BEFORE THE
TEACHER STANDARDS AND PRACTICES COMMISSION
STATE OF OREGON

IN THE MATTER OF:	) **FINAL ORDER**
	)
	) OAH Case No. 1504089
JAMES M. HOUSTON	)

This matter came before the Teacher Standards and Practices Commission during its regularly scheduled meeting of April 8, 2016 and June 20, 2016 to consider the proposed order issued by ALJ Rick Barber on February 25, 2016. Respondent filed exceptions to the Proposed Order. The Commission issued an Amended Proposed Order on August 29, 2016. Respondent filed exceptions to the Amended Proposed Order on September 28, 2016. After considering the case record, the Commission issues this Final Order revoking Respondent's teaching license and his right to apply for a teaching license.

EXCEPTIONS TO AMENDED PROPOSED ORDER

Respondent filed exceptions to the Amended Proposed Order on September 28, 2016 after being allowed two extensions to the original deadline of September 12, 2016. The Commission considered Respondent's exceptions during its November 3, 2016 meeting and finds them unpersuasive.

EXCEPTIONS TO PROPOSED ORDER

Respondent filed exceptions to the proposed order on April 4, 2016 following two extensions to the original deadline. Respondent included 4 "exhibits" along with his exceptions which consisted of (1) Respondent's Closing Argument; (2) Respondent's Response to Commission's Closing Argument; (3) Oregon State Bar complaints Respondent filed against AAG Ramirez and ALJ Barber; and (4) A letter from the OSB Client Assistance Office regarding the OSB complaints. The Commission has reviewed Respondent's exceptions but does not find them persuasive. First, Respondent's exceptions repeat many of the same arguments raised during the course of the proceeding, including the contested case hearing. Those arguments are unpersuasive. Second, Respondent included as part of his exceptions information that is outside of the hearing record, including some of the "exhibits' he attached to his exceptions. The Commission did not consider information provided by Respondent that was not part of the hearing record.

Prior to filing exceptions Respondent submitted two motions. Those motions are considered as part of his exceptions and are discussed below.

Respondent submitted a motion requesting the Commission to pay for and provide him a transcript of the contested case hearing on March 18, 2016, stating the transcript was needed

because the proposed order was "filled" with errors. Respondent's motion is denied.

Respondent submitted a Motion to Supplement Record With New Evidence on March 18, 2016. Respondent stated in this motion that the new evidence consisted of the full transcript of the deposition of Andy Boe. Respondent had an opportunity to offer this evidence during the course of the contested case proceeding. As discussed below, the Boe deposition was the subject of a motion and order to compel. Respondent did not produce it in response to the order or offer it in evidence. The Commission cannot consider evidence outside of the record and therefore denies Respondent's request to submit the Boe deposition transcript.

HISTORY OF THE CASE

On January 28, 2015, the Teacher Standards and Practices Commission (TSPC or the Commission) issued a Notice of Opportunity for Hearing to James M. Houston (Respondent). On February 13, 2015, Respondent requested a hearing.

On March 23, 2015, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Rick Barber to preside at hearing. At a prehearing conference held on May 14, 2015, ALJ Barber and the parties set the hearing for December 7 through 10, 2015.[1]

Hearing was held as scheduled on December 7 through 9, 2015, in Salem, Oregon. Respondent appeared, represented himself, and testified. Senior Assistant Attorney General Raul Ramirez represented the Commission. TSPC Legal Liaison Jeff VanLaanen appeared as the authorized representative of the Commission. The following witnesses testified at hearing: Respondent; former Yoncalla Principal Jerry Fauci; former DESD[2] Assistant Superintendent Andrew Boe; former Yoncalla teacher Lisa Champoux; TSPC investigator Paul Cimino; VanLaanen; and former DESD Superintendent George Murdock. Attorney Haley Percell, attorney for witnesses Fauci, Boe, Champoux and Murdock, was present for their testimony but was not present during the rest of the hearing.

The evidentiary record closed on December 9, 2015, and the record was held open for written closing arguments. The hearing record closed on January 15, 2016, after receipt of the final written argument.

Procedural Matters Raised at Hearing

Although the history of this case is replete with motions, accusations and ancillary matters—as shown by the more than 60 procedural filings—Respondent's closing argument raises two matters that will be addressed here because they arose during the hearing and are not fully

[1] Between the prehearing conference and the hearing there were many motions and many interactions between the two sides and the ALJ. They are not enumerated here because most are not relevant to the issues at hearing. The Commission has included most of those documents, through November 5, 2015, as Pleading Documents P1 through P51. The others are identified in the evidentiary rulings, below.
[2] Douglas Educational Service District.

addressed in the procedural filings.

a. Documents to witnesses. Respondent claimed the Commission had violated confidentiality by providing hearing exhibits to witnesses prior to the contested case hearing. The provision of exhibits in preparation for or during the course of witness testimony is not a violation of confidentiality. The Commission is entitled to interview and examine witnesses in connection with its ongoing investigation pursuant to its statutory authority under ORS 342.176.

b. Ms. Percell's involvement. Respondent also objected to Ms. Percell's participation in the hearing, citing his right to privacy under ORS 342.177 (Respondent's initial objection is found in the procedural filings). Ms. Percell represents several witnesses that were subpoenaed by the Commission and Respondent and who are or were also named defendants in a federal case filed by Respondent. Percell asked to attend the hearing during their testimony and also wanted to be present during the entire hearing.

Based upon Respondent's objection, the ALJ initially denied Ms. Percell's request to be present. She requested reconsideration, noting that she was not a member of the "public" but was representing the witnesses. The ALJ modified his ruling and allowed her to be present during her clients' testimony, but not at other times during the hearing. Respondent objected, both before and at the hearing.

Although Respondent was concerned that Ms. Percell would be joining the Commission's "team," and believed that Mr. Ramirez could represent the witnesses, he was wrong in both particulars. Ms. Percell's participation was limited to making relevance objections, asking questions in aid of such objections, and conferring with her clients as long as there was no question pending. Ms. Percell was present only during her clients' testimony. She did not violate or attempt to violate the limitations placed upon her participation.

ISSUES

1. Whether Respondent committed gross neglect of duty, violating ORS 342.175(1)(b) and OAR 584-020-0040(4)(n), (o) and (s), in the following particulars:

a. By sending threatening emails to a coworker to coerce her to support his position on a pay dispute with the school district and ESD;

b. By failing to report two issues of possible child abuse to the appropriate authorities; and

c. By publishing untrue and sensational allegations against the schools and administrators in an effort to coerce a settlement of his pay dispute.

2. Whether, if Respondent committed gross neglect of duty in one or more of the

above particulars, his license with the Commission should be revoked.

EVIDENTIARY RULINGS

Exhibits A1 through A38, offered by the Commission, were admitted into evidence without objection. Respondent submitted his documents by using an "L" prefix and identifying each page rather than each document. He submitted L1 through L213, and L215 through L296.[3] Shortly after Respondent faxed his exhibits to the OAH, it was determined that pages L40, L122 and L189 were missing from the fax. Respondent faxed those pages to the OAH and to Mr. Ramirez a day later.

The Commission objected to Exhibits pages L58-60, L77-85, L86, L87-88, L162-176, and L212-213 on the basis of relevance. Those objections were overruled. The Commission also objected to L91-92 because they contained information about settlement negotiations. The objection was sustained. Finally, the Commission objected to pages L109-122 and L201-207, excerpts from two depositions. The objections were sustained because neither side (including Respondent) had the entire depositions.[4] Discovery of the depositions had been requested by the Commission, and they were the subject of an Order to Compel. However, they were never provided to the Commission (other than the excerpts at the time exhibits were submitted). Consequently, the deposition excerpts were excluded from evidence.

Amelia Black subpoena. In preparation for the hearing, Respondent requested subpoenas for several witnesses, including Amelia Black. Although several subpoenas were issued to Respondent to serve on witnesses, the ALJ denied the subpoena for Ms. Black because Respondent had failed to explain what the relevance of her testimony would be. On the first day of hearing, the OAH received a phone call from Ms. Black, asking if she was required to attend the hearing in light of a subpoena Respondent had issued to her "acting in self-representation." (Doc. P65). Pursuant to OAR 137-003-0585, only the agency, the ALJ (on the request of a party), or an attorney for a party may issue a subpoena. Ms. Black was told she need not appear for the hearing, and the ALJ informed Respondent that she would not be honoring his unauthorized subpoena.

Procedural Documents. As noted above, there are extensive procedural documents in this case. Before the hearing, the Commission identified Documents P1 through P51, covering the

[3] Page L214 in the initial fax was Respondent's witness list and is not an exhibit in the case.
[4] Respondent indicated he could not afford to purchase the entire transcript of the depositions so he only requested the portions he had "marked" during the depositions.

case through November 5, 2015. To those documents the ALJ added the following:

P52. 11/12/15 Amended Petition for Judicial Review of Rules
P53. 11/26/15 Ruling on Request for Extension of Time to Seek Review
P54. 11/27/15 Motion for Sanctions
P55. 11/29/15 [Motion for] Recusal of ALJ
P56. 11/30/15 Motion to Quash by Attorney Percell (attorney for witnesses)
P57. 12/1/15 Letter denying Respondent's Motion for Sanctions
P58. 12/2/15 Response re: Percell involvement and witness scheduling
P59. 12/2/15 Order on Review of Order on Motion to Compel
P60. 12/2/15 ALJ's letter ruling on Percell's involvement and witness scheduling
P61. 12/4/15 Ruling on Request for Change of Administrative Law Judge
P62. Amelia Black "subpoena" issued by Respondent
P63. 12/18/15 Commission's Closing Argument
P64. 12/18/15 Respondent's Closing Statement
P65. 12/2/15 Opinion & Order (U.S. District Court)[5]
P66. 12/2/15 Dismissal Order (U.S. District Court)
P67. 1/15/16 Respondent's Final Argument
P68. 1/15/16 Commission's email waiving final argument

The procedural documents are not evidence, but are designated as part of the record.

FINDINGS OF FACT

1. Respondent has been a licensed educator with the Commission since March 2005. He holds a special education license for grades 5 through 12. Respondent applied for renewal of his license in 2015. The Commission's consideration of that application has been suspended pending the decision in this case. (Test. of Houston).

Northern Arizona University (1995).

2. In approximately 1992, Respondent was granted tuition waiver and graduate assistance enabling him to attend Northern Arizona University (NAU) for his doctoral program. He received his doctorate in 1995 with high honors. He was instrumental in starting local job fairs at the university. (Ex. L242-243). At the end of his doctoral program, Respondent "believed he was the victim of fraudulent practices" based on the quality of his education. (Ex. L220). In December 1995, Respondent appeared before the Arizona Board of Regents, offering to give back his doctorate if they would refund his tuition. He picketed the NAU graduations from 1995 through 1998, with a placard that read "I want my money back" on one side and "Diploma Mill" on the other. He filed a $1.1 million dollar law suit against NAU that was ultimately dismissed. (Ex. L221). In an article for the Chronicle of Higher Education, Respondent said he did not want to be called "doctor" because he did not earn it. (Ex. L248). In a later lawsuit against the Arizona Board of Education (on a different matter), he noted that the NAU matter caused him to garner

[5] P67 and P68, documents relating to Respondent's attempts to enjoin this administrative hearing by filing a motion with the U.S. District Court, were sent to the ALJ by the Trial Division of the Department of Justice and forwarded to both Mr. Ramirez and Respondent the same day.

"local, state, regional and national press coverage with his activism[.]" (Ex. L221).

3. NAU contended that the criticism and ultimate legal action from Respondent was retaliation because his teaching position with NAU was terminated. Respondent contended that his teaching position was terminated in retaliation for his whistle-blowing. (Ex. L245). Professor Keith Carreiro, among other professors, resigned from NAU during the conflict. (Ex. L252). Carreiro is a mentor to Respondent, and helped him start a group called Consumer Rights in Education. (Test. of Houston). Respondent would later note Carreiro as a sendee on his October 31, 2012 email to union president Champoux. (Test. of Houston; Ex. A7).

Glide High School (2005)

4. In July 2005, shortly after receiving his teaching license, Respondent was given an interview for a special education position at Glide High School in Douglas County. In the interview, Respondent was told that the program was running smoothly with six instructional aides, and that he would be more of a coordinator than a teacher. His main job would be to prepare individualized education programs (IEPs) for the students. The district offered the job to Respondent, and he contacted the new superintendent (who was also in charge of special education), to see if he could be paid higher on the salary scale. The superintendent, Schrader, told Respondent he would have to start at the bottom as he had done. Respondent accepted the position but had almost immediate conflict with the principal, Ms. Maurice, and two of his six instructional aides. Respondent became concerned that the district's IEPs were not being properly prepared, contending that Maurice would not attend mandatory meetings and that staff members were signing for work not being performed (what Respondent called "ghost signatures"). Respondent anonymously contacted the Oregon Department of Education to become an "internal whistleblower" about his perceived problems at the school. In November 2005, Respondent submitted a letter of resignation, then contacted the union and reconsidered. He withdrew his resignation. (L162-165).

5. On November 6, 2005, Respondent told Schrader he was definitely not going to return for the next school year. He demanded a good letter of recommendation, no retaliation from Maurice, a prohibition of Maurice discussing him at all, and a clean employment record for any potential employer's requests. He insisted that Maurice be disciplined by the district for the issues with the IEPs. Respondent continued to work for the district, having withdrawn his resignation, and continued to battle with at least two of his instructional aides and Maurice. In January 2006, following up on Respondent's statement that he was not coming back the next year, Schrader asked Respondent to submit his resignation by February 15, 2006. Respondent told Schrader that this felt like retaliation, and that he wanted to be recommended for renewal—and *then* he would submit his resignation. The district gave him a notice of non-renewal on February 13, 2006. (Ex. L169-174).

6. After being non-renewed, Respondent filed complaints with the Department of Education (about the IEPs) and considered filing claims against Maurice with TSPC. He also looked at his legal "options" concerning what he believed was a "hostile work environment." (Ex.

L175).

Rainier School District (2006)

7. In 2006, Respondent was offered a position with the Rainier School District after meeting the district's administrators at the Portland Professional Educators' Job Fair in March. The district was hiring two special education teachers, one for a resource room and one for a behavior-disordered classroom. Respondent accepted a position with Rainier for the following school year, which he believed to be for the resource room at a salary step 15. When he received the contract for the 2006-2007 school year, it was for the behavior classroom. He was also allowed to be the long-term substitute in his future class room for the remaining part of the 2005-2006 school year. During the 2005-2006 school year, Respondent learned that his predecessor in the classroom had been arrested for molesting students. Respondent perceived ongoing problems between students and staff, particularly the school counselor. In May 2006, he refused to continue substitute teaching in the school, and said he would return for his permanent position in the fall. Respondent had several conversations with Superintendent Carter about his dissatisfaction with the school. In late May 2006, Carter informed Respondent that he had never received the signed contract from Respondent and he was rescinding the job offer to Respondent. (L073-075).

8. On May 27, 2005, Respondent sent an email to Carter that stated:

> I still can't read it but I know what it says. I have been ruminating about the asinine phone message you left, and what I recorded last night, and let the professionalism and all that stuff be tossed aside so that men can express themselves to one another…
>
> Fuck you, fuck you, fuck you. I am coming for the poor way you have handled this and those kids you wished didn't exist. I truly am the worst possible thing to happen to you since you tried covering up the molest of Williams.
>
> Eat shit, and what ever else I can rub your smug face in,
> Dr. James Houston.

(Ex. A37 at 8). Houston was under the influence of alcohol at the time he wrote this email. He later apologized to Carter. (*Id.* at 9).

9. The Rainier district filed a complaint against Respondent with the Commission. In the Commission's review of the case, it noted:

> Mr. Houston was offered employment with the school district for the 2005-2006 school year. Prior to accepting the position, Mr. Houston made disparaging comments about the district. In a phone call between Houston and the Superintendent, the offer of employment was rescinded. Mr. Houston sent an expletive filled email to the Superintendent later that day. A few days later Houston admitted to being frustrated, angry and intoxicated when he sent the email and apologized. Over the next several months, Houston threatened legal action against

> the district. Various emails were exchanged between Houston and the Superintendent and other members of the district, sometimes using vulgar language and often threatening legal action.
>
> Mr. Houston answered all questions posed to him. He explained that he has filed numerous lawsuits in the past in order to remedy injustices that he perceives in his community or work place. All emails discussed in this case were sent from Houston's home computer and email account. * * *
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> * * * * *
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> Since leaving Rainier, Houston spent two years teaching [at] the Shonto Preparatory Elementary/Middle School with the Navajo Nation in Arizona as a Special Education Social Worker. Houston fully cooperated with the Commission investigation. After a review of the matters alleged, Houston's attorney, Adam Arms, and TSPC reached an agreement per the attached stipulation.

(Ex. A29). After Respondent provided assurances that he had gotten his alcohol use under control, the Commission and Respondent settled the complaint with a Stipulated Reprimand in 2007. (Ex. A30).

Arizona Licensure Issues (2005-07)

10. In 2005, after receiving his teaching license in Oregon, Respondent sought reciprocity to teach in Arizona. Respondent already had a substitute teaching license in Arizona that had been "grandfathered" in from the 1980s. (Test. of Houston). The initial screening board in Arizona, known as PPAC, looked at his Oregon licensure and at his criminal history, and recommended that he be granted a license in Arizona. The vote was 4-1 in favor. On March 26, 2007, the State Board of Education (SBE) met to consider the PPAC recommendation. Respondent appeared and identified what he considered errors in the PPAC decision, among other comments. The SBE voted 6-4 to deny Arizona licensure for Respondent. In April 2007, Respondent filed a tort claim notice against the SBE and its members. (Ex. A34).

11. The Arizona SBE later decided to revoke Respondent's grandfathered substitute license in 2008. Respondent again filed a lawsuit against the SBE and challenged the ruling. (*Id.*).

Yoncalla School District (YSD) and Douglas ESD (2012)

12. In August 2012, at a time when Respondent had been substitute teaching in Douglas County for several years, YSD Elementary Principal Jerry Fauci contacted Respondent to tell him about a job opening at the school. The school was creating a room (known as the Opportunity Room) for students with special needs as well as behavior-challenged students who needed to be removed from general classes for a period of time. Fauci knew that Respondent had been a long-term substitute in the school and district, and invited him to apply for the position. (Test. of

Houston).

13. On August 31, 2012, Respondent interviewed for the position with a panel consisting of Fauci; Assistant Superintendent Andy Boe (who also served as the Human Resources professional for YSD); Nancy Vogel; and Brian Hinson. The interview went well, and Fauci offered the job to Respondent that same day. Respondent accepted the job. Because the hiring occurred just before the school year started, Fauci told Respondent that it would take a week or two for Boe to prepare the contract. Meanwhile, Respondent would start the school year working in the classroom but being paid as a long-term substitute teacher. (Test. of Houston, Fauci). Respondent was unaware that the district only paid long-term substitute pay after ten days of normal substitute pay for the position. (Test. of Houston).

14. Respondent was concerned about the rate of his pay, and provided information to Boe about his previous private school teaching experience, his work as a child protective services worker, and his other work creating programs for students with special needs. In addition to his doctorate in education from Northern Arizona University (NAU), Respondent has two masters' degrees as well. On September 14, 2012, when Respondent met with Boe, Boe indicated he could only give Respondent credit for three years' experience in special education. Respondent refused to accept the salary. Respondent and Boe agreed to discuss the matter further. (Test. of Houston). Respondent brought up the idea of being paid as a long term substitute for the year as a way of raising his monthly income. (Ex. A8).

15. After the September 14, 2012 meeting, and because Boe told Respondent that he was concerned the union would balk at giving him more credit for his experience, Respondent read the collective bargaining agreement (CBA), and went to speak to Lisa Champoux, the union president, also a new teacher at the school. Champoux jokingly told Respondent that she became union president so the school district could not fire her. Champoux had taught for approximately 15 years in a Catholic school in the Midwest before moving to Yoncalla. Respondent was not a member of the union and did not, as a substitute teacher, qualify for membership. Nevertheless, Champoux informally discussed the matter with Respondent and asked Respondent to "keep her in the loop." (Test. of Houston, Champoux).

A. The Sexual Touching Matter

16. On September 18, 2012, Respondent's instructional assistants, Teresa and Amelia, told Respondent that J, a boy in the school, had been slapping and grabbing the breasts of female students in the school. Reportedly, the practice had begun the previous school year and had been called "Titty Tap Tuesday." (TTT). Respondent asked his assistants to talk to the girls who had been touched to verify the story. Respondent and the assistants reported the incident to Fauci, who met with the girls and also contacted the girls' parents about the matter. Respondent and Fauci met with J, the boy who had touched the girls, and with J's grandparents, who are his guardians. Respondent created a Critical Incident Report on September 18, 2012, which stated in part:

> * * * Based upon the gray area of harassment versus assault, and that [J] had no previous history of such behavior at school, he was given a three-day suspension.

* * *.

> Mr. Fauci, Mr. Berry (HS principal) and myself evaluated the entire situation. More information was needed to determine the appropriate course of action, foremost discussing the nature of the incident with law enforcement to determine whether or not harassment vs. assault. *Mr. Fauci made a call to the Douglas County Sheriff's Dept. as well as to Asst. Superintendent Boe. He was going to call Superintendent Murdoch [sic] as he spoke with law enforcement.*
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> *I was present when Mr. Fauci telephoned the mothers of both girls touched by [J]. He was sensitive to what this entailed, thorough in explaining the incident, and answered their questions with compassion and respect.*

(Ex. A3; emphasis added).

17. Respondent was present in the room at the time Fauci called the Sheriff's office, but Fauci could only leave a message. The deputy later called Fauci back and Fauci reported the incident. (Test. of Houston, Fauci).

18. Neither Fauci nor Respondent notified Child Protective Services (CPS) of potential child abuse. Boe, when informed of the circumstances by Fauci, did not contact CPS and approved of the way Fauci handled the situation. (Test. of Respondent, Fauci, Boe).

B. The Gun and Knife Matter

19. On September 25, 2012, during a leadership class in the early morning, one of the male students told Respondent that a high school student, F, had recently pulled a knife (butterfly knife) on him. Other male students confirmed the story and indicated that this student had asked each of them to steal a gun for him. The students asked Respondent to let Fauci know about the incidents, but asked to remain anonymous. Respondent phoned Fauci, who was away at a conference, and Fauci said he would take care of the matter. (Test. of Houston, Fauci). Fauci called Berry, the high school principal, and asked him to investigate the matter. In his September 25, 2012 Critical Incident Report, Respondent wrote:

> **Response**: I contacted Mr. Fauci who was away at a conference believing this is a mandatory reporting situation. I shared the information with him, asking that the boys remain anonymous as they have been a treasure of ongoing information about what is going on in the school and community. They are an invaluable resource for information that is otherwise unavailable to school staff and law enforcement. We both thought it best that Brian Berry at the H.S. be called immediately to both alert him that [F] is a student of concern, and to search him for the butterfly knife. Additionally, Mr. Fauci is going to report this to Asst. Superintendent Andy Boe for his instructions on what to do regarding contacting law enforcement.

(Ex. A4). Berry talked to two of the students who had reported the problems with student F, but Respondent did not see Berry interview the student who had reported the pulled knife. (*Id.*). The

students told Berry that the conversation about guns had taken place in the summer, when school was not in session. Berry met with F and searched him for the knife, but F did not have a knife. (Test. of Fauci). Fauci received the information from Berry, and both concluded there was no imminent danger. Because F was a high school student (and under Berry's authority and jurisdiction), Fauci took no more action. (Test. of Fauci). September 25, the date of the critical incident report, was Respondent's last day working in that classroom. (Test. of Houston).

20. On September 27, 2012, Respondent emailed Boe about his salary demands. The email did not mention the incidents of September 18 and September 25. Respondent wanted a salary at "step 9/10" and stated: "I have the full support of the union in this matter." Respondent also indicated that the union was "emphatically opposed" to him being paid as a long term substitute. (Ex. A5). Respondent's statements about having the full support of the union were untrue. (Test. of Champoux).

21. On September 28, 2012, Respondent again met with Boe about his salary and again did not mention the two incidents of September 18 and September 25. Boe explained that he was not going to change his mind about Respondent's credit for experience or the salary offer. He told Respondent that he was not in a position to negotiate a salary with him. He gave Respondent the option of continuing as a long term substitute for the entire year, as Respondent had discussed in an earlier conversation, which would provide Respondent with more money but would not have the benefit package a regular teaching position would have. (Test. of Houston, Boe).

22. On September 29, 2012, Respondent emailed Boe that he was not coming back as a substitute teacher and he was not accepting the proffered contract of employment. (Test. of Houston, Boe). Respondent was allowed to continue substituting in the school, but did not substitute in his former classroom. (Test. of Houston).

23. Respondent kept a chronology of matters concerning his conflict with the district about pay. When he received his payroll check and it did not include 17 days of long-term substitute pay (it included ten days' of regular substitute pay and seven days of long-term pay), he decided that was " the straw that broke the camel's back" and was the "final insult" that would require him to file suit against the school. His written chronology did not mention the critical incident reports or any reference to the two September events except on October 30, 2012. On that date, he wrote in pertinent part:

> I have decided to speak to the Yoncalla District School Board to see what, if anything, they will do to remedy the unethical and civil-liability-laden actions that I was subjected to. If things are not made right and an apology issued I intend to sue. I have spoken with OEA and they are supportive.
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> * * * * *
>
> *I think it only fair that I alert Jerry to what is going on and try to meet with Boe to give him a chance to do the right thing though I suspect it will be a waste of time.* I am doing it more for my own conscience as if he doesn't make things right (I have prepared a settlement proposal for him to avoid litigation)[.] I won't feel bad about

the fallout that will certainly transpire. *Just the incident with the student being reported as having a weapon and who was also looking for a gun to carry on his person should have some heads rolling because they covered it up.*

If Murdock and Boe retaliate against me by not letting me sub throughout the county as I have these many years, I can live with that. Besides, I will then have whistle-blowing and civil rights claims that will get me into the federal court in Eugene where the jury will be liberal and could care less about Douglas County.

(Ex. A10 at 10-11; emphasis added). This chronology entry was the first time that Respondent stated, in this record, that he believed there was a "cover up" of the weapon incident of September 25, 2012. (*Id.*). Respondent did not contact DHS or law enforcement about any cover up of child abuse or child endangerment. (Test. of Houston).

24. On October 31, 2012, Respondent called Champoux on her cell phone to discuss the September incidents. Champoux was driving to work and asked him to call her back. Because he said he wanted to discuss some information about the school, she asked him to email the documents to her so she could review them before the conversation. (Test. of Champoux). Respondent's email to Champoux stated in part:

You are not to show this email to anyone, no one, until after the board meeting where they will be disseminated to the board members. *I intend to meet with Andy the morning of Nov. 21st to give him a chance to avoid this opening of a very smelly can of worms. He will have until five to offer one of the two options in my settlement proposal or the board gets it along with the chronology and claim notice.*

Regarding Titty-Tap-Tuesday

* * * I recognize a crime of sexual assault right away. [J] leaves, we discuss it. I tell him it is criminal and that he needs to call the Sheriff and [J]'s parent. Instead he calls Brian Berry and the parents. We all have a meeting. Parents blame the school. [J] is suspended, at first for ten days because I tell Jerry this is what the student handbook says. It also clearly lays out the actions to be undertaken, call the Sheriff. Berry doesn't think it is sexual assault and is more worried about maintaining confidentiality. * * * Berry leaves after it is decided Jerry must report this to the parents and Andy Boe only. * * * He decides after my repeated urging that the handbook requires calling the Sheriff to call the office to find out what constitutes sexual harassment and if this act does. * * * On Monday, I learn that [J] is suspended for four days but still gets to play football. My boys tell me about TTT, its history, etc. *Jerry tells me the Sheriff didn't think sexual assault but I am not sure if I believe that he actually called him.* * * *

This same type of minimizing and cover-up of the schools by the principals occurred with the gun and knife incident with the ninth grader from Medford. * * * Everyone knows who he is as he went to school there four or five years ago[.] * * * To me this boy poses both a threat to the safety of kids at school as well as the community.

> *Berry botched this badly and Boe learned about it so if nothing was done he is implicated it in, too.* [sic] I sent the critical incident report directly to Andy because it was so serious and he acknowledged getting it to [sic] me, the only one I ever copied to him.
>
> *These two incidents could really shake up all administrators, schools and district if the community learns about it which somehow I have a feeling they will. I am certain of that.*

(Ex. A7; emphasis added). This October 31 email was Champoux's first knowledge of the two events Respondent described. She was outraged enough that she decided to confront Fauci for two reasons. First, if the sexual touching and knife incidents had happened as described and the district had not taken the matters to the police, Champoux was resolved that she would contact the authorities. Second, she interpreted Respondent's email as being an attempt to "blackmail" or coerce the district to settle his pay dispute. (Test. of Champoux).

25. Champoux immediately contacted Fauci and Superintendent Murdock to find out what the district had done about the sexual touching and knife incidents, and to tell them about what she believed was Respondent's intent to blackmail or coerce the district. Champoux was so upset by the process that she had to arrange for a substitute for the rest of the day. Murdock asked her to be available to talk again later in the day, so she went home and waited by the phone. Champoux decided to "block" any further emails from Respondent. In January, she discovered that, rather than blocking the email, her email provider sent the emails to her junk mail instead. (Test. of Champoux).

26. On November 16, 2012, Respondent emailed a draft tort claim notice and a settlement offer to Boe. The cover letter from Respondent stated in part:

> I am contacting you to ascertain whether or not you are amenable to remedying the dispute between us so that it won't be necessary for me to serve the notice on those the statute indicates it must be given to. That would be the chairs of the Yoncalla SD and Douglas ESD boards.
>
> * * * * *
>
> In the event that you decide against an attempt at resolving this conflict, as indicated by your not getting back to me with some sort of response by 10:00 a.m. Sunday, Nov. 18th, I will take this to convey just that and will proceed with the actual service of the claim notice *on Monday, Nov. 19th whereby the 'march towards litigation' will regrettably begin in earnest. I will also be forced to undertake other necessary actions to bring about OEA, state and community attention/action on the matters noted in the notice* and what I observed as someone possessing a doctorate in

educational administration at YES[6] and the Yoncalla School District.

* * * * *

Cheating me out of my money took this old 'gunfighter' out of retirement. I had thought God had finally given me rest with Jerry and YES, a gift for battles well fought. *You should have left well enough alone. Truth be told this is the kind of battle I am amazingly effective with as I am a patient and calculating adversary who has a history as an advocate for many causes that entailed litigation.* Give someone's ego enough rope and they will hang themselves with it every time. I gave you way more rope than I am accustom [sic] to, perhaps old age, maybe being tired of dealing with peoples [sic] machinations, or because forgiveness is always a good thing to embrace. I had chosen the latter until the cheat on my wages. No going back from that.

I am not your typical sub or teacher. Go after the sub position, I have sent this to you fully expecting that. I dare you.

(Ex. A11; emphasis added). In a written presentation to be delivered to the school board on November 19, 2012, Respondent wrote in part:

My calling your attention to what has been going on, as well as what could be the consequences of all of it, could lead to retaliatory actions be done [sic] by those who have exposed the Yoncalla School District to liability that entails civil rights violations and tort claims. If this happens it will constitute an additional claim, this one for violating the rights and protections afforded whistleblowers. And should false allegations be made to discredit or otherwise attack my credibility I remind both this esteemed body and those who would be tempted to do such a thing that such misdeeds constitute defamation of character, which would be yet another claim for damages and one I will vehemently pursue.

* * * * *

* * * I am sorry that I am the bearer of bad news but please don't lose sight of the fact that I didn't cause this, your administrators did. When they cheated me out of my rightful pay that was one too many abuses. They now have the tiger by the tail and the tiger knows how to bite.

(Ex. A12 at 2-3). There was no mention of the September incidents in Respondent's written presentation to the board. (*Id.*).

27. On November 21, 2012, Boe prepared a TSPC complaint against Respondent. Murdock reviewed the complaint. (Test. of Boe). The Commission received the complaint on

[6] Yoncalla Elementary School.

December 6, 2012. The complaint stated in part:

> Attached to this complaint I have attached a comprehensive collection of documents sent by Dr. Houston to the ESD, to the board of the Yoncalla School District, and to others. Also included are the results of our investigation of Dr. Houston's charges. We believe that Dr. Houston abrogated his duties as a mandatory reporter in order to use student information for his own personal gain. Dr. Houston has expressed concern over the non-reporting of mandatory reporting incidents. However, to our knowledge, Dr. Houston did not report these events as he is required to do. * * *
>
> While Dr. Houston noted awareness of potential abuse in a confidential memo to a member of the teaching staff at Yoncalla Elementary School, there is no record that the policy—of which he indicated awareness—was followed. *In fact, it appears he withheld that knowledge for his own personal use as leverage in seeking to discredit one or more district administrators and secure a settlement with the district.* Subsequent investigation of the events revealed that the principal of Yoncalla Elementary School did confer with the Douglas County Sheriff's Office about the first event. The second event outlined by Dr. Houston occurred during the summer. In addition, Dr. Houston has sent emails to staff at Yoncalla Elementary School alleging wrong-doing by the administration. This clearly is an attempt to undermine the authority, professionalism and credibility of district administration. One staff member at Yoncalla Elementary has asked to be protected from Dr. Houston's continual barrage of charges.
>
> She believes him to be a disruption to the educational process and a distraction from her teaching duties. We are aware that Dr. Houston has conducted himself similarly in other districts in Douglas County. He has also sent letters to members of the Yoncalla School Board and has threatened to go public with his charges if his demands for compensation are not met. With all of this in mind, we are asking TSPC to conduct a thorough investigation of Dr. Houston's actions and whether or not it is appropriate for him to be licensed to teach in our schools.

(Ex. A13; emphasis added).

28. Dan Clark is the attorney for YSD and for DESD. After receiving Respondent's tort claim notice, Clark told Respondent that further contact with district personnel must go through his office. (Ex. L158). On December 3, 2012, Clark found several emails from Respondent, all dated November 29, 2012, waiting in his inbox. Respondent wrote, in pertinent part:

- One last comment: you will make money, I will make money, and the district and feelings that the community has about the schools will only be made worse, and there really is not much room from where it now is to rock bottom. And then there is the blog attack should anyone search Yoncalla they are going to get a WOW, no way I want my kids there. In the words of Yoncalla Elementary School Principal Jerry Fauci to me "no one would send

their child to this school if they had another option". I am certain a polygraph I pay for on my own will confirm that I was told this *and the other allegations much more troubling that I will soon alert the Yoncalla community to. And of course I intend to attend each and every school board meeting.* (Ex. A14 at 1).

- So, until further notice, you only need to worry about the Yoncalla SD and how I intend to alert the citizens of that fine community to the horrific conditions of their school, and how they are getting cheated by what they are paying for in a superintendent and the services the ESD provides them[.] I think the local media might like this controversy given how much the district has had in the past. *I am keeping my two aces close to my vest, it will implode the whole damn community, that is a certainty.* My examination of budgets now proceeds because I know there are irregularities in how monies are being co-mingled. (Ex. A15 at 1; emphasis added).
- *I will be filing BOLI and EEOC complaints in the next week. * * * I will also report to the ODOE some troubling things I witnessed. Hard ball is a game I like. Attached, you will find the only terms by which I will not proceed with litigation.* * * * I suspect [the board] will reject the options which is fine by me as it does feel like a sell out of sorts. I would much rather expose the ugly things I witnessed in those two schools and let a jury decide what is right and ethical in the circumstances. (Ex. A16 at 1; emphasis added).

29. On December 14, 2012, Respondent published and distributed a flier in the Yoncalla community. It stated:

STUDENTS' FEARS OF VIOLENCE IGNORED AT YONCALLA SCHOOLS

-Did you know that students have reported to school staff fears of violence and threats they would be killed if they reported it?

-Did you know *these 'cries for help' went ignored by school administrators*?

-Did you know that this threat to the Yoncalla community and schools may still exist?

-Did you know that the Student Handbook specifically forbids bringing weapons to school but *when it was reported a student may have one that this student was not searched for this weapon or even talked to about it*?

WHAT ELSE HAVE THEY BEEN COVERING UP TO PROTECT THEIR JOBS INSTEAD OF STUDENTS???

Contact the School Board President Twila Van Loon at [contact info redacted in this Order but present in the flier] to demand that she and the board protect students and to make Yoncalla schools safer.

(Ex. A19; italic emphasis added). Respondent also provided the flier, in letter form, as a letter to the editor of the Douglas County News. (Ex. A21). Accompanying the flier disseminated to the community was an "anonymous" letter written by Respondent. It stated in part:

> Good people of Yoncalla:
>
> Yes, the flyer this accompanies is true, and *believe me there is even more shocking information I have first-hand knowledge about concerning the unhealthy and potentially unsafe learning environment that exists in your schools*. I have worked at both.
>
> I have chosen to remain anonymous at this time as *I have already been victimized by acts of retaliation by the district administration when I attempted to bring these matters directly to the attention of your school board instead of having them filtered by those responsible for these deplorable conditions*, that being Superintendent George Murdock and HR Director Andy Boe. It has even gone so far as the *district lawyer informing me I am forbidden to talk to school and district personnel and the board members, that he must serve as the 'go between' for information concerning student safety and other troubling aspects* of how your school district is being mismanaged.
>
> My knowledge of the student who is the focal piece of this flyer does not end with the fact that he was carrying a knife solely used for stabbing people, a so-called butterfly knife to the high school, but more scary than that is I had four students inform me he was asking kids in your community to steal a pistol for him so he could arm himself with it. And this young man, according to the students who alerted me to this dire threat to your community and school, told them he would 'cap their families' meaning kill them. These students were most assuredly afraid for their families [sic] safety as well as their own. One had the knife brandished to his face with the threat to kill him if he informed anyone about this assault with a deadly weapon and his efforts to locate a pistol.
>
> *All of this was reported to both school principals, verbally and in writing. What did they do? Nothing.* They even failed to listen to what these students had to report, choosing the ostrich method of denial, putting their heads into a hole in the sand. *I let it be known that if any student in the school or for that matter in the town was hurt by this young man that I would come forward with all I know.* With the recent mass murders at the elementary school in Connecticut I believe it is my duty to alert you to the danger that may still lurk in your town, and schools. This is a very serious matter and the judgment displayed thus far by those you pay to manage your schools is extremely poor and void of any professionalism.

(Ex. A18; emphasis added).

30. On approximately January 7, 2013,[7] shortly after posting the first flier, Respondent posted a second flier in the community. The flier stated:

> # SEXUAL ASSAULTS AT YONCALLA ELEMENTARY SCHOOL
>
> ***-Did you know that young girls have been sexually assaulted at Yoncalla Elementary/Middle School*?**
>
> **-Did you know that name given for this weekly 'horseplay', as one administrator called it, was Titty Tap Tuesday?**
>
> **-Did you know that one of the boys who was grabbing the breasts of the female students was suspended for only 3 days, still allowed to play on the football team, and returned to school only to pose a continual threat to others?**
>
> **-Did you know that the Student Handbook states that the consequences for a sexual assault at school (happened at both schools) is a mandatory call to law enforcement and ten days suspension with possible expulsion, yet this punishment was not enforced by school administrators nor was the school board informed of it?**
>
> ***-Did you know the administrators of Yoncalla schools apparently tried to cover up this ongoing pattern of touching young girls' breasts for the past two school years by minimizing its seriousness*** **and not informing staff about its ongoing occurrence in order to prevent it?**
>
> ***WHAT ELSE HAVE THEY BEEN COVERING UP TO PROTECT THEIR JOBS INSTEAD OF STUDENTS???***
>
> **Contact the School Board President Twila Van Loon at [contact info redacted in this Order but present in the flier] to demand that she and the board protect young girls and to make Yoncalla schools safer.**

(Ex. A20; emphasis added). Respondent disseminated both of the fliers to the city council and church leaders, and put them up on bulletin boards all over Yoncalla. He also provided the fliers to the Douglas County News. The community reacted to this flier, and the later one concerning "Sexual Assaults" with fear and anger at the schools and ESD. (Ex. A24 at 3).

31. On December 14, 2012, the same day as the shootings at Sandy Hook, Connecticut,

[7] This date was not presented during testimony at hearing, but Respondent gave this date in his closing argument. While not generally accepting the additional information from that argument as evidence submitted past the close of the record, I am treating this date as an admission that clarifies the record.

Respondent sent two emails to Champoux, the first at 5:28 PM. It stated in part:

> I have since learned that Kelly Bryant is on the City Council. It is imperative that she contact me in that capacity given how the district is trying to put a muzzle on me, and of course discredit or otherwise paint me in a bad way. *All I can say is a huge pile of "it" is about to hit the proverbial fan and I want to make sure the teachers are protected from the mess/smell/fallout.* No way it won't get ugly there for awhile *as the media is now involved and government agencies*.
>
> Do your job as union president and protect the teachers, prepare them for what is coming. It is not going to be a pleasant place to be, and a united front so they won't get caught up in the stink is imperative.
>
> * * * * *
>
> *Dan Clark, their lawyer, is no match for me. Last time I dealt with him that district "surrendered" and settled. This is not about money, money is the only way you can take them to court.* * * * I could care less about the money, it is how mismanaged and unhealthy that school is due to poor leadership. In the end Jerry is definitely going to be packing, this I can guarantee you. *And if you fail in your duty, as you once told me you became union president so you could use it as a cover in case they try to fire you, will no longer be secret. I am not threatening you, just not respective of your meekness.*
>
> *What did you do about Titty Tap Tuesday? You will need an answer as child protective services has been alerted to this practice at your school.*

(Ex. A22 at 4). The second email, sent at 9:31 p.m. on December 14, 2012, stated:

> In the state of Oregon, one it [sic] five of the U.S. that allows people to tape their phone conversations, not having to be legally acknowledged to the other, *I have a system on my phone that records all calls. Ugly truth that it is. Our conversations are recorded. Think about it. Go coward and release them or stand up and do the right thing. So far I am poised to share your conversations almost assuring at the very least our disrespect of your coworkers or worst, not renewal.*
>
> *So, do you try to safe [sic] your own ass at the expense of what is best for the school or let me share our emails and recorded conversations. Sorry that your attempt to protect your ass from getting fired by playing the union card, it comes across quite convincing on the audio recording, not once but twice. And all the other stuff you refuse ti [sic] discuss on email thinking you were safe. Think again.* I don't respect you nor have a desire to guard your ass given your cowardice in the email and phone records I have of you. You have a lot to learn.

(*Id.* at 5; emphasis added). Respondent lied to Champoux about recording her telephone calls with

him. (Test. of Houston).[8]

32. Champoux had been avoiding contact with Respondent, and believed she had blocked his emails to her. On January 11, 2013, while cleaning out the "junk" emails from her computer, she found the two emails Respondent had sent her on December 14, 2012. As a result of what she read in the emails, Champoux filed coercion charges with Deputy Mapes of the Douglas County Sheriff's Office. She also filed a complaint against Respondent with the Commission. (Ex. A22; Test. of Champoux). Douglas County did not file criminal charges against Respondent. (Test. of Houston).

33. On February 14, 2013, the Equal Employment Opportunity Commission (EEOC) gave notice to Yoncalla School District that Respondent had filed an age discrimination claim against the district. (Ex. A23).

34. On January 28, 2015, the Commission issued a Notice of Opportunity for Hearing to Respondent, alleging the following factual matters:

> 3) On or about September 4, 2012, you entered discussions with district administrator Boe regarding a contract offer. At the time, you were employed as a long term substitute teacher for this position and talks were conducted to offer you a contract position. You expressed displeasure with the salary offer, did not accept the contract, and continued on as a substitute teacher while negotiations continued. Unhappy with negotiations, you contacted union representative Champoux and expressed your displeasure about the hiring process and pay and requested assistance from the union. Champoux advised that because you are not a member of the union, there was nothing the union could do to assist you.
>
> On or about October 31, 2012, you contacted Champoux and told her about two incidents involving the safety of students that you felt were not dealt with properly by the school district. Champoux believed you intended to use this information as leverage to compel the district in its negotiations with you or to settle a law suit in your favor. Champoux reported your conversation and the information regarding the two reported incidents to school administrators. Champoux chose to cut off communications with you and blocked you from her phone and email. Champoux later discovered emails from you that had been sent to her "spam" folder. These emails were threatening in nature. You threatened to disclose information about Champoux to school administrators and staff if she didn't "stand up and do the right thing". You described to Champoux your ability to discredit her to her peers and the possibility that you could get her fired (non-renewed). Champoux, was upset and scared by your threats and reported your actions to local law enforcement who conducted an investigation into the possible crime of coercion.
>
> * * * * *
>
> 5) On September 18, 2012, you informed the district of a male student who had

[8] In Respondent's terms, he was "bluffing."

been hitting female students in the breasts. School officials conducted and completed an investigation. On September 25, 2012, you reported to the administration information you had learned regarding a student at another school who had allegedly threatened a student with a knife and was asking other students to steal him a gun. School officials conducted and concluded an investigation based on your report. You failed to make any reports of either of these incidents to law enforcement or the department of human services (DHS) as required by district policy, of which you were aware of and trained in.

On or about November 29, 2012, you advised district administrators that you would be filing complaints with various agencies regarding your displeasure with how the district handled your employment and contract issues. You offered a settlement proposal in which you requested the district pay you damages or you would make additional reports to regulatory agencies, file law suits, and go public with other allegations. The tone of your correspondence was threatening and coercive. In December of 2012, you publicly posted inflammatory flyers, publications and sent letters to the editor (local newspaper) directed at school district patrons advising them that their children were not safe in their schools due to the mishandling of the two incidents described above. These publications were inaccurate and inflammatory, and you used them as leverage in an attempt to coerce the district into settling financially with you. At no time did you attempt to settle or process your grievances through the proper established channels as required by district policy.

(Ex. L3).

CONCLUSIONS OF LAW

1. Respondent committed gross neglect of duty, violating ORS 342.175(1)(b) and OAR 584-020-0040(4)(n) and (o), in the following particulars:

a. By sending threatening emails to a coworker to coerce her to support his position on a pay dispute with the school district and ESD; and

c. By publishing untrue and sensational allegations against the schools and administrators in an effort to coerce a settlement of his pay dispute.

2. Respondent's license with the Commission should be revoked.

OPINION

The Commission contends that Respondent's teaching license must be revoked for acts constituting gross neglect of duty. TSPC has the burden of proof and must prove its case by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are

more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

There were two complaints against Respondent filed with the Commission. In November 2012, the ESD filed a complaint (the Boe complaint) alleging that Respondent failed to perform his duties as a mandatory reporter, and that he was using unreported child abuse allegations as a bargaining chip to leverage or coerce a settlement of his pay dispute with the district. Champoux filed the second complaint (the Champoux complaint) in January 2013, after she found two emails from Respondent that she considered threatening. In both cases, the Commission has charged Respondent with gross neglect of duty.

I. The Legal Standard

Defining "Gross Neglect of Duty." Although the two complaints are somewhat factually different, the Commission contends that Respondent's actions in both matters constituted gross neglect of duty. ORS 342.175 states in part:

> **Grounds for discipline; reinstatement.** (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*[.]

(Emphasis added).

OAR 584-020-0040 defines "gross neglect of duty" and cites other administrative rules describing actions constituting 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[.]
>
> * * * * *

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

(Emphasis added). In this case (and under both complaints), the Commission asserts that Licensee violated the following rules:

- OAR 584-020-0010(5) (use professional judgment);
- OAR 584-020-0025(2)(e) (using district lawful and reasonable rules and regulations);
- OAR 584-020-0030(1) (the competent educator works effectively with others—students, staff, parents and patrons. The competent educator is aware of the ways the community identifies with the school, as well as community needs and the way the school program is designed to meet these needs. The competent educator can communicate with knowledge, clarity and judgment about educational matters, the school, and the needs of the students);
- OAR 584-020-0030(2)(b) (skill in communicating with administrators, students, staff, parents and other patrons);
- OAR 584-020-0035(2)(b) (conduct professional business, including grievances, through established lawful and reasonable procedures).[9]

II. Factual Analysis

The Dispute over Respondent's Pay. Although the pay dispute is not an issue in this case, Respondent's ongoing dispute with the school and ESD over his pay provides the background for many of Respondent's actions and, at least indirectly, for both of the complaints made against Respondent. Respondent was unhappy with his unfruitful salary discussions with Boe and he attempted to enlist Champoux, who was the union president, to help him address the salary issues. When the district refused to further negotiate the salary, Respondent turned to more threatening ways of getting what he wanted.

When the school hired Respondent, he met with Boe (the ESD assistant superintendent who contractually handled HR responsibilities for the school district) to discuss his salary for the teaching contract for the 2012-2013 school year. Respondent wanted several years of credit for several years of private school teaching (and other experience), but Boe was only willing to give him three years' credit for his special education experience. Respondent rejected Boe's salary offer, although both agreed to continue discussing the matter. In the interim, Respondent contacted Champoux to enlist the union's help. Because Respondent (as a substitute teacher) was not a union member, Champoux indicated that the union could not represent him but offered to informally advise him (she, too, had sought credit for previous private school experience). She asked him to "keep her in the loop" concerning his pay dispute.

The September Incidents. During September 2012, while Respondent was trying to negotiate a higher salary, two incidents arose in Respondent's classroom unrelated to his salary dispute.

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[9] The Commission indicated in its Closing Argument that it was not relying on an additional charge in OAR 584-020-0035(3)(a) and was withdrawing that allegation. (Commission Closing Arg. at 8 (fn 41)).

a. The first incident. On September 18, 2012, Respondent's assistant reported to him that a boy student, J, was touching the breasts of female students. Respondent asked his female assistants to investigate further by talking to the girls involved. The assistant's information was provided to Principal Fauci, who met with the girls and informed their parents of the situation. Fauci and Respondent also met with J and his guardian grandparents to discuss the matter. J was suspended for three days and, to Respondent's consternation, was still allowed to play football that week.[10] Respondent was present with Fauci when Fauci called the Sheriff's office and, as his critical incident report indicated, was satisfied when Fauci later told him the deputy received the information.

b. The second incident. Fauci was not on campus at the time of the September 25, 2012 knife and gun report. Students told Respondent that a high school boy, F, had pulled a knife on one of the students and had previously asked the boys to steal a gun for him. Respondent contacted Fauci at a conference, and Fauci told him that he would have the high school principal, Berry, investigate the matter. Berry investigated the matter and searched the student for the alleged knife, finding nothing. He also learned that the conversation between the students about the gun happened during summer vacation and not at school. Fauci and Berry were satisfied there was no imminent danger at the school. Respondent's critical incident report reflected this information, although his handwritten postscript questioned whether Berry had talked to all of the involved students.

According to Respondent's testimony, neither of the incidents required Respondent or any other school employee to report the matter to the Department of Human Services or law enforcement (beyond the call that Fauci made to the Sheriff's office in the breast touching incident). Boe's and Fauci's testimony, showed the school handled each incident appropriately under the cirucmstances. The first incident (titty tap Tuesday) was reported to law enforcement. The second incident (involving the student threats) showed that the student in question did not possess a knife, While Respondent noted on each of the critical incident reports his belief that the matters may be subject of mandatory reporting, it is evident (as discussed below) that Respondent at some point simply decided to use these incidents as pawns in his attempt to address his dispute over his pay.

Meanwhile, Respondent was still trying to negotiate a higher salary with Boe, but was not succeeding. On September 29, 2012, after meeting with Boe on the day before, Respondent informed Boe that he was not going to take the job. When Respondent received his paycheck in October, he became angry because he believed he was supposed to have been paid long-term substitute wages from the very beginning of his work at Yoncalla, rather than only after the first ten days. Respondent decided to pursue legal remedies against the school and the ESD.

Conflation of the pay issues and the September incidents. As of September 29, 2012, the day Respondent told Boe he was not accepting the position, the only issue Respondent was pursuing was the pay dispute. Both of the September incidents—as shown by Respondent's critical incident reports—were resolved. Based upon his incident reports, Respondent's only disagreement with the incidents had been the length of J's suspension and allowing him to play

[10] Although Respondent would later contend that he told Fauci that J should be suspended for ten days, his own critical incident report does not support this later statement.

football, and Respondent's perception that Berry had not talked to the student who reported F's knife. Neither of these was important enough to Respondent, at that time, to lead him to report the matters to the authorities. .

However, by October 30, 2012, Respondent was mulling over the use of the incidents for his benefit in his pay dispute. As he wrote in his chronology:

> I think it only fair that I alert Jerry to what is going on and try to meet with Boe to give him a chance to do the right thing though I suspect it will be a waste of time. I am doing it more for my own conscience as if he doesn't make things right (I have prepared a settlement proposal for him to avoid litigation)[.] I won't feel bad about the fallout that will certainly transpire. *Just the incident with the student being reported as having a weapon and who was also looking for a gun to carry on his person should have some heads rolling because they covered it up.*
>
> If Murdock and Boe retaliate against me by not letting me sub throughout the county as I have these many years, I can live with that. Besides, I will then have whistle-blowing and civil rights claims that will get me into the federal court in Eugene where the jury will be liberal and could care less about Douglas County.

(Ex. A10 at 10-11; emphasis added). This was the first mention by Respondent (in his own chronology) that either of the September incidents entered into the consideration of settling his pay dispute. Despite his own involvement in the incidents, Respondent was now contending that there had been a cover up and that it should "have some heads rolling."

On October 31, 2012, the day after he first mentioned using the September incidents in his chronology, Respondent sent the email to Champoux. He described the two September incidents (in a way substantially different than his own critical incident reports), and told Champoux to keep the information secret until he could obtain a settlement either from Boe or from the district at the board meeting.

Reading Respondent's email with its suggestion that the district was covering up two events that should have been reported, Champoux determined that she must: 1) find out if the child abuse allegations were true and, if they had not been reported, to report them herself; and 2) alert the administrators to Respondent's intent to use these incidents to coerce a settlement from the district on his pay dispute.

Champoux confronted Fauci and Murdock about the September incidents and found out that the matters had been appropriately resolved in September. Champoux told Fauci and Murdock about Respondent's plan to use those incidents to coerce a settlement of his pay dispute. Champoux also attempted to block Respondent's phone calls and emails, although her attempts on the emails only routed any email from Respondent to her junk mail.

The Boe complaint. Respondent made a written presentation to the school board on November 19 to address the pay dispute. He also presented a settlement offer to the board, along with a draft of a tort claim notice. Although he did not refer to the September incidents in his

written comments, the district was aware of his intent to use the two September events because of his email to Champoux. As a result, Boe prepared a complaint to the Commission that it received on December 6, 2012.

Boe's complaint asserted that Respondent was intending to use the September incidents to obtain a settlement of his pay dispute and that, if Respondent really believed the September matters should have been reported, he had failed to report the incidents himself.

That Respondent was intending to use the two September incidents as bargaining chips became very clear in his November 29, 2012 emails to Attorney Clark.[11] In addition to threatening to file several additional claims (BOLI, EEOC, etc.) against the district and ESD, Respondent told Clark that he was keeping his "two aces close to [his] vest," and he promised that they would "implode the whole damn community." (Ex. A15). In context, there can be no question that Respondent's "two aces" were the September incidents that Respondent would sensationalize (in December 2012) to frighten the community of Yoncalla.

Inflaming the community. Respondent was true to his word and, in mid-December he published a sensationalized and inaccurate flier about "Fears of Violence" at Yoncalla Elementary/Middle School. He sent a letter to the "good citizens of Yoncalla," contacted church and civic leaders and obtained press coverage of his allegations.

Respondent's allegations in the flier and the letter were sensationalized and largely untrue. There was no cover up of any aspect of the knife incident and, contrary to Respondent's assertion, the student was searched and no knife was found.

Respondent argues that he was operating on his own knowledge of the event and made the comments in good faith, because he did not know Berry had searched the boy for the knife. However, Respondent had no knowledge of the event beyond his own critical incident report. September 25, the day of the incident, was Respondent's last day working at the school and he did not have any knowledge about the school's follow-up of the event. Even if Respondent had continued to teach at the school, he would not have been privy to Berry's follow-up with student F. Respondent's allegations about a cover-up, and his statement that the student was not searched, were reckless and untrue.

Other comments in the flier and the letter were also inaccurate, and Respondent knew they were inaccurate. There was no evidence of any cover up in either case, and Respondent knew that the administration of the schools had not "ignored" or "covered up" threats of violence. Respondent wrote those comments with the clear intent, in his own words, to "implode the whole damn community."

Respondent blames the publication of this information on the December 14, 2012 events at Sandy Hook. In his initial closing argument, he contends that the Sandy Hook tragedy was "the key variable found in the chain-of-events" that led to the complaints against him. (Arg. at 5).

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[11] Clark, counsel for the school district and ESD, had informed Respondent that, after the filing of the tort claim notice and presentation of the settlement offer to the district, all further contact with the district and ESD must be made through him.

However, Respondent's attribution of his poor judgment to the tragedy of Sandy Hook is simply not credible. By October at the latest, Respondent was already contemplating using his sensationalized version of the September events to buttress his bargaining power with the district. His first written indication that "heads would roll" because of a cover-up was written on October 30, 2012, two months before Sandy Hook occurred. Respondent's second flier, alleging "sexual assaults" at the school, was issued in January 2013, three weeks after Sandy Hook.

Even if the record did suggest that Respondent's emotional response to Sandy Hook contributed to inflaming the community, that response was unreasonable. In the wake of the Sandy Hook tragedy, a time when Americans were coming together to mourn the victims at the school, Respondent actually drove a wedge between the community of Yoncalla and the school. Respondent's judgment in this instance was even more damaging than the emails he sent to school administrators in Rainier several years earlier—emails that led to Respondent's first discipline by the Commission.

Respondent's intent to inflame the community is made even clearer by the publication of his second flier about "Sexual Assault." Issued some three weeks after Sandy Hook, Respondent's dependence on that tragedy to explain what he wrote about alleged sexual assaults is without any support. Respondent intentionally took the September 18 incident—an incident he knew was resolved because he had helped resolve it—and again sensationalized it to inflame the Yoncalla community against its school district. He told the community that law enforcement had not been contacted when Respondent had actually been in the room when Fauci called the sheriff. Respondent was untruthful and inaccurate in his "sexual assault" flier.

Emails to Champoux. On January 11, 2013, while Champoux was cleaning out the junk mail from her home computer, she found two emails that Respondent had sent to her on December 14, 2012. Respondent's emails threatened Champoux with exposure of certain matters if she did not "stand" with Respondent in his issues with the district. Respondent told Champoux he had been taping her phone calls and would give that information to others at the school. Champoux was frightened by Respondent's threats, took the emails to Murdock, filed a criminal complaint with the Douglas County Sheriff's Office, and filed a complaint with the Commission.

Those emails, quoted at length in the Findings of Fact above, again demonstrate Respondent's lack of truthfulness and his intent to coerce actions of others. Respondent admitted at hearing that he was "bluffing" when he said he recorded Champoux's calls. However, he used that lie to attempt to get Champoux to "stand" with him on the issues. Champoux credibly testified that Respondent's communications made her afraid of him.

Respondent admits that he sent the emails, again claiming that he was upset by the Sandy Hook tragedy earlier on December 14. For the reasons explained above, his claim is not credible. There is no rational basis for Respondent to argue that a school tragedy on the east coast justified lying to and threatening the exposure of a teaching colleague. His emails were crude and threatening, and what he called "bluffing" about recording Champoux's phone calls is better described as lying.

Respondent admits sending the two emails to Champoux. In his Response Brief,[12] the essence of Respondent's argument about Champoux concerns her credibility. He argues:

> Regarding Champoux not being aware of "titty-tap Tuesday" and the high school student allegedly looking for a gun and having a knife on him, my testimony refutes her testifying that she was not aware of any of this; true she did not know the full details but I did alert her to these serious matters and I did other teachers and instructional assistants. Afterall, [sic] we were a team. She asked to be kept in the loop not about my dispute over whether or not I was hired as a contracted teacher and then told I would be a long-term substitute teacher but what we both perceived to be poor leadership and management in the school and district when it came to classroom and school-wide behavior management, and communication with staff.
>
> Regarding the blocking of my e-mails I will refer the ALJ to my closing statement. Suffice to say when a person is blocked the e-mail does not go thru and is not placed in the junk file (that is where spam goes). Ms. Champoux's testimony about this is simply a lie. * * * And it is worth noting that the date she claims to have found my Dec. 14th e-mails in her junk folder coincides, based upon my testimony, when I placed the Sexual Assault flyer in the Yoncalla community on January 7, 2013? Coincidence? Hardly! I would argue that there was collusion between her and Mr. Murdock to attack my credibility as the flyers called into question their respective roles in the district.

(Closing Arg. at 3-4). Respondent further argued that the Commission could not call his communications with Champoux "coercive" because no criminal charges were filed against him. (*Id.*). Like the ALJ, the Commission disagrees with Respondent's analysis of the Champoux emails in every particular.

First, there is no evidence (other than Respondent's testimony) to establish that Champoux knew anything about the two September incidents until Respondent sent his October 31 email. Champoux emphatically denies that her request to Respondent to keep her "in the loop" concerned those incidents or any other matter than his efforts to obtain a higher salary as a teacher, and she credibly denied any knowledge of the September incidents before the October 31 email from Respondent.[13]

Second, Respondent also argues that Champoux lacks credibility because she did not really "block" his email. To be blocked, he argues, would mean that any attempt to contact the person

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[12] The Commission has disregarded the portions of Respondent's Response brief which presents facts not in evidence at hearing,

[13] Although Respondent argues that keeping Champoux "in the loop" meant that she was aware of the September incidents and the alleged "cover-up" by the school, the evidence shows otherwise. Champoux's request to keep her in the loop occurred when addressing the pay issue. That her first knowledge of the September incidents was on October 31 is strongly supported by how that information moved her to action—confronting Fauci and Murdock about what she had been told were unreported instances of child abuse.

would be returned with an indication it was blocked. However, Champoux testified she thought she had blocked Respondent's emails, but the email provider sent the emails to her "junk" mail rather than her mailbox. She found them in the "junk" when she was cleaning those junk emails off of her computer. Champoux's explanation is perfectly credible, and the Commission accepts it as true. Respondent's argument that her claim is "simply a lie" is without support in the record. Similarly, Respondent's speculation (in his brief) that Champoux and Murdock colluded to attack Respondent's credibility is unsupported by any evidence.

Respondent's emails were crude and threatening and contained untruths. His explanation that he was angry at Champoux because she did not appear at the November 19 board meeting to help him present his concerns about the September incidents is rebutted by Champoux's reliable testimony that the only thing she had spoken with Respondent about was his pay dispute.

III. Legal Analysis

1. The Boe Complaint. As noted, the Boe complaint contained two allegations: first, that Respondent had failed to perform his duties as a mandatory reporter, and second, that he had published untrue and sensational allegations in the community in an attempt to obtain a settlement of his pay dispute.

Much of the testimony at hearing focused on the two September incidents. In each incident, the record reflects that the school handled the situation well, and within the law. Respondent was aware of this in both instances, as he was involved in reporting both incidents. It was only when Respondent later used these two September events to disrupt the school district and inflame the community against the school that the district and the Commission raised Respondent's own responsibility to report the incidents if he thought they were that serious.

Respondent's actions in this case involve a huge contradiction. At hearing, Respondent insisted that there was nothing to report to the authorities in the two September events, and testified he was present when Fauci called the sheriff's deputy in the sexual touching case. If Respondent's argument is correct, then there was simply no factual or reasonable basis for him to inflame the community with his lurid fliers and letters describing "fears of violence" and "sexual assaults" in the school.

However, if Respondent really believed the September events were as serious as he described to the "good citizens of Yoncalla," then he was required to report the events even at that late date. He did not do so.[14] Thus, as the Commission argues, Respondent either violated his mandatory reporting requirements or he used those September incidents to either coerce a settlement or to inflame the community.

The preponderance of the evidence established Respondent sought to use the information of the critical incident reports as leverage for his pay dispute with the district. He also used them to coerce Champoux to provide assistance. The ALJ did not find that Respondent violated his

[14] Respondent testified that he anonymously reported the matter to DHS some time in December 2012. There is no documentary evidence to support that testimony, and Respondent's testimony is not credible.

mandatory reporting duty with respect to each incident. The Commission does not adopt the ALJ's conclusion, but the Commission will not rely on the allegations of failure to report as a basis for this action.

Respondent failed to use good professional judgment when he chose to use two events that had been well-handled by the school to obtain the settlement on his pay dispute. Respondent did not appear to believe there was anything reportable in either incident, but stirred up the Yoncalla community by alleging that the school had covered up both incidents. Respondent violated OAR 584-020-0010(5).

Furthermore, Respondent did not meet the standard of an ethical educator because, although he was aware of the ways a community identifies with its schools, he deliberately drove a wedge between the community and the school with his lurid fliers and misinformation. He violated OAR 584-020-0030(1).[15] He did not demonstrate skill in his communications with the administrators, his other teachers, or the community patrons. Instead of "knowledge, clarity, and judgment," Respondent intentionally muddied the waters concerning the September incidents in an attempt to obtain a settlement, or to retaliate against the school district for refusing to settle.

Respondent argues that he was well-liked and effective in the classroom, and was in every way professional in his work there. However, the charges against Respondent are not about his classroom effectiveness. It was outside the classroom—but still within his role as an educator—where his problems were manifest. Respondent's actions in attempting to use the September incidents to obtain settlement of his pay dispute, and his inflammatory retaliation when the district would not settle, were a substantial deviation from his responsibilities and constitute gross neglect of duty.

2. The Champoux Complaint. Respondent's two emails on December 14, 2012 (that Champoux did not read until almost a month later) again show that Respondent was not an competent educator and violated OAR 584-020-0030(1). His communications with Champoux did not demonstrate skill in communicating the needs of the school or the community. Instead, they crudely threatened Champoux with exposure if she did not go along with Respondent's agenda. Respondent's judgment in sending those emails—even if, as he claims, they were sent while he was emotional about Sandy Hook—was very poor. Although not profane like the communications that led to his discipline in 2006-2007, the emails were full of lies and threats. Again, they were a substantial deviation from what is expected of an educator. Again, his actions constituted gross neglect of duty.

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[15] That rule states:

> **Human Relations and Communications**
>
> (1) The competent educator works effectively with others -- Students, staff, parents, and patrons. The competent educator is aware of the ways the community identifies with the school, as well as community needs and ways the school program is designed to meet these needs. The competent educator can communicate with knowledge, clarity, and judgment about educational matters, the school, and the needs of students.

Respondent's Primary Arguments. Respondent's primary arguments in opposition to the Commission bear comment. First, as addressed above, he claims that the Sandy Hook massacre on December 14, 2012 was the "key variable" in causing the actions leading to the complaints. Because the conduct in question preceded Sandy Hook by two months, and continued until at least three weeks after Sandy Hook, this argument is without merit.

Second, he argues that the perceived effect of his community attacks against the school prove he is credible:

> My personal integrity and honesty as defined by me as to what it entails, not the TSPC, was such that the principal, human resources director, and superintendent are no longer employed by YSD—all replaced after these issues, and others that staff at the school raised were scrutinized and consequences meted out.

(Arg. at 14). Because school administrators were allegedly ousted by the community, he claims, Respondent contends that his self-defined integrity and honesty has been established.[16] Respondent fails to understand the damaging consequences of his inaccurate and sensationalized attacks on the school. This argument further establishes his lack of professional judgment.

Third, and perhaps the most astonishing argument of all in light of the facts of the case, is Respondent's argument that *the school district* brought up the September incidents in order to retaliate against him for intending to file a lawsuit on the pay dispute:

> I was never, ever asked by school and district administrators, as evinced by the testimony of Fauci and Boe, if I had made a report to law enforcement or DHS. Why, because they had determined none was required. *No one thought it was necessary until they needed something to discredit me with following my serving my notice of claim upon Boe, Murdock and the school district.*

(Arg. at 8-9; emphasis added). According to this argument, it was the district that brought up the September incidents as a means of getting back at Respondent for intending to file suit. Respondent's argument turns the facts of the case on their head. It was Respondent that brought up the September incidents, and it was Respondent who inflamed the Yoncalla community with inaccurate and irresponsible allegations against the school district and ESD.

Despite these arguments, the evidence establishes that Respondent took two events from the classroom and, when he could not obtain a settlement of his pay dispute, began to use the two events—the "two aces"—in an effort to "implode the whole damn town." When Champoux would not go along with his plan and actually sought to avoid Respondent, he sent her two threatening emails. For the reasons set forth above, the Commission has established that Respondent committed gross neglect of duty in both matters, but has not determined that Respondent failed to perform the duties of a mandatory reporter.

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[16] Respondent correctly notes that the Commission withdrew its allegation concerning his honesty and integrity, but incorrectly concludes that the withdrawal establishes his credibility. Respondent, like any other witness or party, is subject to the forum's scrutiny of his credibility.

The Appropriate Sanction

ORS 342.175, quoted above, allows the Commission to determine the appropriate sanction for any violation of the Commission's rules, including for gross neglect of duty. Having established two counts of gross neglect of duty, the Commission seeks to revoke Respondent's license and to deny his current application to retain his teaching license.

Respondent, apparently not understanding the severity of his misrepresentations and the damage caused by his actions in Yoncalla, contends that he should only receive a letter of reprimand. However, Respondent's actions in this case put not just the school but the whole small community of Yoncalla in chaos. Respondent's history in other school districts, his prior discipline, as well as his alma mater at NAU, shows that this form of chaos is what he apparently thrives on. Under the facts of this case, Respondent's violations were severe enough that revocation of his license, and a revocation of his right to apply for a license, is appropriate. Accordingly, his teaching license should be revoked.

FINAL ORDER

Based on the foregoing reasons:

1. Respondent's teaching license is hereby revoked.
2. Respondent's right to apply for a teaching license is hereby revoked.

IT IS SO ORDERED this 14th day of December, 2016.

TEACHER STANDARDS AND PRACTICES COMMISSION

By: Monica Beane
Dr. Monica Beane, Executive Director

NOTICE OF APPEAL OR 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.