied he had a gun. (Bremiller's test.)

⁷ Sammons testified that he does not remember AD telling him anything about a threat when she handed him the note. (Test. of Sammons.)

⁸ Sammons initially told the Commission's investigator that he did not read the note when AD handed it to him because he was very busy and he thought it was just another note. At hearing, Sammons testified that he could not remember whether he read the note or if AD said anything to him when she gave him the note. (Test. of Sammons.)

⁹ Sammons testified that he understood AD's use of the word "hide" instead of "hid," to mean that RH might in the future "hide" a gun on the school grounds, not that the gun was already on the school grounds. He stated that he did not ask AD or RH any questions after AD gave him the note because he thought AD was just trying to get back at RH by getting him in trouble. (Test. of Sammons.)

outside in the little gray one by the pole we line up at." (Ex. A32.) Students were always handing him notes concerning their conflicts with other students. AD and RH were frequently in conflict with each other and tried to bring Sammons into their conflict by telling on each other. Sammons read the note, which stated that RH had a gun and was threatening to shoot Sammons and AD.¹⁰ (Exs. A1, A24.) Sammons told AD that he would take care of it and directed her to go back to her seat. She felt that he did not believe her. Later in the day, AD went to see Bremiller with a complaint that Sammons never called on her when she raised her hand. She also told him about the threat. Bremiller went out on the school grounds and looked in the trashcan and adjacent area but did not see a gun. He told her to go back to class and that he would investigate the matter. He planned to talk to Sammons with AD after class. Bremiller brought RH into his office and asked him if he had thought about bringing a gun to class and RH denied that he thought about bringing a gun to school. Bremiller talked to RH about the danger of handling guns. (Exs. A3, A8, A10; test. of Connelly, Bremiller, and Sammons.)

(9) At 3:20 pm, Sammons dismissed the class for the day. RH was standing outside on the field that was behind the classroom and showed the unloaded gun that was tucked into his waistband under his sweatshirt to BM. RH looked very angry. BM asked him to put the gun on the grass and said that they would act like they found it on the school grounds next to a trashcan. She reported the gun to a staff member and found Bremiller. Bremiller asked Sammons to secure the weapon while he called the police.¹¹ Later, BM told the staff what had actually happened. (Ex. A10; test. of Connelly.)

(10) Bebe met with Sammons the day after the incident to clarify what had occurred.¹² She was concerned because Sammons' story about the incident seemed to change over time.¹³

¹⁰ Sammons first reported that he did not immediately read the note and did not notice anything unusual about AD's behavior. Later, he told Kathy Bebe that he read the note immediately and knew that it said that RH had a gun and was going to shoot Sammons and AD. (Exs. 24, 32.) Sammons' written statement to the police stated that he dismissed AD's statement because, in the past, RH had said "mean things to others and he thought this was just another example of that behavior." He also stated that RH seemed calm and non-threatening until later when RH and AD again started arguing and bothering each other. (Ex. 8.)

¹¹ Sammons testified at hearing that Bremiller asked another teacher to secure the weapon so he brought AD into the classroom and interviewed her about the weapon incident. He stated that he then realized that he had misunderstood what AD had tried to tell him in the note. (Test. of Sammons.) Bremiller's recollection was that Sammons secured the weapon. (Test. of Bremiller.)

¹² Bebe's job with Salem-Keiser School District involves, among other things, assisting principals with personnel and performance issues. After the incident she met with Grant staff, students, and teachers, including Sammons. (Test. of Bebe.)

¹³ Sammons testified that he was not trying to mislead anyone. Stress had caused confusion in his mind and he was very upset that RH wanted to shoot him. He told the officer what he remembered. He said that he made a judgment call concerning the note that AD gave him. (Test. of Sammons.)

Sammons told Bebe that AD had told him about the gun but he thought that she was just trying to get RH in trouble. When there was a commotion on the school grounds, he knew it was a gun. But, he was afraid to tell the police and the administration because he thought he would be fired on the spot. (Test. of Bebe and Sammons.)

(11) After the gun was found on March 13, 2002, Sammons provided the police with an initial oral statement. He did not mention a note and stated that he did not know about the gun until it was found. He also provided a written statement on March 14, 2002, where he acknowledged that AD had given him a note that morning about RH's threats and the gun and that he had intended to tell Bremiller but did not do so; a third 10 minute interview occurred when Sammons and the police officer were searching for AD's note.¹⁴ On March 14, 2002, the police interviewed the other students, including DG, AD and BM who were shown the gun by AH, and asked them to provide written statements. RH first denied the threat and then admitted that he had threatened AD and Sammons. RH was subsequently charged with carrying a concealed weapon, menacing, and unlawful possession of a weapon. (Exs. A8, A10, A29-A31; test. of Connelly and Bebe.) A local newspaper reported Sammons failure to report RH's threat to bring a gun to school and the presence of the gun on the school grounds. (Exs. A4, A6, A7.)

(12) Sammons was placed on paid administrative leave and resigned on March 26, 2002, after entering into a resignation agreement with the District. (Exs. A3, A5.) On April 24, 2002, the District's Superintendent notified the Commission that Sammons had failed to report a student's threat to bring a gun to school. The superintendent reported that Sammons conduct may constitute gross neglect of duty or gross unfitness and that his conduct in that regard had been independently investigated by both the Salem Police and the District. (Ex. A2.)

(13) Sammons is no longer working as a teacher for the District or any other school district in Oregon. (Test. of Sammons.)

CONCLUSIONS OF LAW

(1) Respondent had "reasonable cause to believe" that RH, a student in his fourth grade class, had a gun on school property based on the report and note from AD, another student in the class.

(2) Respondent's conduct in failing to report the information violated the District's "zero-tolerance" policy.

(3) Respondent's conduct in failing to report the information violated ORS 339.315.

(4) This conduct constituted gross neglect of duty under OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0020(2)(d), 584-020-0025(2)(a), and (2)(e); and OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(2)(b) and 584-020-0035(3)(a).

¹⁴ Sammons testified that he later found the note in a pile of papers after he had cleaned out his desk at the school. (Test. of Sammons.)

(5) These violations are proven and warrant revocation of Respondent's Oregon teaching license.

OPINION

Respondent challenges both his alleged violations of school district policy and ORS 339.315 and that this conduct constituted gross neglect of duty under OAR 584-020-0040(4)(n) and OAR 584-020-0040(4)(o). He also challenges the proposed revocation of his Oregon teaching license. In that regard, the Commission has the burden of proving these allegations and that the proposed sanction is warranted by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on the Commission in disciplinary action); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989)

Alleged Violation of ORS 339.315

ORS 339.315 states in relevant part:

(1)(a) **Any employee of a public school district**, an education service district or a private school who has **reasonable cause to believe that a person**, while in a school, is or within the previous 120 days **has been in possession of a firearm or destructive device** in violation of ORS 166.250, 166.370 or 166.382 **shall report the person's conduct immediately to a school administrator, school director, the administrator's or director's designee or law enforcement agency within the county**. A school administrator, school director or the administrator's or director's designee, who has reasonable cause to believe that the person, while in a school, is or within the previous 120 days has been in possession of a firearm or destructive device in violation of ORS 166.250, 166.370 or 166.382, shall promptly report the person's conduct to a law enforcement agency within the county. If the school administrator, school director or employee has reasonable cause to believe that a person has been in possession of a firearm or destructive device as described in this paragraph more than 120 days previously, the school administrator, school director or employee may report the person's conduct to a law enforcement agency within the county.

(b) Anyone participating in the making of a report under paragraph (a) of this subsection who has reasonable grounds for making the report is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or content of the report.

Any participant has the same immunity with respect to participating in any judicial proceeding resulting from the report.

* * * * *

(2) When a law enforcement agency receives a report under subsection (1) of this section, **the law enforcement agency shall promptly conduct** an investigation to determine whether there is **probable cause to believe that the person, while in a school, did possess a firearm or destructive device** in violation of ORS 166.250, 166.370 or 166.382.

(3) As used in this section, “school” means:

(a) A public or private institution of learning providing instruction at levels kindergarten through grade 12, or their equivalents, or any part thereof;

(b) The grounds adjacent to the institution; and

(c) Any site or premises that at the time is being used exclusively for a student program or activity that is sponsored or sanctioned by the institution, a public school district, an education service district or a voluntary organization approved by the State Board of Education under ORS 339.430 and that is posted as such.

(Emphasis added.)

In his Post Hearing Brief, Respondent contends that the standard of “reasonable cause to believe” set forth in ORS 339.315(1)(a) is the same standard as “probable cause.” In support of his contention, Respondent argues, citing *State v. Finch*, 144 Or App 42 (1996), that in looking at the “totality of the circumstances” here, he did not have “probable cause” to believe that the student possessed a weapon. However, *Finch* is not on point inasmuch as it is a school search and seizure case, not a case where the question is whether the teacher had a duty to report information that a student a gun on school property. Although I do not find Respondent’s argument in that regard persuasive, neither statute nor rule defines the standard of “reasonable cause to believe.”

Turning to the statutory analysis of ORS 339.315, I find that it is clear from the text and context that the legislature did not intend the “probable cause” standard to apply to school employees’ duty to report the presence of a weapon on school grounds. In interpreting a statute, the court’s, and thus my charge, is to determine the legislative intent. ORS 174.020;¹⁵ *PGE v.*

¹⁵ ORS 174.020 states:

(1)(a) In the construction of a statute, a court shall pursue the

Bureau of Labor and Industries, 317 Or 606, 610 (1993). In order to discern the legislative intent, the first level of analysis is to examine both the text and context of the statute. 317 Or at 610-611. The text of the statute is the best evidence of the legislature's intent. If the legislature's intent is unclear after that inquiry, I consider the legislative history, and if still unclear, I apply the general maxims of statutory construction. *Id.*

The provision which triggers a teacher's duty to report that a student has a gun on school grounds is subsection (1)(a). In order to trigger the duty, the teacher must have a "reasonable cause to believe" that the student has a gun. In contrast, subsection (2) requires a law enforcement officer to conduct an investigation to determine if there is "probable cause to believe" that the student has committed a criminal act. By using both standards of "probable cause" and "reasonable cause" in the same statute it is clear that the legislature did not intend for the two standards to be the same as suggested by Respondent. See *PGE*, 317 Or at 614 (the legislative use of different phraseology in different places in a statute indicates a different intent). The Commission, on the other hand, argues that the "reasonable cause" standard, which is also used in statutes requiring reporting of child abuse and abuse of persons with mental illnesses and developmental disabilities, is a lesser standard than the "probable cause" standard. The Commission points to the Oregon Supreme Court's observation in *State v. Gulley*, 34 Or 57, 66 (1996) in support of its argument. I agree. Moreover, the fact that the law enforcement officers must meet the "probable cause" standard to charge the student with a crime indicates that the "probable cause" standard is the higher of the two standards.

Applying the "reasonable cause" standard to the facts here, I find that Respondent did have reasonable cause to believe that RH had a gun on the school grounds. The record establishes that RH went home and came back to school, giving him the opportunity to bring the gun to school. Moreover, the record also establishes that Respondent knew that RH was upset and angry at him, providing RH with a motive for using a gun. After recess, AD wrote Sammons a note. Although Respondent testified that he did not remember AD telling him about RH's threat to shoot him and AD, I find on this evidence that AD told him about RH's threat. The note said "read it is very important" on one side and on the back side said "[RH] hide a pistol (gun) in the garbage can outside in the little gray one by the pole we line up at." Respondent did not attempt to verify whether or not this was true, he simply determined it was

intention of the legislature if possible.

(b) To assist a court in its construction of a statute, a party may offer the legislative history of the statute.

(2) When a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.

(3) A court may limit its consideration of legislative history to the information that the parties provide to the court. A court shall give the weight to the legislative history that the court considers to be appropriate.

not and ignored the matter.

Respondent initially told the Commission's investigator that he did not read the note when AD handed it to him because he was very busy and he thought it was just another note. At hearing, he testified that he could not remember whether he read the note or if AD said anything to him when she gave him the note. At other times, he stated that he read the note but disregarded the threat because AD and RH were always trying to draw him into their disputes by accusing each other of things. He also stated that he did not believe that a fourth grade student would bring a gun to school. I do not find these rationalizations for his failure to report this matter persuasive.¹⁶ Consequently, I conclude on this record that Respondent had sufficient information to reasonably believe that RH had a gun on school grounds and failed to report the matter in violation of ORS 339.315.

Alleged Violation of School District Policy

The Salem-Keiser School District's policy "Reporting of Threats and Weapons on Campus" mirrors ORS 339.315, except it does not require the school employee to report "immediately." It states in relevant part:

Any school employee who has reasonable cause to believe that a person has, within the previous 120 days, been in possession of a firearm or destructive device while in school must report this information to the school administrator, a Board director, or a law enforcement agency within the county.

Having already found above that Respondent had reasonable cause to believe that RH had a gun at school, I conclude that Respondent also violated the District's policy. I note that even though the policy does not specifically state that the report must be done immediately, a reasonable person would have concluded that he should report the matter immediately, given the obvious urgency of a gun currently on the school grounds. I also note that Respondent argued that he was not aware of either the statute or the District's policy. However, ignorance of the law is not a defense.

Alleged violations of OAR 584-020-0040(4)

OAR 584-020-0040(4) states in relevant part:

(4) Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following may be

¹⁶ Moreover, his most unpersuasive rationalization for his failure to report the matter was his testimony based on the tense of the verb, *i.e.* that he understood AD's use of the word "hide" instead of "hid," to mean that RH might in the future "hid" a gun on the school grounds, not that the gun was currently hidden on the school grounds. As AD's teacher he should have been aware of her inability to use the right tense for the verb.

admissible as evidence of gross neglect of duty. Consideration may include but is not limited to:

* * * *

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

(o) Substantial deviation from professional standards of ethics set forth in OAR 584-020-0035; and

* * * * *

OAR 584-020-0040(4)(n) incorporates OAR 584-020-0020(2) which provides in pertinent part:

(2) The competent teacher demonstrates:

* * * * *

(d) Skill in the supervision of students.

The rule also incorporates OAR 584-020-0025(2) which provides in relevant part:

(2) The competent teacher demonstrates skills in:

(a) Establishing and maintaining classroom management that is conducive to learning;

* * * * *

(e) Using district lawful and reasonable rules and regulations.

Finally, OAR 584-020-0040(4)(o) incorporates OAR 584-020-0035(2)(a) and (3)(a), which state:

(2) The ethical educator, in fulfilling obligations to the district, will:

* * * * *;

(b) Conduct professional business, including grievances, through established lawful and reasonable procedures;

* * * * *.

(3) The ethical educator, in fulfilling obligations to the profession, will:

(a) Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty;

* * * * *

Applying these requirements to the facts of this case, I find that Respondent violated the requirements set forth in OAR 584-020-0040(4)(n) and (o) by failing to comply with ORS 339.315 and the District's policy concerning weapons and threats. These provisions required him without exception to report RH's possession of a gun and his threats to shoot both him and AD. This is an extremely serious matter and one the Commission and the public do not take lightly. The Commission has interpreted its rules as applied to Respondent's conduct to constitute a substantial violation of professional standards. Moreover, Respondent failed to supervise his students and to manage his classroom so as to ensure the safety of the students by addressing problems as they arose in violation of the requirements set forth in OAR 584-020(2)(d) and OAR 584-020-0025(a).

I am required to defer to an administrative agency's plausible interpretation of its own rules if the interpretation cannot be shown to be inconsistent with the wording of the rule itself, or with the rule's context, or any other source of law. *Don't Waste Oregon Committee v. Energy Facility Siting Council*, 320 Or 132, 142 (1994). I am authorized to overrule an agency's interpretation of a rule if an agency has "erroneously interpreted a provision of law." *Id.* However, here the "provision of law" is the rule itself.

Consequently, I conclude that the way Respondent managed his classroom, supervised his students, and handled this incident constituted a substantial breach of the above professional standards and gross neglect of duty.

Sanction warranted

ORS 342.175 (1) gives TSPC the authority to suspend or revoke the license of a teacher for gross neglect of duty. Additionally, subsection (5) states that:

"Violation of rules adopted by the commission relating to competent and ethical performance of professional duties shall be admissible as evidence of gross neglect of duty or gross unfitness."

Pursuant to this statute, I have found that Respondent's conduct in this instance violated OAR 584-020-0040 and constituted gross neglect of duty. The Commission has proposed revocation of Respondent's Oregon teaching license. In determining the appropriate sanction, I apply OAR 584-020-0045, which states:

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.

Applying the factors set forth above, I conclude that revocation is appropriate. With respect to the first factor, I find, based on the credible testimony of Respondent's previous principal Tarzian, that Respondent's inability to supervise his students and manage his classroom was a long-standing problem that was part of a continuing pattern which started when he was assigned to a regular classroom at Sunrise Elementary School during the 1995-96 school year. That inability to supervise his students and control his classroom was at the heart of his failure to report RH's threat and his possible possession of a gun because the record establishes that he was "too busy" or perhaps too overwhelmed or distracted by the students' discipline problems to take care of threats to the safety of his students.

As to the second factor, I find that because Respondent does not have the skills to deal with behavior problems and is unlikely to master it in the future, this type of incident could occur again. This is certainly supported by Respondent's past inability to address behavior problems and manage his classroom.

With respect to the fourth and fifth factors, as previously stated, this was a very serious matter. Although the gun was unloaded, Respondent did not know that when the events were unfolding. The danger to students, himself and other teachers was severe had the gun been loaded. The incident could have ended as did in the Thurston High School shooting incident. Moreover, his failure to report the threat and RH's possession of a gun was reported in the local

newspaper, which undoubtedly negatively impacted the parents, making them feel that their children may not be safe in the District's schools.

As to Respondent's state of mind during the incident, when AD reported RH's possession of a gun and his threat to shoot both him and her, Respondent misjudged and ignored the information because he did not take AD's report seriously. This is a very dangerous way to respond to threats of this kind. Moreover, he did not even attempt to investigate if the report was true. At least counselor Bremiller attempted to find the gun and talked to RH about the dangers of bringing a gun to school; Respondent failed to perform any type of investigation. Compounding this reaction was Respondent's failure to tell the administration and the police officers the truth when interviewed. Instead, he was dishonest and evasive.

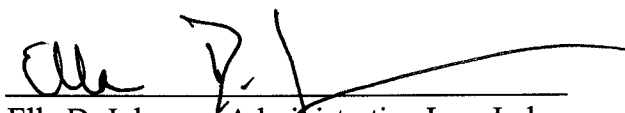
With respect to the danger that students will imitate Respondent's behavior or use it as a model, I find that Respondent's failure to address AD's report or take some action to verify the threat does not present a danger that students imitate the behavior. But worse than that, it provides them with a model of adult behavior which undermines their confidence in adults to take seriously what they say. Therefore, they will be less likely to confide in adults concerning matters they feel threatened by. Given the age and level of maturity of the students here, forth and fifth graders, this has the potential to impact their future relationships with adults throughout their formative years when they are the most vulnerable. Finally, I do not find any extenuating circumstances or other factors bearing on the appropriate nature of a disciplinary sanction, except Respondent's lack of experience in the regular classroom. It is unfortunate that Respondent did not realize from his first experiences in the Albany School District with a regular classroom that this was not a good fit with his abilities and limitations. Some individuals can not successfully handle the disciplinary aspect of teaching and I believe Respondent is one of those individuals. He apparently did a good job during the 14 years that he taught reading in small groups and by individual instruction. However, as demonstrated by his continuing problems thereafter in supervising students and managing his classroom, he should have sought employment more like the position he held teaching reading instead of attempting to teach in a regular classroom. Accordingly, I find that the Commission's proposed revocation of Respondent's teaching license is appropriate and affirm the Commission's Amended Notice.

PROPOSED ORDER

I propose that the Commission issue the following order:

The teaching license of David Richard Sammons is revoked for violations of ORS 339.315, Salem-Keiser School District policy, and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0020(2)(d), 584-020-0025(2)(a), and (2)(e); and OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(2)(b) and 584-020-0035(3)(a).

Dated this 19th day of May 2004 at Salem, Oregon.


Ella D. Johnson, Administrative Law Judge
Office of Administrative Hearings

APPEAL PROCEDURE

NOTICE: Under the current procedures, the Commission reviews the record and proposed order in contested cases and issues a final order. Pursuant to OAR 137-003-0650 and **584-019-0040(2)**, you are entitled to file written exceptions to this proposed order within **14** days of the date this proposed order is mailed. The exceptions should explain all of the reasons why you believe that the proposed order is incorrect. Mail exceptions to:

Teachers Standards and Practices Commission
Public Service Building
255 Capitol Street NE
Salem, OR 97310-1332

cc: Joe McKeever, AAG
Susan Nisbet, TSPC
Thomas Doyle, AAL