

**BEFORE THE HEARING OFFICER PANEL
STATE OF OREGON
for the
TEACHER STANDARDS AND PRACTICES COMMISSION**

JUN 07 2002

IN THE MATTER OF THE LICENSE)	PROPOSED ORDER
SUSPENSION OF)	
CARRIE EGAN)	HOP Case No.: 20013525
)	TSPC Case No.: GE 0700-01

HISTORY OF THE CASE

By letter dated August 29, 2001, Hermiston School District (School District) notified Carrie Egan (Respondent) that it intended to pursue suspension of her Oregon teaching license. By letter dated October 9, 2001, Respondent requested a contested case hearing. On February 14, 2002, Administrative Law Judge Catherine P. Coburn conducted a pre-hearing telephone conference. On March 18, 2002, I convened and postponed a telephone hearing to allow both parties to submit exhibits. The hearing was reset for April 15, 2002 and postponed because all telephone lines to Hermiston were disconnected. On May 6, 2002, I conducted a telephone hearing in this matter. The School District appeared *pro se* and was represented by Deputy Superintendent Darce Driskel pursuant to OAR 137-003-0555(1)(b). The School District called Pat Consoliver as a witness. Respondent appeared *pro se* and was assisted by Tom De Forrest in presenting her case. Respondent testified on her own behalf. No other witnesses testified and the record closed on May 6, 2002.

ISSUE

The issue is whether on or about August 17, 2001, Respondent failed to provide 60-day notice of her resignation in violation of ORS 342.553(1) and OAR 584-050-0020(3).

EVIDENTIARY RULINGS

The School District's Exhibits 1 through 12 as well as Supplementary Exhibit 13, the Working Agreement between The Hermiston Association of Teachers and the Hermiston School District 8R Board of Directors, 1998-2002, were received into the record without objection. Respondent's Exhibits 101 and 102 were also received into the record without objection.

FINDINGS OF FACT

In 1992, the School District adopted a policy that provides:

RESIGNATION OF STAFF

A licensed staff member who wishes to resign from his/her position with the district must give written notice at least 60 days prior to the date he/she wishes to leave district employment. The superintendent is authorized to accept the resignation effective the day it is received and either release the teacher immediately from further teaching or administrative obligations or inform the teacher that he/she must continue teaching for part or all of the 60-day period.

Where less than a 60-day notice is given, the Board may request the Teacher Standards and Practices Commission to suspend the teacher's or administrator's license for the remainder of the school year. Exceptions due to emergency or other extenuating circumstances may be considered by the Board.

In August 2000, the School District hired Respondent as a special education teacher and she served in that capacity at Sandstone Middle School during the 2000 – 2001 school year. (Testimony of Respondent). Respondent holds an Oregon Restricted Transitional teaching license and an emergency special education certificate. (Ex. 2; testimony of Respondent). In March 2001, Respondent was nominated as Educator of the Year. (Ex. 101).

On April 5, 2001, Respondent signed a contract to teach in the School District during the 2001 – 2002 school year. (Ex. 2). In July and August, the School District received resignations from three other teachers. (Ex. 4). On August 17, 2001, the School District received Respondent's written notice of resignation. (Ex. 3). Respondent resigned her position with the School District in order to accept a position with another School District that was more geographically convenient. (Testimony of Respondent).

For the 2001 – 2002 school year, the first day of work for new teachers was August 28. The first day of work for returning teachers was August 29. (Testimony of Driskel). The School District hired another teacher to replace Respondent and the school board approved the action on August 28. (Ex. 7; testimony of Driskel). On September 4, 2001, the Hermiston School Board voted 5 to 2 to suspend respondent's Oregon teacher's license. (Ex. 8-4).

CONCLUSIONS OF LAW

Respondent failed to provide the School District with 60 days notice of her resignation.

OPINION

ORS 342.553(1) provides:

(1) Any elementary or secondary teacher who has entered into a contract to teach in any public school and who resigns the position without first providing 60 days' written notice to the district superintendent or the notice required in the applicable collective bargaining agreement may have the teaching license of the teacher suspended for the remainder of the school year by the Teacher Standards and Practices Commission upon notice of the resignation from the district school board to the commission. The commission shall notify the teacher of the suspension of the teaching license held by the teacher.

Under the heading "Suspension for Resignation in Violation of Contract", OAR 584-050-0020(3) and (4) provide:

(3) If TSPC decides that the charge has been proven and the justification for violating the contract is not satisfactory, TSPC will suspend the teacher's license for the remainder of the school year. The decision of TSPC is final. See also ORS 342.553(2) regarding violation of contracts.

(4) A license which has been suspended for violation of contract may be reinstated after the period of suspension upon application and payment of the evaluation fee.

Respondent contends that the license suspension is unwarranted. In support of her position, Respondent first argues that her geographic convenience constitutes "extenuating circumstances" that justified the untimely resignation. Respondent points out that her new job was located closer to her residence, her fiance's residence and her continuing education classes. Respondent next argues that the School District received resignations from several other teachers within 60 days of the school year and did not seek suspension of the other teachers' licenses. Respondent further argues that the School District failed to follow its policy because it did not offer her the option of teaching for the 60-day period. Finally, Respondent argues that the license suspension is unfair in light of her nomination as Educator of the Year.

The School District contends that the license suspension is warranted under the circumstances. In support of its position, the School District argues that in pursuing suspension, it considered several factors including timeliness of the resignation, the teacher's endorsement and the availability of candidates to replace the teacher who resigned. The School District next argues that its policy allows discretion in seeking

license suspensions. Finally, the School District takes the position that the license suspension does not reflect upon the quality of Respondent's performance as a teacher.

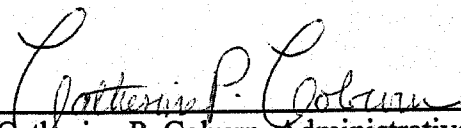
There is no question that Respondent violated ORS 342.553(1) and OAR 584-050-0020(3) by entering a contract and providing written notice of resignation less than 60 days prior to the start of the 2001 - 2002 school year. The School District received Respondent's written notice of resignation on August 17, 2001 and the returning teacher's first day of work was August 29th. Moreover, the statute, the administrative rule, and the School District policy allow the School District discretion to pursue license suspension. Here, the School District considered the short notice and the difficulty of identifying qualified candidates and hiring a replacement before the start of school. The School District found that Respondent's geographic convenience did not constitute "extenuating circumstances" as that term is used in the district policy. On the other hand, other teachers who resigned may have presented circumstances that were different from Respondent's. Furthermore, the School District policy allows the School District discretion to allow a resigning teacher to continue teaching during the 60-day period. Under the policy, the School District may choose not to offer this alternative, considering whether the resignation occurs before or during the school year and taking into account the continuity of student-teacher relationships. Finally, the School District takes the position, and I agree, that the license suspension for untimely resignation does not reflect upon Respondent's performance as a teacher, particularly in light of her nomination as Educator of the Year.

PROPOSED ORDER

I recommend that TSPC issue the following order:

Respondent's Oregon teaching license is suspended for the remainder of the 2001-2002 school year.

Dated this 5th day of June 2002.


Catherine P. Coburn, Administrative Law Judge
Hearing Officer Panel

NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW

NOTICE: Pursuant to OAR 137-003-0650, you are entitled to file written exceptions to this proposed Order. Written exceptions must be received by the Teacher Standards and Practices Commission within 10 days following the date of service of this Proposed Order. Mail exceptions to:

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