

indicated via email that TSPC did not object to the proposed postponement of the hearing. The OAH converted the October 26, 2022 hearing date to a prehearing conference to select new hearing dates.

On October 24, 2022, Appellant notified the OAH of his election to proceed *in pro per*. On October 26, 2022, ALJ Webster convened a prehearing conference for the purpose of setting new hearing dates. AAG Ramirez appeared on behalf of TSPC with Lincoln Hathaway. Appellant appeared *pro se*. ALJ Webster set this matter for in-person hearing at the Salem OAH on April 19 and 20, 2023. The OAH reassigned this matter back to ALJ Allen.

On April 11, 2023, Appellant requested to convert the in-person hearing to a virtual proceeding using Webex. TSPC did not object to the requested format change and ALJ Allen granted the request on the same date.

ALJ Allen convened the hearing on April 19, 2023, via the Webex virtual conference platform. Appellant appeared without counsel and testified on his own behalf. AAG Ramirez and Mr. Cooley appeared on behalf of TSPC. Testifying on behalf of TSPC were: Lindsay James, science teacher at Ponderosa Middle School; Brett Lemieux, Principal at Ponderosa Middle School; Gerard Collins, Federal Programs Coordinator for KFCS; Rene Clark, Human Resources Director for KFCS; Julie Bettles, Education and Employment Director for the Klamath Tribes; and John LaFollette, TSPC investigator. The record closed at the conclusion of the hearing on April 19, 2023.

ISSUES

1. Whether Appellant engaged in gross neglect of duty by transporting students in his personal vehicle and/or purchasing personal items for students. ORS 342.175(1)(b); OAR 584-020-0040(4)(n) and (o),
2. If so, whether TSPC may suspend Appellant's substitute teaching license for six months. ORS 342.175.

EVIDENTIARY RULING

Exhibits A1 through A16, offered by the Commission, were admitted into the record without objection. Exhibits R2 and R3, offered by Appellant, were admitted into the record without objection.¹

FINDINGS OF FACT

1. During all times relevant to this order, Appellant held a Restricted Substitute Teaching License issued by TSPC. (Test. of Belenfant.)
2. Appellant began working as the Title VI Home-to-School Liaison for KFCS in early October 2019. In that role, Appellant served eligible KFCS students – in grades 6 through

¹ Appellant withdrew Exhibit R1 at the beginning of the hearing on April 19, 2023.

12 – who were registered members of recognized Native American tribes. Appellant’s position was expected to last for the entirety of the 2019-2020 school year. (Test. of Belenfant and Collins; *see also* Ex. A1 at 1.)

3. Appellant’s job duties with KFCS involved assisting Native American students and their families within district public schools by providing access to academic and cultural supports including tutoring, extracurricular activities, and cultural events. Appellant’s responsibilities included serving qualified Title VI students at Ponderosa Middle School (Ponderosa), Klamath Union High School (KUHS), Eagle Ridge High School (ERHS), and Klamath Learning Center. KFCS provided Appellant with office space at Ponderosa and KUHS. (Test. of Belenfant; Ex. A1 at 1.)

4. Title VI students may be eligible for certain benefits, including payment of educational and extra-curricular costs and fees, through the federal Johnson-O’Malley Fund (JO funds). Most native tribes manage distribution of JO funds to eligible students who are enrolled members of the tribe. Some smaller tribes can access JO funds through larger tribes in the area if their own tribes do not have personnel administering such funds. (Test. of Bettles and Clark.)

5. As part of the hiring process, Appellant completed several training modules related to KFCS district policies and expectations. Those modules included training in sexual harassment in the workplace, staff-to-student sexual misconduct, discrimination/harassment, and KFCS workplace policies. Appellant completed all training modules on his first day of employment, October 7, 2019. (Ex. A13 at 2-3; test. of Belenfant and Clark.)

6. KFCS district policies require all staff to maintain professional and age-appropriate relationships with all students. KFCS policies also require written approval from the school principal and/or district superintendent for any staff member to transport a student in his/her private vehicle. (Test. of Lemieux; Exs. A14 at 2 and A15 at 1-2.)

7. Klamath Falls is considered high poverty community and KFCS are recognized as Universal Poverty Schools by the US Department of Education. (Test. of James.)

8. In his role as Title VI Liaison, Appellant was responsible for serving approximately 60-70 qualifying students at Ponderosa; 80-90 students at KUHS; and 10-15 students at ERHS. (Ex. A14 at 2.)

9. In Klamath Falls, eligible members from any tribe can apply to the Klamath Tribes Education and Employment Director for JO funds. For approved payments or purchases, the Klamath Tribes will then issue a purchase order to the approved vendor depending on the type of purchase. For athletic equipment, the only approved vendor used by the JO program in Klamath Falls is Big 5 Sporting Goods. The Klamath Tribes has no process for providing vouchers or gift cards to other local retailers including Fred Meyer. (Test. of Bettles.)

10. The Fort Bidwell Indian Community is a small tribe that does not manage member applications for nor disperse JO funds. For education related expenses, Fort Bidwell members are required to apply directly through their respective schools. (Test. of LaFollette.)

11. Klamath Tribes Education and Employment Director Julie Bettles manages JO funds for enrolled members of the Klamath and other Native American tribes in the Klamath Falls area. Ms. Bettles office received an application for JO funds distribution to purchase basketball shoes for a seventh-grade female student, JW, on or about November 4, 2019. Ms. Bettles reviewed the application and deemed it incomplete for lack of tribal registration, grades, and academic schedule for JW on November 8, 2019. Ms. Bettles also rejected the application because it was not submitted by a parent of JW. Thereafter, Ms. Bettles sent a notice to JW's parents notifying them the application was incomplete. (Test. of Bettles.)

12. Appellant telephoned Ms. Bettles office on November 22, 2019 and indicated he would be sending registration, grades, and schedule information for JW. Ms. Bettles' office never received additional information from JW's parents or Appellant. As such, the Klamath Tribes did not issue a purchase order for the requested athletic shoes. (Test. of Bettles.)

13. JW and her family are registered members of the Fort Bidwell Indian Community in Northern California. (Test. of Belenfant.)

14. On December 13, 2019, Brett Lemieux, Principal for Ponderosa, received a complaint from Ponderosa guidance counselor Brittany Clark indicating Appellant was making her uncomfortable in the workplace with personal text messages and following her around campus during her workday. At that time, Ms. Clark also raised concerns about multiple students regularly missing class time to lounge in Appellant's office. (Test. of Lemieux; Ex. A2.)

15. On the morning of December 20, 2019, Rene Clark (*née* Blakely), Human Resources Director for KFCS, met with Mr. Lemieux and Brittany Clark regarding allegations against Appellant. At that time, Brittany Clark and Mr. Lemieux noted Appellant appeared to spend an inordinate amount of time with female students despite male students in the Title VI program with significant academic and home needs. (Ex. A3 at 1-2, and 4.)

16. During the December 20, 2019 meeting, Brittany Clark conveyed her opinion that Appellant was engaged in "grooming" female students by allowing them to hang out in his office during class time and providing them with personal items such as Dutch Bros. drinks. Rene Clark asked Mr. Lemieux to review available security footage to see how many times Appellant brought such items to campus for students. (Test. of Clark and Lemieux; Ex. A3 at 6-7.)

17. Based on his review of camera footage, Mr. Lemieux determined that Appellant brought Dutch Bros drinks for students on three separate occasions in November 2019. During his review of the footage, Mr. Lemieux also observed Appellant arriving at school on December 11, 2019 at 9:13 a.m. Mr. Lemieux observed female student JW exiting Appellant's personal vehicle. (Test. of Lemieux; Ex. A6.)

18. Appellant transported JW to school in the morning on at least two occasions. Appellant also transported JW's brother, EW, to and from school on numerous occasions. (Test. of Belenfant.)

19. Appellant provided approximately 20-30 beverages from Dutch Bros to students while employed as the Title VI liaison for KFCS. (Test. of Belenfant.)

20. When Mr. Lemieux asked Appellant how he purchased Dutch Bros items for students, Appellant claimed he used “district office funds” to which he had access as the Title VI liaison. (Test. of Lemieux.)

21. Neither Mr. Lemieux nor KFCS Federal Programs Coordinator Gerard Collins is aware of a district office fund available to Title VI liaisons. Mr. Collins was Appellant’s direct supervisor while he served as the Title VI liaison for KFCS. (Test. of Collins and Lemieux.)

22. On the afternoon of December 20, 2019, Mr. Lemieux and Rene Clark met with Appellant, informed him of the allegations, and advised him that KFCS would be conducting a personnel investigation following winter break. Ms. Clark provided Appellant with a written notice of administrative leave identifying, among other things, the district’s concerns with Appellant providing inappropriate gifts and inequitable support to female students and transporting at least one female student in his personal vehicle. That notice informed Appellant that he would be contacted to schedule an interview following the district’s investigation. (Test. of Clark; Ex. A4.)

23. Also on December 20, 2019, Tony Swan, Principal of KUHS, received an email from Dean of Students Sandy Yazzie conveying frustration with Appellant from some of the teachers. According to that email, teachers at KUHS reported Appellant was allowing female students – at least one of whom was not enrolled in the Title VI program – to hang out in his office instead of going to their regularly scheduled classes. According to Ms. Yazzie’s email, some of those students were experiencing negative academic consequences as a result of their absences from class. (Ex. A5.)

24. On January 6, 2020, Ms. Clark contacted all schools at which Appellant provided services to inquire about any complaints regarding Appellant. Upon contacting Mr. Swan, Ms. Clark learned of the December 20, 2019 email from Ms. Yazzie. Ms. Clark then contacted Ms. Yazzie who elaborated on teacher frustrations with Appellant allowing female students to spend excessive amounts of time in his office when they are scheduled for academic courses. Ms. Yazzie also informed Ms. Clark that at least one of the female students in issue was not in the Title VI program and therefore had no reason to be in Appellant’s office. (Test. of Clark; Ex. A7 at 1-3.)

25. Also on January 6, 2020, Ms. Clark spoke with Mr. Lemieux and Louis Dix, Vice Principal at Ponderosa, who reported they had learned Appellant met almost exclusively with female students while at Ponderosa. Mr. Lemieux also informed Ms. Clark that he discovered Appellant had purchased a pair of basketball shoes for JW prior to being placed on administrative leave. (Test. of Clark and Lemieux; Ex. A7 at 4-5.)

26. Rene Clark also spoke with Brittany Clark who informed her that Appellant was usually in his office with female students, including two who were not in the Title VI program.

(Ex. A7 at 6.)

27. On January 8, 2020, Ms. Clark contacted Appellant to schedule interview for the next day and address the purpose of the meeting. Ms. Clark conveyed the areas of district concern as text messages with Brittany Clark, favoritism of female students, providing inappropriate gifts to female students, and transporting a female student in his personal vehicle. (Test. of Clark; Ex. A8 at 1.)

28. At approximately 6:00 p.m. on January 8, 2020, Appellant emailed Gerard Collins and tendered his immediate resignation. On January 9, 2020, Mr. Collins forwarded the email to Ms. Clark who accepted Appellant's resignation on behalf of KFCS. (Ex. A9 at 1; test. of Clark.)

29. Appellant did not participate in any investigative interview with KFCS. (Test. of Belenfant and Clark.)

30. On the afternoon of January 9, 2020, Ms. Clark emailed Appellant and advised him that, as a result of his resignation without participating in an investigative interview, KFCS had removed him from its certified substitute teacher list. Ms. Clark advised Appellant that he would not be added back to the list until he participated in an investigative interview. Ms. Clark also informed Appellant he could contact her to set up a time to meet if he wished to participate in the interview and return to the substitute teacher list. (Test. of Clark; Ex. A11.)

31. On January 9, 2020, Ms. Clark completed a School District Misconduct Report Form advising TSPC that Appellant had been placed on leave for misconduct and had resigned before the district was able to complete its investigation into the allegations. (Ex. A12; test. of Clark.)

32. On December 17, 2020, Appellant participated in an interview with TSPC investigator John LaFollette. Appellant was represented by counsel during that interview. (Test. of LaFollette and Belenfant; Ex. A14.)

33. During that interview, Appellant told Mr. LaFollette that he purchased Dutch Bros beverages for student using donated gift cards. Appellant told Mr. LaFollette the gift cards were donated by an unknown executive at Dutch Bros and provided to Appellant by his cousin, Ryan Adams, who "is a CPA that does accounting work for [Dutch Bros]." (Ex. A14 at 6.) Appellant claimed that Mr. Adams provided him with approximately 50 gift cards as a one-time donation to the Title VI program. (*Id.*)

34. Mr. LaFollette asked Appellant if he purchased basketball shoes for JW. Appellant denied buying the shoes and told Mr. LaFollette the shoes were purchased using JO funds in the form of a voucher to Fred Meyer in Klamath Falls. (Ex. A14 at 6-8.)

35. During the TSPC interview, Appellant also claimed that he never provided any female student with a ride to school in his personal vehicle. Appellant then stated he was on the approved pick-up/drop-off list for two siblings, JW and EW, and claimed he never transported

either student alone. Appellant also claimed that Mr. Collins gave him permission to transport students in his personal vehicle. (Ex. A14 at 9.)

36. In April 2022, Mr. LaFollette contacted Mr. Adams regarding the gift cards Appellant claimed to have obtained from him. Mr. Adams indicated he is an executive with Dutch Bros, rather than an outside CPA, and denied providing any gift cards to Appellant. Mr. Adams advised Mr. LaFollette that any gift cards Appellant obtained likely came from one of Dutch Bros local stores. (Test. of LaFollette.)

37. Appellant was not on the approved pick-up/drop-off list for JW and/or EW at Ponderosa while employed by KFCS. (Test. of Lemieux.)

38. Appellant did not obtain written permission to transport any student in his private vehicle from the principal at Ponderosa or from the district superintendent. (Test. of Lemieux and Collins.)

CONCLUSIONS OF LAW

1. Appellant engaged in gross neglect of duty by transporting students in his personal vehicle and purchasing personal items for students.

2. TSPC may suspend Appellant's substitute teaching license for six months.

OPINION

In this matter, the Commission alleges Appellant engaged in conduct constituting gross neglect of duty and proposes to suspend his Restricted Substitute Teaching License for six months. Specifically, the Commission contends Appellant violated school district policies as well as ethical rules applicable to the profession by showing inequitable attention to female students, transporting students in his personal vehicle without permission, and providing gifts – including Dutch Bros beverages and athletic shoes – to select students. As the proponent of those positions, 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); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (in administrative actions, the standard of proof that generally applies in agency proceedings, including license-related proceedings, is the preponderance standard.) 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).

The burden of proof encompasses two burdens, the burden of production and the burden of persuasion. *Marvin Wood Products v. Callow*, 171 Or App 175 (2000) (Conceptually, the burden of proof encompasses two distinct burdens: the burden of producing evidence of a particular fact (*i.e.*, the burden of production), and the burden of convincing the trier of fact that the alleged fact is true (*i.e.*, the burden of persuasion)). Accordingly, any party advocating a particular position bears the burdens of production and persuasion as to that position. A party

may not rely on an absence of evidence in the record to meet its burden. *May Trucking Co. v. Dept. of Transportation*, 203 Or App 564, 572-573 (2006) (rejecting petitioner’s contention of an absence of evidence in the record and finding, “It was petitioner’s obligation to make sure that there is evidence in the record supporting its position.”)

At hearing, Appellant proved to be a poor historian and unreliable witness. His testimony at hearing diverged in material respects from prior statements he made to district personnel and TSPC investigators. As an example, Appellant provided inconsistent answers when asked about funds used to purchase beverages for students. Initially, Appellant indicated he used district office funds to which he had access as the Title VI liaison for such purchases. During an interview with TSPC investigators, Appellant claimed the beverage purchases were made using donated gift cards he had obtained from his cousin, Mr. Adams, who, in turn, obtained them from an unidentified executive at Dutch Bros. At hearing, Appellant testified that Mr. Adams provided approximately 50 gift cards directly to him. TSPC’s evidence revealed that, while Mr. Adams does work for Dutch Bros, he never provided gift cards to Appellant. Rather, Mr. Adams informed TSPC that such cards are generally available only at the retail stores.

Moreover, Appellant initially asserted that he never transported female students in his personal vehicle. That evidence was contradicted by video footage observed by Mr. Lemieux during the district’s internal investigation. Appellant then asserted that he only transported a female student in his personal vehicle when her male sibling was present and then only because he had obtained permission from the school principal and his supervisor, Mr. Gerard. At hearing, both individuals testified that they never gave Appellant such permission. Finally, Appellant asserted the students’ parent added him to the list of adults authorized to transport the students. A review of school records performed by Mr. Lemieux revealed no such authorization on file.

Finally, regarding the purchase of athletic shoes for JW, the record did not support Appellant’s claimed source of funds for the purchase. Appellant consistently maintained he paid for the shoes using tribal funds dispersed through the JO fund. Nonetheless, he could not explain inconsistencies between his claim of receiving a gift card to Fred Meyer for the purchase and TSPC’s evidence demonstrating that the only approved vendor for athletic equipment in the Klamath Falls area using JO funds is Big 5 Sporting Goods. Moreover, Appellant initially asserted that the Fort Bidwell Indian Community provided the JO funds. At hearing, TSPC presented evidence showing that the Fort Bidwell Indian Community, as a small California tribe, has no JO coordinator and does not distribute those funds directly. Rather, according to the record, members of that tribe must apply through the individual schools to obtain JO funds. Finally, Appellant could not reconcile his claims with evidence in the record showing that he attempted to obtain JO funds for the shoe purchase by submitting an application to the Klamath Tribes. That application was deemed incomplete and no JO funds were dispersed for JW.

Based on the repeated inconsistencies in and implausibility of Appellant’s testimony, ALJ Allen found TSPC’s evidence to be more reliable and thus properly gave more weight to that evidence where it conflicted with that provided by Appellant.

ORS 342.175 outlines grounds for discipline of licensed educators or applicants and

provides, in part:

(1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a commission licensee, discipline a commission licensee, or suspend or revoke the right of any person to apply for a license or registration based on the following:

* * * * *

(b) Gross neglect of duty[.]

Similarly, OAR 584-020-0040 elaborates on the Commission's disciplinary authority, defines gross neglect of duty, 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;

(o) Substantial deviation from professional standards of ethics set forth in OAR 584-020-0035[.]

As relevant to this proceeding, OAR 584-020-0010 sets forth Commission standards for the competent educator and states, in pertinent part:

The educator demonstrates a commitment to:

* * * * *

(5) Use professional judgment * * * [.]

OAR 584-020-0025, addressing management skills states:

(1) The competent educator is a person who understands students and is able to relate to them in constructive and culturally competent ways. The competent educator establishes and maintains good rapport. The competent educator maintains and uses records as required, and as needed to assist the growth of students.

(2) The competent teacher demonstrates skills in:

* * * * *

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

Moreover, OAR 584-020-0035 identifies the Commission's standards for the ethical educator and provides, in part:

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:

* * * * *

(c) *Maintain an appropriate professional student-educator relationship by:*

(A) Not demonstrating or expressing professionally inappropriate interest in a student's personal life;

(B) *Not * * * giving or exchanging romantic or overly personal gifts or notes with a student;*

* * * * *

(D) *Honoring appropriate adult boundaries with students in conduct and conversations at all times.*

* * * * *

(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[.]

Emphasis added.

Appellant's conduct must be evaluated in the context of this legal framework. TSPC asserts Appellant failed to exercise professional judgement in his interactions with female students. Based on the record, ALJ Allen agreed with the Commission.

The evidence demonstrates that Appellant showed undue attention and provided gifts to underprivileged female students in the middle and high schools he served as a Title VI liaison. The evidence also establishes Appellant permitted female students to use his office as a reprieve from academic courses, impairing their educational progress and frustrating other educators. Moreover, Appellant's provision of gifts to students, male or female, raises significant concerns

over appropriate educator-student boundaries – particularly in an impoverished community. Additionally, Appellant failed to obey district rules and regulations when he repeatedly transported one or more students in his personal vehicle without written permission from the school principal or district superintendent. Finally, Appellant failed to maintain the dignity of the profession when he repeatedly provided disingenuous answers to district personnel and TPSC investigators. As such, Appellant engaged in gross neglect of duty as defined in OAR 584-020-0040 as it incorporates OAR 584-020-0010, -0025, and -0035.

Pursuant to authority granted in ORS 342.175, the Commission promulgated OAR 584-020-0040, which provides grounds for disciplinary action for violations of Commission statutes or administrative rules and states, in part:

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

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

* * * * *

(c) Is charged with gross neglect of duty;

* * * * *

(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;

(o) Substantial deviation from professional standards of ethics set forth in OAR 584-020-0035[.]

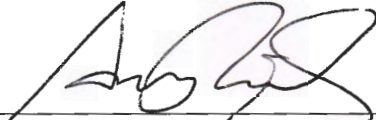
As set forth above, TSPC has established Appellant engaged in gross neglect of duty through a serious and material breach of professional boundaries and substantial deviation from applicable ethical standards set forth above. Pursuant to ORS 342.175 and OAR 584-020-0040(3), TSPC may revoke or suspend Appellant’s Restricted Substitute Teaching License. In this matter, TSPC proposed a six-month suspension of Appellant’s license. Based on the hearing record, the proposed sanction appropriate.

FINAL ORDER

Based on the foregoing, Joel Belenfant's Restricted Substitute Teaching License is suspended for six months from the date of issuance of this final order.

It is so Ordered this 24 day of October, 2023.

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