

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

IN THE MATTER OF:) **FINAL ORDER**
)
JAIME MADRIGAL,) OAH Case No. 2020-ABC-03871
Licensee) Agency Case No. 2017-11-0006

This matter came before the Teacher Standards and Practices Commission (Commission) during their meeting of November 5, 2021, to consider the Proposed Order issued by Senior Administrative Law Judge (ALJ) Dove L. Gutman on June 30, 2021. Licensee did not file exceptions to the Proposed Order. The Commission issued an Amended Proposed Order on November 12, 2021. Licensee, through counsel, filed exceptions to the Amended Proposed Order on November 24, 2021. The Commission considered the Amended Proposed Order along with Licensee’s exceptions at its meeting of February 4, 2022. After considering the records and file herein, the Commission adopts the Amended Proposed Order as the Final Order as discussed below.

EXCEPTIONS TO AMENDED PROPOSED ORDER

Licensee filed exceptions to the Amended Proposed Order. The Commission responds to the exceptions as follows:

Exception 1

Licensee contends that TSPC is precluded from issuing an amended proposed order under 137-003-0655(7) because it did not issue it within 90 days of issuance of the proposed order. There is no authority for Licensee’s proposition. Licensee’s exception is not persuasive.

Exception 2

Licensee indicates that his license status should be updated because he indicates that he does not currently hold a teaching license. The Commission is not considering Licensee’s statements about his current license status to the extent that information is not already in the record. In any event, the finding of fact that Licensee takes exception to includes the expiration date of his license, and that finding is correct. Finally, the addition of his current license status would not affect the outcome of the case. Licensee’s exception is not persuasive.

Exceptions 3 and 4

Licensee’s exceptions 3 and 4 represent a disagreement with how the ALJ viewed certain testimony. Licensee did not identify clear and convincing evidence why the findings of historical fact he takes exception to are wrong. The exceptions are not well taken.

Exception 5 and 6

Licensee takes exception to the Commission’s modification to the ALJ’s conclusions of law.

These exceptions reflect a disagreement with how Licensee viewed the evidence and the conclusions drawn from the evidence. The Commission adequately explained in the Amended Proposed Order the modifications to the ALJ's proposed order. These exceptions are not well taken.

Exception 7

Licensee takes exception to the Commission including a statement from the ALJ's proposed order in the Amended Proposed Order that is contrary to the Commission's reasoning. The inclusion of the statement "I agree with Licensee" in the Amended Proposed Order represents a scrivener's error and has been removed from this Final Order.

Exceptions 8 and 9

Licensee takes exception to the Commission's modification of portions of the ALJ's opinion, indicating that the Commission did not identify clear and convincing evidence to indicate why the ALJ's conclusions were wrong. In doing so, Licensee interprets these modifications as changes to findings of historical fact. The ALJ's opinion regarding what she believed the Commission did not establish are not findings of historical fact. The Commission otherwise identified and explained the changes it made to the ALJ's opinion. To the extent these modifications could be considered changes to findings of historical fact, the Commission finds clear and convincing evidence in the record that the ALJ's findings of historical fact in exceptions 8 and 9 are wrong. The Commission's discussion of those modifications included in the Amended Proposed Order are unchanged, and they identify the evidence in the record the Commission relied on in making the modifications. Licensee's exceptions are not well-taken.

HISTORY OF THE CASE

On August 28, 2019, the Commission issued a Notice of Opportunity for Hearing (Notice) to Jaime Madrigal (Licensee), proposing to impose a public reprimand and place Licensee on probation for two years for engaging in gross neglect of duty. On September 16, 2019, Licensee requested a hearing.

On July 2, 2020, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned ALJ Dove L. Gutman to preside at hearing.

On August 4, 2020, ALJ Gutman held a prehearing telephone conference. Licensee represented himself. Senior Assistant Attorney General Raul Ramirez represented the Commission. During the telephone conference, ALJ Gutman addressed the issues for hearing, the burden of proof, and the parties' witness lists and the proposed exhibits for hearing. On motion of the Commission, ALJ Gutman corrected the Notice on page two, paragraph five by interlineation with no objection from Licensee.¹ With the parties' input, ALJ Gutman scheduled the hearing for January 12, 2021, at the OAH in Salem, Oregon.

On November 20, 2020, Presiding ALJ Monica Whitaker notified the parties that due to

¹ ALJ Gutman corrected the first sentence in paragraph five to read: The conduct described in sections three (3) and four (4) above constitutes gross neglect of duty ***. (See, Notice, corrected by interlineation, at 2.)

the COVID-19 pandemic, the OAH had suspended in-person hearings until further notice. Presiding ALJ Whitaker proposed converting the hearing scheduled for January 12, 2021, to a video conference hearing via Skype for Business.

On November 25, 2020, the Commission notified Presiding ALJ Whitaker that it had no objection to a video conference hearing. On November 30, 2020, Licensee notified Presiding ALJ Whitaker that he did not have access to reliable internet and, therefore, objected to a video conference hearing. Licensee proposed rescheduling the hearing until it could be held in-person or until sometime after January 19, 2021, when he had better internet access.

On December 15, 2020, ALJ Gutman held a prehearing telephone conference to address Licensee's request to postpone the hearing. Licensee represented himself. Mr. Ramirez represented the Commission. ALJ Gutman granted Licensee's postponement request as a one-time allowance. With the parties' input, ALJ Gutman rescheduled the in-person hearing for April 20, 2021. The parties agreed that if the hearing could not take place in-person on April 20, 2021, it would take place by video conference. ALJ Gutman, as agreed to by the parties, set the deadline for the submission of witness lists and proposed exhibits for hearing to April 6, 2021.

On March 1, 2021, ALJ Gutman notified the parties that due to the COVID-19 pandemic, the in-person hearing scheduled for April 20, 2021, would take place by video conference via Skype for Business.

On April 15, 2021, Licensee filed a request for a subpoena duces tecum. On April 16, 2021, ALJ Gutman denied Licensee's request, finding that pursuant to OAR 137-003-0585(1)(b), Licensee had failed to make a showing of general relevance and reasonable scope of the evidence sought.

On April 16, 2021, Licensee filed an untimely witness list and a second request for a subpoena duces tecum. On April 18, 2021, Licensee filed an untimely amended witness list. On April 19, 2021, the Commission filed its objection to Licensee's second request for a subpoena duces tecum. On April 19, 2021, ALJ Gutman denied Licensee's second request for a subpoena duces tecum, finding that pursuant to OAR 137-003-0585(1)(b), Licensee had failed to make a showing of general relevance and reasonable scope of the evidence sought.

On April 19, 2021, Licensee filed a request to postpone the hearing. On April 19, 2021, the Commission filed its objection to Licensee's request to postpone the hearing. On April 19, 2021, ALJ Gutman denied Licensee's request to postpone the hearing.

On April 20, 2021, ALJ Gutman convened a video conference hearing via Skype for Business. Licensee represented himself. Mr. Ramirez represented the Commission. Licensee requested that witnesses be excluded during the hearing. The Commission had no objection to the request. ALJ Gutman granted Licensee's request to exclude witnesses. The Commission objected to Licensee's untimely list of witnesses, asserting that it had prepared its case based on not receiving a witness list from Licensee on the scheduled submission date of April 6, 2021. Licensee admitted that his witness list was untimely but requested that his witnesses be allowed to testify to provide a full and fair record. ALJ Gutman sustained the Commission's objection

and denied Licensee's request, finding that Licensee's witness list was untimely provided, and its late submission was unduly prejudicial to the Commission. The following individuals provided testimony on behalf of the Commission: Debra Tesch, Officer Manager at Umatilla High School; Robert Lorence, Principal of Umatilla High School; Mary Buckallew, teacher at Umatilla High School; Scott Bow, Athletic Director and teacher at Umatilla High School; and Heidi Sipe, Superintendent of Umatilla School District. Licensee testified on his own behalf. The record closed on April 20, 2021.

ISSUES

1. Whether, on or about October 27, 2017, Licensee engaged in gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1) and (5), OAR 584-020-0025(2)(e), and OAR 584-020-0030(2)(b).

2. Whether, if the violations are proven, Licensee should receive a public reprimand and be placed on probation for two years. ORS 342.175(1)(b), ORS 342.177(3).

EVIDENTIARY RULINGS

The Commission's Exhibits A1 through A4, A6, A8 through A12, A14, and A16 were admitted into the record without objection. Licensee objected to Exhibits A5 and A15 on the basis that they were irrelevant. The objections were overruled and Exhibits A5 and A15 were admitted into evidence. Licensee objected to Exhibits A7 and A13 on the basis that they were hearsay and lacking in authentication. Following witness testimony that authenticated Exhibits A7 and A13, Licensee's objections were overruled and Exhibits A7 and A13 were admitted into evidence. Licensee's Exhibits R1 and R2 were excluded as untimely, not relevant, and lacking in authentication. At Licensee's request, Exhibits R1 and R2 were received as an offer of proof.

MOTION TO POSTPONE

On April 20, 2021, following the evidentiary rulings, Licensee renewed his motion to postpone the hearing asserting that he needed additional time to obtain legal representation. The Commission objected to Licensee's motion as untimely. ALJ Gutman denied Licensee's motion to postpone.

FINDINGS OF FACT

Background information

1. Licensee is a licensed educator in Oregon. Licensee received his license, license number 10494459, from the Commission on August 29, 2017. Licensee currently holds a Restricted Substitute Teaching License with an endorsement in Substitute Any Specialty Preprimary through Grade 12, effective July 1, 2018 through June 30, 2021. (Ex. A1.)

2. On September 6, 2017, Licensee signed a Job Description for the position of Teacher with Umatilla School District (USD). (Test. of Sipes; Ex. A2 at 3.) On that same date, Licensee signed an Acknowledgement of Handbook and Job Description, affirming that: he had received

the USD handbook and he agreed to abide by the procedures, expectations and policies set forth therein; he understood that he was accountable for all USD School Board Policies; and he understood that failure to abide by the expectations set forth in the handbook and Board Policy could result in discipline up to, and including, dismissal. (*Id.* at 5.)

3. Sometime between September 6, 2017, and September 29, 2017, Heidi Sipes, Superintendent of USD, hired Licensee as a substitute teacher for the 2017 to 2018 school year.² (Test. of Sipes, Lorence.)

4. On September 29, 2017, Licensee began employment with USD, working as a substitute teacher at Umatilla High School.³ (Test. of Lorence; *see Ex. A7* at 1.) As a substitute teacher, Licensee was subject to the USD’s policies, procedures, and expectations, as well as the professional licensing requirements of the Commission.⁴ (Test. of Sipes.)

USD staff handbook

5. The USD staff handbook provided an overview of the district’s policies, procedures and expectations,⁵ and stated, in pertinent part:

Admission to District Extracurricular Activities

Complimentary admission is provided to all staff for extracurricular activities (excluding OSAA sponsored events such as play-offs). It is expected that all staff attending events assist in supervision of students and general crowd control as needed. Staff attending extracurricular activities without payment of admission fees are expected to abide by all code of conduct expectations.

* * * * *

Board Policies

All Board policies are available on the District website under “Board Policies.” The policies are searchable and printable. Please remember, it is the employee’s responsibility to remain current on, and abide by, all Board policies.

² The exact date of hire is unclear from the record. (Hearing record.)

³ The exact date that Licensee was placed on the substitute teacher list is unclear from the record. (Hearing record.)

⁴ Although Ms. Sipe affirmed that she was familiar with the professional standards and expectations of licensed teachers in Oregon, she did not testify as to what the relevant standards of professional competency under OAR 584-020-0010(1) and (5), and OAR 584-020-0030(2)(b) reasonably demanded. (Hearing record.)

⁵ The handbook references some of the district’s policies. All of the district’s policies are available on the web. (Test. of Sipe.)

* * * * *

Communication

Professional communication is key to a successful work environment. The Professional Communication rubric (available in the shared google drive to all employees) sets forth the expectations for professional communication within the district.

* * * * *

Harassment – Refer to District Policies GBN, GBN-AR, GBNA, GBNA-AR, JBA, JBA-AR

Harassment (staff to staff, staff to student, student to student, and student to staff) is strictly prohibited on district property including non-district property while a staff member is at any district-sponsored, district approved or district related activity or function, such as field trips or athletic events, in which students are under the control of the district or where the staff member is engaged in district business.

Harassment includes, but is not limited to, racial, religious, national origin, age, parental or marital status, disability and sexual harassment.

* * * * *

Other types of harassment may include, but not be limited to, jokes, stories, pictures, or objects that are offensive, tend to alarm, annoy, abuse or demean certain protected individuals and groups.

A staff member whose behavior is found to be in violation of District policy may be subject to discipline up to and including dismissal. A student whose behavior is found to be in violation of District policy may be subject to discipline up to and including expulsion.

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Staff Conduct

All staff are expected to conduct themselves in a manner that conforms with District policy and administrative regulations.

Additionally, all licensed staff are expected to adhere to the

Standards for Competent and Ethical Performance of Oregon Educators as specified in Oregon Administrative Rules (<http://www.tspc.state.or.us>).⁶

The Ethical Educator

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.

* * * * *

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

1. Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty;

(Ex. A3 at 4, 5, 7, 8, 19-20, 32-33; emphasis in original, underline added.) The staff handbook also set forth the district's expectations regarding professional communication and conduct, including standard performance conduct and non-standard performance conduct. The handbook identified non-standard performance conduct to include the following behaviors: resistant, oppositional, sabotaging, chauvinistic, sarcastic, dishonest, minimizing/distorting information, silent treatment, us versus them, and operating from a negative agenda. (Ex. A3 at 50.)

Behavior of Licensee

6. On September 22, 2017, Mary Buckallew, a teacher at Umatilla High School, was working security⁷ at a soccer game involving Umatilla High School. During the game, Ms. Buckallew observed a group of people, which included Licensee,⁸ yelling at the soccer players. The group was yelling mostly in Spanish. Ms. Buckallew does not understand Spanish. Ms. Buckallew moved her chair closer to the group of people and told them to "say positive things."⁹

⁶ Ms. Sipe did not affirm that the district's standards and expectations were the same as the professional standards and expectations for licensed teachers in Oregon. (Hearing record.)

⁷ USD hires some of its staff members to perform security at sporting events. The staff members have various duties at the events, including admitting spectators, collecting admission fees, scoring the clock, monitoring people in the stands, maintaining visibility, and placing staff in certain areas to prevent problems from occurring. (Test. of Bow.)

⁸ The record does not establish whether or not Licensee paid the admission fees to attend the soccer game. (Hearing record.)

⁹ Ms. Buckallew does not remember having any interaction with Licensee following her statement to the group. (Test. of Buckallew.)

(Test. of Buckallew.) Ms. Buckallew spoke with some of the players after the game. The players told Ms. Buckallew that Licensee had been teasing them, saying negative things and putting them down.¹⁰ (*Id.*; Ex. A7 at 1.) Ms. Buckallew subsequently notified Scott Bow, a teacher and the athletic director at Umatilla High School, that Licensee had been making comments in Spanish during the game that were upsetting to the players. (Test. of Buckallew.)

7. On September 29, 2017, Mr. Bow spoke with Licensee in the office of Umatilla High School before school started. Mr. Bow knew Licensee from when he had been a student in the district. Mr. Bow asked Licensee how he was doing, and Licensee said that he was subbing in the district. Mr. Bow asked Licensee about the comments he had made during the soccer game the previous week. Licensee responded by asserting how poorly the team played and that they did not know what they were doing. Mr. Bow told Licensee that as a substitute teacher in the district, he was held to a higher standard and needed to be positive and encourage the students. Mr. Bow warned Licensee that if he received another complaint about Licensee, he would have Licensee removed from the events. (Test. of Bow; Ex. A7 at 1.) Robert Lawrence, the principal of Umatilla High School, was in the office and overheard the conversation between Mr. Bow and Licensee. Mr. Lawrence knew Licensee from when he had been a student in the district. Mr. Lawrence reinforced Mr. Bow's warning to Licensee by telling Licensee that as a "substitute teacher," he was held to a higher standard. (Test. of Lawrence; Ex. A7 at 1.)

8. On October 27, 2017, Debra Tesch, the office manager at Umatilla High School, was working security at a soccer game at Umatilla High School. Ms. Tesch knew Licensee from when he had been a student in the district. Ms. Tesch was not wearing clothing that identified her as security. Ms. Tesch had worked security at school events in the past, which Licensee knew. (Test. of Tesch; Ex. A7 at 1.) During the game, the assistant soccer coaches approached Ms. Tesch and requested that she ask Licensee,¹¹ who was with a group of people in the bleachers, to leave because he was yelling inappropriate things to the team and the coaches.¹² Licensee was yelling in Spanish. Ms. Tesch does not understand Spanish. Ms. Tesch walked over to the bleachers and asked Licensee to come down so she could speak with him. Ms. Tesch observed that there were students and members of the public in the vicinity of Licensee. Licensee stepped down from the bleachers. Ms. Tesch told Licensee that he needed to stop yelling inappropriate things at the team and the coaches, and that the assistant coaches wanted him to leave. Licensee threw his hands up and told Ms. Tesch that he was not leaving and that the coaches did not know how to coach. Licensee returned to the bleachers and continued to yell at the coaches in Spanish. Ms. Tesch then told Licensee that he needed to leave. Licensee refused and told Ms. Tesch that he was not leaving. (Test. of Tesch; Ex. A7 at 1.) Ms. Tesch then called Mr. Bow, who was not at the game, and reported what had happened with Licensee. Mr. Bow told Ms. Tesch to call Ms. Sipe and the police. Ms. Tesch called Ms. Sipe, who said that she would call the police and come to the game. (Test. of Tesch; Ex. A7 at 1.) Ms. Sipe

¹⁰ Ms. Buckallew does not know what Licensee said to the players. (Test. of Buckallew; hearing record.)

¹¹ The record does not establish whether or not Licensee paid the admission fees to attend the soccer game. (Hearing record.)

¹² Ms. Tesch does not know what Licensee yelled at the players and coaches. (Test. of Tesch; hearing record.)

immediately called the police and reported that Licensee was being verbally belligerent at the high school soccer game, and he had been asked to leave and was refusing to leave. Within a few minutes, two police officers arrived on scene at the game. (Test. of Sipe; Ex. A4 at 1.) One of the officers stood at the bottom of the bleachers and asked Licensee to come down and leave the game. Licensee refused to comply with the officer's request. Licensee told the officer that he had a right to be there and that the officer should leave. Licensee also told the officer that he needed to tell him why he had to leave. The officer gave Licensee several reasons why he should leave. Licensee then told the officer that the reasons were not good enough and he needed to try harder. Ms. Tesch observed that the officer was courteous to Licensee, and that Licensee was disrespectful and belligerent to the officer. (Test. of Tesch, Sipe; Ex. A13 at 2.) Shortly thereafter, Ms. Sipe arrived at the soccer game and observed Licensee standing in the bleachers and yelling down at police. Licensee was red in the face and acting aggressive, repeatedly telling police to "Make me come down." (Test. of Sipe.) Licensee was making statements about how Umatilla was a horrible school and its staff were awful. Licensee was also blaming one of the coaches for singling him out. Ms. Sipe observed that there were several people in the vicinity of Licensee. Ms. Sipe stood at the fence near the bleachers and asked Licensee to come down from the bleachers and to calm down. Licensee refused. (Test. of Sipe; Ex. A11 at 2.) The two officers then repeatedly asked Licensee to come down from the bleachers and to calm down. Licensee refused, stating that he had not done anything wrong and they could not make him leave. (Test. of Sipe.) After the officers told Licensee that they were going to come up and bring him down, Licensee came down from the bleachers. (Test. of Tesch.) Ms. Sipe attempted to talk to Licensee at the fence. Licensee then proceeded to yell profanities and accusations at Ms. Sipe, including accusations about other personnel. Licensee told Ms. Sipe, "This is fucking bullshit." (Test. of Sipe.) Ms. Sipe told Licensee, "You are a teacher now, you cannot behave this way." (*Id.*) Licensee responded, "I don't care what the fuck I am." (*Id.*) Ms. Sipe observed that Licensee was very angry. Ms. Sipe told Licensee that he needed to calm down. (*Id.*) Licensee told Ms. Sipe that the coach "over there" drinks with the players, that another coach is a "coke head," and that she "hires the wrong people." (Ex. A13 at 3.) As the officers escorted Licensee from the soccer field, Licensee slow-clapped his hands and sarcastically told Ms. Sipe to, "Keep doing a great job and hiring people like Josh Pickens. Great job." (*Id.* at 4; test. of Sipe.) Licensee also told Ms. Sipe that the "school district is garbage and is a mess." (*Id.*) One of the officers asked Ms. Sipe if she wanted to trespass Licensee from school property, and Ms. Sipe answered in the affirmative. Ms. Sipe filled out paperwork, trespassing Licensee from district property for one year. (*Id.*; Ex. A4 at 1.) Ms. Sipe found Licensee's conduct at the soccer game to be aggressive, scary, and unacceptable. (Test. of Sipe; Ex. A11 at 3.)

Appeal of the trespass notice

9. On or about October 31, 2017, Licensee filed an appeal of the trespass notice. (Exs. A8 at 1, A10 at 1-2.) In the appeal, Licensee stated, among other things, that "I was told to go for the simple fact that the coaches do not like me. Not once did I do anything that would warrant such action, so I declined to leave as I was unwilling to leave without justification." (Ex. A10 at 1.) Licensee also stated, "In hindsight, I recognize that I could have kept my cool and walked out without showing my frustration but I strongly hold true to the position I took and would not do much different if encountering a similar situation. I get that for power hungry individuals it is

imperative that they show their authority but tell me who sets a better example for the kids we are trying to educate, the individual who says you must do something because they said so and with no justification or the individual who stood his ground for something they believed in and simply asked for a justification for getting ousted. I kept my cool for most of the way but I will admit at the end I let my emotions get to me, one can only take so much oppression and disappointment before breaking, but tell me was that really grounds for issuing a trespass notice.” (*Id.* at 2.)

10. On or about October 31, 2017, Ms. Sipe obtained statements from Ms. Tesch, Ms. Buckallew, Mr. Bow, and Mr. Lorence regarding their interactions with Licensee.¹³ (Test. of Lorence, Sipe; Ex. A7 at 1.)

11. On November 8, 2017, Ms. Sipe notified Licensee by letter that his request for reconsideration of the trespass notice was denied. (Ex. A11 at 2-3; test. of Sipe.) In the letter, Ms. Sipe detailed the inappropriate and unprofessional conduct that Licensee displayed at the high school soccer game on October 27, 2017, which included yelling profanities; making accusations against staff; being disrespectful, angry, and aggressive; losing control; and refusing to comply with requests from staff and police. (Ex. A11 at 2-3.) Ms. Sipe also stated, in part:

I cannot see where the request to leave was handled appropriately by you at any point in the interactions with staff, police or myself. You would have had the opportunity to respectfully question the situation had you simply walked away with Mrs. Tesch, engaged in respectful conversation and then asked to phone in another staff member for another perspective.

* * * * *

I agree, you should have kept your cool and walked out so you could have sought a positive resolution to the situation. What type of educator do I want for Umatilla students? I want educators who seek right and express themselves, but I want educators who do so appropriately. Swearing at a school secretary voluntarily giving up her free time to help at a soccer game is not showing a positive model for students. Refusing to comply with simple requests by police is not modeling appropriate conduct for students. Yelling profanities and making accusations regarding a variety of school staff to the superintendent in front of students * * * is not setting an example for students. Your conduct was absolutely out of control and unacceptable.

You were not trespassed only for teasing students. You were trespassed for escalating a simple situation that likely could have

¹³ Ms. Sipe did not obtain statements from the soccer players that were at the game on October 27, 2017. (Hearing record.) Mr. Lorence and Mr. Bow did not interview the soccer players that were at the game on October 27, 2017. (Test. of Lorence, Bow.)

been resolved with a calm and respectful conversation. I hope you will learn from this situation and move forward more maturely and appropriately in the future. I was initially thrilled to have you as a substitute in our district because I appreciated having a successful alumni come back and model success for our students. I am disappointed to see you instead model inappropriate conduct and a lack of professionalism for students.

I am not willing to revoke your trespass at this time and I believe your conduct has shown that you are quick to anger, lose control when you are angry and should not be a role model for Umatilla students as a substitute, nor guest on our premises, until you get a better hold of your temper. If you wish to appeal my decision, you may have your case heard before the Umatilla School Board at the November 16th Board meeting.

(Id. at 3.)

12. On November 15, 2017, Licensee emailed Ms. Sipe and requested that his case be heard by the Board. (Ex. A12 at 1.)

Board meeting

13. On November 16, 2017, Licensee gave an oral statement to the Board regarding his conduct at the soccer game on October 27, 2017. (Test. of Sipe; *see* Ex. A13.) Licensee told the Board that he was quiet and watching the game, and there was one play where Umatilla got “nut megged,”¹⁴ and he “did the Ohhh and started laughing.” (*Id.* at 1.) Licensee said that at half-time he saw Pedro¹⁵ go over to Ms. Tesch, and then Ms. Tesch came over and called him down from the bleachers. Licensee said that Ms. Tesch told him, “Don’t know what you said, might have been in Spanish, but coaches said you have to go.” (*Id.*) Licensee said that he got upset and refused to leave. Licensee said that he had not done anything wrong. (*Id.* at 1-2.) Licensee said that Ms. Tesch kept calling people, and that ten minutes passed and then he saw a cop show up. Licensee said that he was not a threat to anyone. Licensee said that he told the cop that he needed to tell him why he had to leave. Licensee said that he also told the cop that he needed to “try harder.” (*Id.* at 2; test. of Sipe.) Licensee said that a second cop came and asked him to come down, and he said “no.” (Ex. A13 at 3.) Licensee told the Board that he only came down from the bleachers because he thought Ms. Sipe would understand. Licensee said that Ms. Sipe told him, “Jaime, you’ve got to go.” (*Id.*) Licensee admitted that he said, “Fuck that, this is bullshit,” and that Ms. Sipe told him, “You shouldn’t act this way, you’re a teacher now.” (*Id.*) Licensee admitted that he said, “I don’t care what the fuck I am.” (*Id.*) Licensee admitted that he told Ms. Sipe that the coach “over there” drinks with the players and that another coach is a “coke head.” (*Id.*) Licensee admitted that he told Ms. Sipe that she hires the wrong people. (*Id.*)

¹⁴ “Nut meg” is when the soccer ball is kicked between a player’s legs. (Test. of Sipe.)

¹⁵ There are two soccer coaches named Pedro. Pedro Senior is the head soccer coach, and Pedro Junior is the assistant soccer coach. (Test. of Sipe.)

Licensee denied that he was “very aggressive” with Ms. Sipe. (*Id.* at 4.) Licensee told the Board that the whole thing was “blown out of proportion by the coaches,” and that he was “super positive to Umatilla athletes.” (*Id.* at 5.) Licensee admitted that he was “disrespectful and did cuss,” but questioned whether that was a reason to prevent him from being on school grounds. (*Id.* at 7.)

14. On November 21, 2017, the Board emailed Licensee, notifying him of the following:

Thank you for coming before the School Board, November 16, 2017. Through your testimony, it is clear this matter began as what could have been a small situation with a quick resolution. The situation escalated quickly due in large part to the manner in which you chose to refuse repeated requests by both school staff and police.

At this time, the Board does not feel you are accepting personal responsibility for the manner in which you handled staff, nor the police, in front of students and we will not lift your trespass.

(Ex. A14 at 1.)

Additional information

15. Ms. Sipe removed Licensee from the substitute teacher list. Licensee is no longer eligible for employment with USD. (Test. of Sipe.)

CONCLUSIONS OF LAW

1. On or about October 27, 2017, Licensee engaged in gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1) and (5), OAR 584-020-0025(2)(e), and OAR 584-020-0030(2)(b).¹⁶

2. Licensee should receive a public reprimand and should be placed on probation for two years.¹⁷

OPINION

The Commission contends that Licensee engaged in gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1) and (5), OAR 584-020-0025(2)(e), and OAR 584-020-0030(2)(b). The Commission also contends that Licensee should receive a public reprimand and be placed on probation for two years for the violation. The Commission bears the burden of proving its allegations by a preponderance of the

¹⁶ This conclusion of law has been modified because the Commission concludes that Licensee engaged in gross neglect of duty in violation of the cited statutes and rules.

¹⁷ This conclusion of law has been modified because the Commission concludes that Licensee should be disciplined for the violations of statutes and rules cited in Conclusion of Law 1.

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). The standard of proof that generally applies in agency proceedings, including license-related proceedings, is the preponderance standard. *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018). 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. Whether Licensee engaged in gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1) and (5), OAR 584-020-0025(2)(e), and OAR 584-020-0030(2)(b).

ORS 342.175 is titled “Grounds for discipline; reinstatement” and 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 * * * based on the following:

* * * * *

(b) Gross neglect of duty[.]

* * * * *

(6) 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[.]

OAR 584-020-0040 is titled “Grounds for Disciplinary Action” and 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:

* * * * *

(n) Substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030[.]

The Commission promulgated administrative rules in OAR Chapter 584, Division 20 to

define standards for the competent and ethical performance of the professional duties of Oregon educators. OAR 584-020-0010 is titled “The Competent Educator” and provides, in part:

The educator demonstrates a commitment to:

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

* * * * *

(5) Use professional judgment[.]

OAR 584-020-0025 is titled “Management Skills” and provides, in part:

(2) The competent teacher demonstrates skills in:

* * * * *

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

OAR 584-020-0030 is titled “Human Relations and Communications” and provides, in part:

(2) The competent teacher demonstrates:

* * * * *

(b) Skill in communicating with administrators, students, staff, parents, and other patrons.

As indicated above, the competent educator demonstrates a commitment to recognize the worth and dignity of all persons and respect for each individual, and to use professional judgment. In addition, the competent teacher demonstrates skills in using district lawful and reasonable rules and regulations. Moreover, the competent teacher demonstrates skill in communicating with administrators, students, staff, parents, and other patrons.

a. Licensee behavior on September 22, 2017

The Commission’s Notice of Opportunity for Hearing (NOH) summarized behavior that Licensee engaged in on September 22. The ALJ interpreted the Commission’s summary of the behavior as constituting an independent basis to discipline Licensee. In fact, the NOH referred to Licensee’s behavior of September 22 to establish that as of on or about September 29, 2017, Licensee was on notice that his September 22 behavior was not acceptable as a licensed educator. Licensee was on notice of this based on conversations he had with Mr. Bow and Mr. Lorence. Because the Commission is not independently seeking to discipline Licensee for his behavior on September 22, 2017, the Commission has removed the ALJ’s discussion and

conclusion of that issue.

b. Licensee's behavior on October 27, 2017

The Commission contends that Licensee's behavior at the soccer game on October 27, 2017, violated the professional standards of competency set forth in OAR 584-020-0010(1) and (5), OAR 584-020-0030(2)(b), and OAR 584-020-0025(2)(e). Licensee contends that the Commission failed to meet its burden of proof.

On September 29, 2017, Licensee began employment as a substitute teacher at Umatilla High School. On that date, before classes began, Mr. Bow spoke with Licensee in the office. Mr. Bow asked Licensee about the comments he had made during the soccer game the previous week. Licensee responded by asserting how poorly the team played and that they did not know what they were doing. Mr. Bow told Licensee that as a substitute teacher in the district, he was held to a higher standard and needed to be positive and encourage the students. Mr. Bow warned Licensee that if he received another complaint about Licensee, he would have Licensee removed from the events. Mr. Lorence, the Principal of Umatilla High School, overheard the conversation and reinforced Mr. Bow's warning to Licensee by telling Licensee that as a substitute teacher, he was held to a higher standard.

On October 27, 2017, Licensee attended a soccer game at Umatilla High School. Ms. Tesch, the office manager at Umatilla High School, was working security at the game. During the game, the assistant soccer coaches approached Ms. Tesch and requested that she ask Licensee, who was with a group of people in the bleachers, to leave because he was yelling inappropriate things to the team and the coaches. Licensee was yelling in Spanish. Ms. Tesch does not understand Spanish. Ms. Tesch walked over to the bleachers and asked Licensee to come down so she could speak with him. Ms. Tesch observed that there were students and members of the public in the vicinity of Licensee. Licensee stepped down from the bleachers. Ms. Tesch told Licensee that he needed to stop yelling inappropriate things at the team and the coaches, and that the assistant coaches wanted him to leave. Licensee threw his hands up and told Ms. Tesch that he was not leaving and that the coaches did not know how to coach. Licensee returned to the bleachers and continued to yell at the coaches in Spanish. Ms. Tesch then told Licensee that he needed to leave. Licensee told Ms. Tesch that he was not leaving.

Ms. Tesch then called Mr. Bow, who was not at the game, and reported what had happened with Licensee. Mr. Bow told Ms. Tesch to call Ms. Sipe and the police. Ms. Tesch called Ms. Sipe, who said that she would call the police and come to the game. Ms. Sipe immediately called the police and reported that Licensee was being verbally belligerent at the high school soccer game and was refusing to leave. Within a few minutes, two police officers arrived on scene at the game. One of the officers stood at the bottom of the bleachers and asked Licensee to come down and leave the game. Licensee refused to comply with the officer's request. Licensee told the officer that he had a right to be there and that the officer should leave.

Licensee also told the officer that he needed to tell him why he had to leave. The officer gave Licensee several reasons why he should leave. Licensee then told the officer that the reasons were not good enough and he needed to try harder.

Shortly thereafter, Ms. Sipe arrived at the soccer game and observed Licensee standing in the bleachers and yelling down at police. Licensee was red in the face and acting aggressive, repeatedly telling police to “Make me come down.” Testimony of Sipe. Licensee was making statements about how Umatilla was a horrible school and its staff were awful. Licensee was also blaming one of the coaches for singling him out. Ms. Sipe observed that there were several people in the vicinity of Licensee. Ms. Sipe stood at the fence near the bleachers and asked Licensee to come down from the bleachers and to calm down. Licensee refused. The two officers then repeatedly asked Licensee to come down from the bleachers and to calm down. Licensee refused, stating that he had not done anything wrong and they could not make him leave. After the officers told Licensee that they were going to come up and bring him down, Licensee came down from the bleachers.

Ms. Sipe attempted to talk to Licensee at the fence. Licensee then proceeded to yell profanities and accusations at Ms. Sipe, including accusations about other personnel. Licensee told Ms. Sipe, “This is fucking bullshit.” Testimony of Sipe. Ms. Sipe told Licensee, “You are a teacher now, you cannot behave this way.” *Id.* Licensee responded, “I don’t care what the fuck I am.” *Id.* Ms. Sipe observed that Licensee was very angry. Ms. Sipe told Licensee that he needed to calm down. Licensee told Ms. Sipe that the coach “over there” drinks with the players, that another coach is a “coke head,” and that she “hires the wrong people.” Exhibit A13 at 3. As the officers escorted Licensee from the soccer field, Licensee slow-clapped his hands and sarcastically told Ms. Sipe to, “Keep doing a great job and hiring people like Josh Pickens. Great job.” Testimony of Sipe. Licensee also told Ms. Sipe that the “school district is garbage and is a mess.” *Id.* One of the officers asked Ms. Sipe if she wanted to trespass Licensee from school property, and Ms. Sipe answered in the affirmative. Ms. Sipe filled out paperwork, trespassing Licensee from district property for one year.

The Commission contends that Licensee failed to recognize worth, dignity and respect for Ms. Tesch, Ms. Sipe, the police officers, the soccer players, and the coaches during the game by yelling at the players, coaches, and police officers, using profanity and being sarcastic when speaking with Ms. Sipe, and refusing to leave the game when asked to do so by Ms. Tesch, the officers, and Ms. Sipe. The Commission contends that Licensee failed to use professional judgment during the game by heckling the players and coaches, ignoring the reasonable request from Ms. Tesch to leave the game, being belligerent towards the police officers, cussing and making accusations about staff in front of students, staff and spectators when speaking with Ms. Sipe, and failing to heed the warning previously given by Mr. Bow and Mr. Lorence. The Commission contends that Licensee failed to demonstrate skill in communicating with Ms. Tesch, Ms. Sipe, the police officers, the soccer players, and the coaches during the game by yelling at the players, coaches, and police officers, cussing and being sarcastic when speaking with Ms. Sipe, and refusing to leave the game when asked to do so by Ms. Tesch, the officers, and Ms. Sipe. The Commission contends that Licensee failed to demonstrate skill in using district lawful rules and regulations by failing to abide by the district’s code of conduct at extracurricular activities, failing to engage in professional communication with others, harassing

students and staff, engaging in non-standard performance conduct, and violating Board policies.

The ALJ concluded that the Commission failed to establish what the relevant standards of professional competency under OAR 584-020-0010(1) and (5), and OAR 584-020-0030(2)(b) reasonably demanded or what an educator that demonstrates a commitment to recognizing the worth and dignity of all persons and respect for each individual, and that demonstrates a commitment to using professional judgment, and that demonstrates skill in communicating with administrators, students, staff, and other patrons would or should have done. The ALJ reached this conclusion because she concluded that the record did not contain evidence or testimony regarding what conduct was reasonably expected from Licensee. The Commission rejects this conclusion because Ms. Sipe testified to the applicable standards of professional competency. The ALJ's own findings of fact and reasoning summarize extensive behaviors that Ms. Sipe indicated would constitute gross neglect of duty. Ms. Sipe's testimony was specific that as the Chief Administrator for Umatilla County School District, she completed and signed the Misconduct Report Form, indicating her belief that Licensee's conduct constituted gross neglect of duty (Exhibit A9). Ms. Sipe elaborated in her testimony, explaining that Licensee took a minor situation and escalated it to a point where he lost his temper in front of students, acted in an out-of-control manner, such that it required police intervention. She further testified that this level of conduct constitutes gross neglect of duty and is not representative of an educator's ability to be responsible for students. (*Id.*) The record contains ample evidence that Licensee acted in exactly the opposite manner of what would have been expected of a licensed educator. In light of the record, the Commission concludes that Licensee violated the professional standards of competency under OAR 584-020-0010(1) and (5), and OAR 584-020-0030(2)(b) and, in doing so, committed gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(n).¹⁸

With regards to the relevant standards of professional competency under OAR 584-020-0025(2)(e), that ALJ concluded that although Ms. Sipe testified as to the district's code of conduct expectations, rules and regulations, and how she believed Licensee's behavior at the soccer game on October 27, 2017, violated those professional expectations, the Commission had failed to establish whether or not Licensee had paid the admission fees to attend the soccer game on October 27, 2017. In reaching this conclusion, the ALJ mistakenly interpreted a provision in the Staff Handbook regarding expectations for staff attending an event with complementary admission, as establishing that anyone *paying* to attend a school sponsored event therefore does not have to abide by any applicable school district policies. The Commission rejects this interpretation of the Staff Handbook, and the resulting reasoning. Ms. Sipe's testimony was clear that as an employee of the Umatilla School District, Licensee was subject to all district policies and requirements. (Sipe test.) Licensee also acknowledged this when he first received and signed his job description and staff handbook (Ex A2, A3). Following the ALJ's mistaken logic would mean that an employee of the Umatilla County School District could effectively exempt themselves from *any* behavior expectations simply by paying admission to a school sponsored event. This is an illogical outcome and is not supported by the evidence in the record, so the Commission rejects it. Consequently, the Commission concludes that Licensee's behavior at the soccer game violated the district's code of conduct expectations, rules and regulations and,

¹⁸ The Commission modified this paragraph to make it consistent with the Commission's conclusions of law.

therefore, violated OAR 584-020-0025(2)(e).¹⁹

In conclusion, Licensee's behavior at the soccer game on October 27, 2017, violated the professional standards of competency set forth in OAR 584-020-0010(1) and (5), OAR 584-020-0030(2)(b), and OAR 584-020-0025(2)(e).

Accordingly, the Commission proved, more likely than not, that on or about October 27, 2017, Licensee engaged in gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1) and (5), OAR 584-020-0030(2)(b), and OAR 584-020-0025(2)(e).²⁰

2. Whether Licensee should receive a public reprimand and be placed on probation for two years.

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 339.390 or 342.176 based on the following:

* * * * *

(b) Gross neglect of duty[.]

ORS 342.177(3) provides:

The commission shall render its decision at its next regular meeting following the hearing. If the decision of the commission is that the charge described in ORS 342.175(1) has been proven, the commission may take any or all of the following disciplinary action against the person charged:

(a) Issue a public reprimand.

(b) Place the person on probation for a period not to exceed four years and subject to such conditions as the commission considers necessary.

¹⁹ The Commission modified this paragraph to make it consistent with the Commission's conclusions of law.

²⁰ The Commission modified this paragraph to make it consistent with the Commission's conclusions of law.

As indicated above, the Commission has the authority to discipline an educator, including issuing a public reprimand and/or placing the person on probation for a period not to exceed four years and subject to such conditions as the Commission considers necessary, for engaging in gross neglect of duty if the educator has held a license at any time within five years prior to issuance of the notice of charges based on gross neglect of duty.

Because the Commission proved that Licensee engaged in gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1) and (5), OAR 584-020-0030(2)(b), and OAR 584-020-0025(2)(e), the Commission may reprimand Licensee and place him on probation for two years. The sanctions imposed by here are both within the Commission's statutory authority and discretion. Licensee's conduct was open and notorious, with students and the public being able to witness it. The incident of October 27 modeled highly inappropriate behavior for any students who were present to observe Licensee. Licensee has failed to take accountability for any of his conduct, choosing instead to blame others for conduct he engaged in.²¹

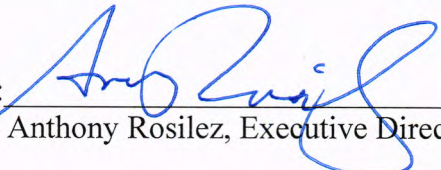
FINAL ORDER

Based on the foregoing:

1. The Commission proved by a preponderance of the evidence that Licensee engaged in gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1) and (5), OAR 584-020-0025(2)(e), and OAR 584-020-0030(2)(b).
2. Licensee is hereby publicly reprimanded and he is placed on probation for two years from the date of this order.

It is so Ordered this 17 day of February, 2022.

TEACHER STANDARDS AND PRACTICES COMMISSION

By: 

Dr. Anthony Rosilez, Executive Director

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 FROM THE SERVICE OF THIS ORDER. JUDICIAL REVIEW IS PURSUANT TO THE PROVISIONS OF ORS 183.482 TO THE OREGON COURT OF APPEALS

²¹ The Commission modified this paragraph to make it consistent with the Commission's conclusions of law and to explain the bases for discipline.