

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

IN THE MATTER OF THE TEACHING  
LICENSE OF:

**JAMEY K. HARDY, Licensee**

) **FINAL ORDER**  
)  
) OAH Case No.: 1303412  
)  
)


This matter came before the Commission during its regularly scheduled meeting of March 7, 2014, to consider the Proposed Order issued by Administrative Law Judge (ALJ) Monica A. Whitaker on February 12, 2014. Licensee filed exceptions to the Proposed Order in a timely manner.

The Commission considered Licensee's exceptions. The Commission, having reviewed Respondent's exceptions, does not find them persuasive. Licensee's exceptions primarily raise issues that were argued at hearing and considered by the ALJ. Licensee also excepted to the proposed discipline on the premise that the Commission withdrew one of the charges in the Notice of Opportunity for Hearing. The Commission finds that the sanction proposed by the ALJ is appropriate based on the violations found and it is within the Commission's statutory authority and discretion.

Based on the foregoing, the Commission adopts the attached Proposed Order as the Final Order, and hereby suspends Licensee's teaching license for one year.

IT IS SO ORDERED THIS 14<sup>th</sup> day of March, 2014.

TEACHER STANDARDS AND PRACTICES COMMISSION

By   
Victoria Chamberlain, Executive Director  
Teacher Standards and Practices Commission

**NOTICE OF APPEAL RIGHTS**

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provision of ORS 183.482 to the Oregon Court of Appeal.

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

**RECEIVED**

FEB 13 2014

Teacher Standards &  
Practices Commission

IN THE MATTER OF:

) **PROPOSED ORDER**

)

**JAMEY K. HARDY, Licensee**

) OAH Case No.: 1303412

**HISTORY OF THE CASE**

On June 28, 2013, the Teacher Standards and Practices Commission (the Commission or TSPC) issued a Notice of Opportunity for Hearing (Notice) to Licensee Jamey K. Hardy. The Notice proposed denying renewal of Ms. Hardy's teaching license, suspending, or revoking her right to apply for an Oregon teaching license or to impose other discipline under ORS 342.177. On July 3, 2013, the Commission received Ms. Hardy's request for hearing. The Commission referred the case to the Office of Administrative Hearings (OAH) on September 16, 2013. The OAH assigned the case to Senior Administrative Law Judge (ALJ) Monica A. Whitaker.

ALJ Whitaker convened a telephone prehearing conference on October 15, 2013. Senior Assistant Attorney Generals Raul Ramirez and Judith Anderson represented the Commission and attorney Ralph Wiser represented Ms. Hardy. During the prehearing, Mr. Ramirez explained that the Commission sought to impose a one-year suspension on Ms. Hardy's license.

A hearing convened in Tualatin, Oregon, on January 9, 2014. Mr. Ramirez represented the Commission and Mr. Wiser represented Ms. Hardy. Ms. Hardy, Miranda Webb, Kari Colvard, Brandy Beatty, Kari Whitacre, Pamela Busey, and Betty Palmer testified during the hearing. The record remained open to receive written closing arguments. Ms. Hardy filed her written closing argument on January 20, 2014. The Commission filed its written closing argument on February 6, 2014. The record closed on that date and ALJ Whitaker took the matter under advisement.

**ISSUES<sup>1</sup>**

1. Whether Ms. Hardy failed to report an incident of possible child abuse to school administration, law enforcement, or the Department of Human Services, thereby engaging in gross neglect of duty. ORS 419B.010(1) and (2), OAR 584-020-0025(2)(e) and OAR 584-020-0040(4)(s).

2. Whether Ms. Hardy shared negative and derogatory details of a student's personality and behaviors to a non-school employee, thereby engaging in gross neglect of duty. OAR 584-020-0010(1) and OAR 584-020-0035(1)(a).

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<sup>1</sup> The Notice also included a third allegation that the TSPC withdrew during the hearing.

3. If one or both of the above violations is proven, whether the Commission may suspend Ms. Hardy's license for one year? ORS 342.175(1)(b).

### EVIDENTIARY RULING

Exhibits A1 through A5, and Exhibit A7, offered by the Commission, were admitted into the record without objection. Exhibit A6 was admitted into the record over Mr. Wiser's objection. Exhibits R1, R2, R5, R6, R8 through R12, as well as R17 and R18, offered by Ms. Hardy, were admitted into the record without objection. Exhibits R3, R4, R7, and R13 through R16 were admitted into the record over the Commission's objections.

### FINDINGS OF FACT

1. Ms. Hardy has been licensed by the Commission since January 19, 2005. (Notice at 1.) She started working as a substitute teacher for the Baker County School District in 2004 and was hired as a full time certified teacher at Brooklyn Primary School<sup>2</sup> in 2006. During the 2009-2010 school year, Ms. Hardy started working at South Baker Intermediate School.<sup>3</sup> On or about November 5, 2011, Ms. Hardy also started working as a cashier at Maverick, Inc., a gas station and convenience store. (Test. of Hardy.)

2. In or about February 2012, Ms. Hardy's fourth grade students submitted District Writing Samples. The students were instructed to "tell a true story about a time or an event that you like to remember or tell a true story about a time when you helped someone or someone helped you." (Ex. A1 at 1.) Ms. Hardy read and graded each of the writing samples. (Test. of Hardy.) One student, CB, submitted a writing sample titled "The time I helped my Aunt & uncle." (*Id.* at 1 through 3.) CB's writing sample read, in part:

Well this is how it all started. I was spending [*sic*] the night at my aunt's house and my uncle was out having a few drinks with some friends. When my uncle got home it was about 1:00 in the morning and he was in a black out[.] If you don't know what that is it is where you have had way to[o] much drinks and you don't know what you[']r[e] doing.

And then my uncle came barging in the house and started punching the walls right above where my cousin and I were sleeping. My little cousins were freaking out and so was my brother! My aunt woke up, but she didn't know what was going on. My uncle found a gun and held my aunt down. That[']s when she really started freaking out. She was screaming for me to help her, but I already was calling for her. My brother \* \* \* scared he wouldn't let go of me.

I was holding the baby my lit[t]lest cousin, and I had to give her to my brother. \* \* \*. I screamed and screamed \* \* \* he wouldn't let go I didn't know what else to do so I started hitting him. Finally he put the gun down. We weren[']t

<sup>2</sup> Brooklyn Primary School was previously named Brooklyn Elementary School. (Test. of Hardy.)

<sup>3</sup> South Baker Intermediate School was previously named South Baker Elementary School. (Test. of Hardy.)

hurt but we were a little bit scared. But the night before this happened he said to me he would never ever hurt me in his [w]hole entire life. And I believed him.

(*Id.* at 2 through 3.)

3. After reading CB's writing sample, Ms. Hardy had concerns that CB had been exposed to a potentially violent situation. Ms. Hardy spoke to CB about what CB had written to seek from CB to be sure she had the entire story. CB informed Ms. Hardy that the police had been involved in the situation involving her uncle and that her uncle had been arrested. Ms. Hardy assumed CB had been the one to call the police and concluded that CB had been exposed to an unfortunate situation involving violence. Ms. Hardy did not report the contents of CB's story or the incident to the school's administration, the police, or the Department of Human Services because of CB's representation that the police had been involved in the situation and arrested CB's uncle. (Test. of Hardy.)

4. In April 2012, one of Ms. Hardy's students, BB, and his mother were in the Maverick convenience store. After BB and his mother left, Ms. Hardy told the other cashier with whom she was working, Miranda Webb, that BB was a trouble maker, that BB would frequently get in trouble, that BB was spoiled and that is why he got away with everything, and that BB's mother knew of these issues and did nothing about them. (Test. of Hardy and Webb.) Thereafter, Ms. Webb informed BB's mother of the comments Ms. Hardy had made. BB's mother and father were upset by Ms. Hardy's comments and informed the school principal about the comments Ms. Hardy had made. (Test. of Webb and Colvard.)

### CONCLUSIONS OF LAW

1. Ms. Hardy failed to report an incident of possible child abuse to school administration, law enforcement, or the Department of Human Services, thereby engaging in gross neglect of duty.

2. Ms. Hardy shared negative and derogatory details of a student's personality and behaviors to a non-school employee, thereby engaging in gross neglect of duty.

3. The Commission may suspend Ms. Hardy's license for one year.

### OPINION

The Commission alleges that Ms. Hardy failed to report an incident of possible child abuse to school administration, law enforcement, or the Department of Human Services, and that she shared negative and derogatory details of a student's personality and behaviors to a non-school employee. The Commission alleges that this behavior amounted to gross neglect of duty. The Commission bears the burden of proving its allegations by a preponderance of the evidence. ORS 183.450(2) and (5); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard of

proof in administrative hearings is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

*1. Failure to report possible child abuse*

In or about February 2012, Ms. Hardy received a writing sample from one of her students, CB. CB's story was based on a true event and was titled "The time I helped my Aunt & uncle." CB's story depicted a situation where her uncle was drunk, became violent, punched a hole in the wall, and held CB's aunt down with a gun. The stories revealed that there were other children besides CB present during the incident, that CB was "freaking out," screaming, and began hitting her uncle to make him put the gun down. After reading CB's writing sample, Ms. Hardy spoke to CB, who informed Ms. Hardy that the police had been involved and her uncle had been arrested. Ms. Hardy concluded that the situation was resolved and did not report the incident to the school's administration, the police, or the Department of Human Services. The Commission alleges that Ms. Hardy's failure to report the incident resulted in gross neglect of duty.

OAR 584-020-0040 provides, in part:

(4) Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following may be admissible as evidence of gross neglect of duty. Consideration may include but is not limited to:

\* \* \* \* \*

(s) Failing to report child abuse pursuant to ORS 419B.010.

OAR 584-020-0025 provides, in part:

(2) The competent teacher demonstrates skills in:

\* \* \* \* \*

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

ORS 419B.010 provides, in part:

(1) Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse<sup>4</sup> or

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<sup>4</sup> ORS 419B.005 defines abuse as"

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which

that any person with whom the official comes in contact has abused a child shall immediately report or cause a report to be made in the manner required in ORS 419B.015. \* \* \*.

(2) Notwithstanding subsection (1) of this section, a report need not be made under this section if the public or private official acquires information relating to abuse by reason of a report made under this section, or by reason of a proceeding arising out of a report made under this section, and the public or private official reasonably believes that the information is already known by a law enforcement agency or the Department of Human Services.

At the hearing, Ms. Hardy testified that CB was a good, conscientious, and reliable student, and that she had no reason to doubt CB's representation that the police had been called regarding the incident with the uncle. Ms. Hardy also testified that the situation described in CB's story is one a child should not have to endure, and that it was an unfortunate situation in which a child was exposed to violence.

CB's mother testified during the hearing in an offer of proof. She testified that the police responded to the call and interviewed, among others, CB, that CB's uncle was arrested, became clean and sober, and apologized to CB and the family for his conduct that night. She also testified that prior to CB's submission of the story, CB asked if it would be okay to write about the events of that night. The issue in this case is not what actually occurred at CB's aunt and uncle's house that night, but rather whether Ms. Hardy had a duty to report possible abuse. Whether CB's uncle became clean and sober after the incident and later apologized for his conduct, and whether CB and her mother had discussed the submission of the story, are irrelevant to determining whether Ms. Hardy should have reported the incident. Therefore, CB's mother's testimony has little weight in my determination regarding Ms. Hardy's duty to report the incident to the appropriate authority.

CB told Ms. Hardy that the police were called and her uncle was arrested after the incident. Ms. Hardy knew no other information related to the incident other than what CB reported. Ms. Hardy did not know whether the police had actually investigated a claim of abuse, on what charge the uncle had been arrested, or whether the police had really been involved in the situation. After reading the story and speaking to CB, I am persuaded that Ms. Hardy had reasonable cause to believe that CB had suffered abuse, as that term is defined in ORS 419B.005.

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appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

\* \* \* \* \*

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

\* \* \* \* \*

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

ORS 419B.010(2) is inapplicable in this case, as Ms. Hardy did not learn of the abuse through a report or a proceeding arising out of a report, but rather she learned of it from CB herself.

At a minimum, Ms. Hardy should have reported the incident to the school administration, which could have helped her determine whether the incident needed to be reported to a law enforcement agency or the Department of Human Services. In failing to report the incident, Ms. Hardy failed to use professional judgment and engaged in gross neglect of duty. See OAR 584-020-0010(5), 584-020-0025(2)(e), and 584-020-0040(4)(s).<sup>5</sup>

*2. Sharing negative and derogatory details of a student's personality and behaviors to a non-school employee*

In April 2012, Ms. Hardy made comments about a student, BB, to a non-school district employee. Ms. Hardy said that BB was a trouble maker, that BB frequently got in trouble, that BB was spoiled and that is why he got away with everything, and that BB's mother knew of these issues and did nothing about them. The Commission alleges that this behavior resulted in gross neglect of duty.

OAR 584-020-0010, titled "The Competent Educator," provides, in part:

The educator demonstrates a commitment to:

- (1) Recognize the worth and dignity of all persons and respect for each individual.

OAR 584-020-0035, titled "The Ethical Educator," provides, in part:

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<sup>5</sup> I disagree with counsel for Ms. Hardy that *Talbott v. Teacher Standards & Practices Commission*, 260 Or App 355 (2013), requires a different conclusion. Counsel contends that "Ms. Hardy did not believe that CB's writing sample set forth a situation in which CB had suffered child abuse. In addition, Ms. Hardy understood that the matter at issue had already been dealt with by the police." Hardy Closing Argument at 3 through 4. I disagree. In *Talbott*, one allegation raised by TSPC was that Respondent knowingly falsified or made knowing misrepresentations on his employment application. The Court of Appeals concluded that the evidence in the record did not support a finding that Respondent knowingly provided incorrect answers to the two background questions because two of the witnesses were unable to coherently explain what Respondent had admitted to doing, that each seem confused about the order and timing of the two applications that Respondent filled out, and their testimony, even if it was credible despite the lack of clear recollection that it reflected, did not establish that Respondent admitted to changing his answers on the pre-employment background form.

Here, Ms. Hardy needed to exercise professional judgment in determining whether she had a duty to report an incident of possible abuse. When she decided not to report the incident, she did not have enough information to make an informed decision that abuse had not occurred or that the police had been involved and handled the situation. At best, she made an assumption that the police had been involved and investigated possible abuse, and reached this by relying on the information provided to her by CB, a fourth grade student.

The ethical educator is a person who accepts the requirements of membership in the teaching profession and acts at all times in ethical ways. In so doing the ethical educator considers the needs of the students, the district, and the profession.

(1) The ethical educator, in fulfilling obligations to the student, will:

(a) Keep the confidence entrusted in the profession as it relates to confidential information concerning a student and the student's family.

Ms. Hardy failed to demonstrate a commitment to recognizing BB's worth and dignity, acted disrespectfully towards BB, and failed to keep the confidence entrusted to her as BB's teacher regarding BB's challenges when she chose to speak poorly about BB to Ms. Webb. In light of this, I agree with the Commission that Ms. Hardy engaged in a gross neglect of duty when she made derogatory comments about BB's personality and behaviors to a non-school district employee.

### *3. Sanction*

ORS 342.175 provides, in part:

(1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator or suspend or revoke the right of any person to apply for a license or registration if the licensee, registrant or applicant has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176 based on the following:

\* \* \* \* \*

(b) Gross neglect of duty[.]

As previously discussed, Ms. Hardy engaged in gross neglect of duty, and pursuant to ORS 342.175(1)(b), the Commission may discipline Ms. Hardy for this behavior. Therefore, the Commission may suspend Ms. Hardy's license for a period of one year.

### **ORDER**

I propose the Teacher Standards and Practices Commission issue the following order:  
Jamey K. Hardy's teaching license is hereby suspended for a period of one year.

**Monica A. Whitaker**

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Senior Administrative Law Judge  
Office of Administrative Hearings



## EXCEPTIONS

The proposed order is the Administrative Law Judge's recommendation to the Teacher Standards and Practices Commission. If you disagree with any part of this proposed order, you may file written objections, called "exceptions," to the proposed order and present written argument in support of your exceptions. Written argument and exceptions must be filed **within fourteen (14) days after mailing of the proposed order** with the:

Teacher Standards and Practices Commission  
250 Division Street NE  
Salem, OR 97301

The Commission need not allow oral argument. The Executive Director may permit oral argument in those cases in which the Director believes oral argument may be appropriate or helpful to the Commissioners in making a final determination. If oral argument is allowed, the Commission will inform you of the time and place for presenting oral argument.