

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

IN THE MATTER OF:) **FINAL ORDER**
)
JEFFREY K. LILLEBO) OAH Case No. 2020-ABC-04146
) Agency Case No. 2019-11-008

HISTORY OF THE CASE

This matter came before the Teacher Standards and Practices Commission during its meeting of August 30, 2021 to consider a proposed order issued by Administrative Law Judge Elizabeth Jarry on June 21, 2021. Mr. Lillebo did not file exceptions to the ALJ's Proposed Order. After considering the record, the Commission adopts the ALJ's findings of fact, conclusions of law, and recommendation as the Final Order as set forth below. Modifications to the underlying Proposed Order are noted below.

On July 22, 2020, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing to Jeffrey K. Lillebo, proposing to discipline Mr. Lillebo's Oregon teaching license. On September 3, 2020, Mr. Lillebo requested a hearing.

On October 23, 2020, the Commission referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Dove Gutman to preside at hearing.

On December 18, 2020, ALJ Gutman held a prehearing conference by telephone. Senior Assistant Attorney General Raul Ramirez represented the Commission. Mr. Lillebo did not appear. ALJ Gutman scheduled an in-person hearing for May 6, 2021 and set a deadline for the submission of witness lists and exhibits.

On January 29, 2021, the Commission issued an Amended Notice of Opportunity for Hearing.

On April 8, 2021, the OAH issued a letter to the parties, via email, informing them that due to the ongoing COVID-19 pandemic, the hearing would be held via videoconference. Also on April 8, 2021, Mr. Lillebo emailed an objection to the use of WebEx for the videoconference hearing. On April 22, 2021, ALJ Gutman sent a letter to the parties confirming the use of WebEx for the hearing.

On April 30, 2021, the OAH reassigned the matter to ALJ Joe Allen.

A videoconference hearing convened on May 6, 2021, before ALJ Allen. Mr. Ramirez represented the Commission, and Kevin Cooley appeared on behalf of the Commission. Mr. Lillebo appeared *pro se* and requested a postponement of the hearing on the ground that he was

experiencing technical issues. ALJ Allen granted the requested postponement and set another hearing for May 28, 2021.

On May 24, 2021, the OAH reassigned the matter to ALJ Elizabeth Jarry.

A videoconference hearing convened on May 28, 2021, before ALJ Jarry. Mr. Lillebo appeared *pro se* and testified. Mr. Ramirez represented the Commission, and Kevin Cooley appeared on behalf of the Commission. Steve Quick, Superintendent of Harney County School District #3, and Megan Hunter, Principal of Monroe School, testified for the Commission. Due to technical issues experienced by Mr. Lillebo, the parties also participated in the hearing by telephone, and ALJ Jarry discontinued the use of the videoconference for a portion of the hearing. The record closed at the conclusion of the hearing.

ISSUES

1. Whether Mr. Lillebo engaged in conduct that constituted gross neglect of duty. OAR 584-020-0040 (July 1, 2017).¹
2. Whether the Commission should revoke Mr. Lillebo's Oregon teaching license. ORS 342.175.

EVIDENTIARY RULINGS

The Commission offered Exhibits A1 through A10. Exhibits A2, A9, and A10 were admitted into the record without objection. Exhibits A1 and A2 through A8 were admitted into the record over Mr. Lillebo's objections.

FINDINGS OF FACT

1. The Commission has licensed Mr. Lillebo as a teacher since September 15, 1997. (Ex. A10 at 2.) Mr. Lillebo currently holds a professional teaching license (license), effective February 12, 2017 through February 11, 2022, which authorizes him for employment in Oregon Public schools for pre-K through grade 12 social studies. (Ex. A9 at 1.)
2. In a Stipulation of Facts and Final Order of Suspension, signed October 12, 2010, the Commission found that Mr. Lillebo engaged in gross neglect of duty for inappropriate conduct and comments he made toward students and staff and failure to follow district policy by showing films with mature content to students without parental permission. For those violations, the Commission imposed a one-year suspension of Mr. Lillebo's license, effective August 9, 2010. (Ex. A10 at 1 through 4.)
3. On July 1, 2019, Mr. Lillebo began working for Harney County School District #3

¹ The version of the rule cited herein was in effect in 2019, at the time of the incident. The rule has been subsequently amended with the most recent effective date of January 2, 2020. All subsequent citations to the rule in this Proposed Order are to the 2017 version of the rule.

(District) at the Eastern Oregon Youth Authority (OYA) Correctional Facility Monroe School. (Test. of Hunter and Quick.) Most of the students in the school were ages 14 to 20. (Test. of Quick.) Mr. Lillebo underwent mandatory, in-person training with OYA, which included topics such as juvenile justice, employee ethics, situational awareness, professional boundaries, how to interact with OYA youth, and self-defense. The self-defense portion of the training instructed teachers on maintaining their own safety and focused primarily on methods to extricate themselves from dangerous situations. The training prohibited teachers from physically intervening with students unless their own safety was in question. At the Monroe School, Group Life Coordinators (GLCs) employed by OYA must be present when the teachers work with students, and teachers are expected to make GLCs aware of student behavior that requires physical intervention. (Test. of Hunter.)

4. At approximately 2:15 p.m. on September 23, 2019, Mr. Lillebo was teaching a group of five students in a small room. A GLC was also present. Mr. Lillebo sat in an office chair at a table. He was slouched down in the chair with his legs crossed much of the time. Two students sat at the table with him, one sat at the side of the room across from him, one sat at a counter to the right of him, and a fifth student sat directly behind him. While Mr. Lillebo was speaking to the students, the student seated directly behind him began waving his hands and making gestures over Mr. Lillebo's head. The student continued the behavior for less than one minute without Mr. Lillebo noticing. The student then briefly brushed his fingertips on the top of Mr. Lillebo's head. In response, Mr. Lillebo pivoted around in his chair and grabbed the student's sweatshirt near the front collar. (Ex. A8; test. of Hunter.) While clutching the sweatshirt and leaning close to the student's face, Mr. Lillebo told the student in a raised voice to not touch his head and he also told the student, "Next time I might send you to the dentist." (Ex. A1 at 1.) Mr. Lillebo then released the student, turned back around in his chair, crossed his legs, and continued speaking. After approximately 18 seconds, Mr. Lillebo directed the student to move from behind him. The student got up and sat in a chair directly to Mr. Lillebo's left. Mr. Lillebo continued speaking to the students and began flipping through the book on the table in front of him. The GLC did not intervene during the incident. (Ex. A8; test. of Hunter.)

5. District policies prohibit teachers from restraining students, unless a student is a danger to themselves or others, threatening students, or using harassing language toward students. (Test. of Quick.)

6. Teachers are expected to maintain situational awareness in the classroom. It is inappropriate for a teacher to permit a student to sit directly behind them, especially with the additional safety concerns involved when teaching incarcerated youths. (Test. of Quick and Hunter.) When the student was seated behind him on September 23, 2019, Mr. Lillebo had the options of moving his own seat, asking the student to move, or asking the GLC to move the student. (Test. of Hunter.)

7. Teachers are expected to deescalate situations in their classrooms. The acts of grabbing the student by the sweatshirt and verbally threatening him escalated the situation and had the potential to cause greater disruption if the student had responded with physical force. (Test. of Quick.)

8. On September 24, 2019, Megan Hunter, the Principal of Monroe School, met with Mr. Lillebo and his union representative to question Mr. Lillebo about the incident. Mr. Lillebo informed Ms. Hunter that he “grabbed [the student] to restrain him, no pressure or joints” and that it was a way to gain control so the student would stop the behavior. (Ex. A1 at 3; test. of Hunter.)

9. Ms. Hunter has worked at the Monroe School for two years. She has been licensed as an administrator for three years and previously worked as an assistant principal. Prior to that, she worked for five years as an elementary school teacher. (Test. of Hunter.)

10. On September 25, 2019, Steve Quick, the Superintendent of the District, placed Mr. Lillebo on administrative leave due to the September 23, 2019, incident. (Ex. A2 at 1.)

11. Mr. Quick has served as the Superintendent of the District for five years. (Test. of Quick.)

12. On September 26, 2019, Ms. Hunter recommended Mr. Lillebo’s termination of employment. (Ex. A3 at 1.)

13. Charmarie Bradach, Program Director for OYA, suspended Mr. Lillebo’s access to the Eastern Oregon Youth Correctional Facility based on the September 23, 2019, incident, effective October 1, 2019. (Ex. A5 at 1.)

14. On November 8, 2019, Mr. Quick recommended that the school board terminate Mr. Lillebo’s contract for reasons that included physically restraining a student without a legitimate reason, verbally threatening a student, and OYA banning him from its facility. (Ex. A7 at 1 and 2.)

15. On November 8, 2019, Mr. Quick filed a School District Misconduct Report Form with the Commission, recommending removal of Mr. Lillebo’s license or other sanctions for physically restraining a student and making threatening remarks to the student. (Ex. A6 at 1 and 2.)

CONCLUSIONS OF LAW

1. Mr. Lillebo engaged in conduct that constituted gross neglect of duty.
2. The Commission should revoke Mr. Lillebo’s Oregon teaching license.

OPINION

The Commission proposes to revoke Mr. Lillebo’s Oregon teaching license based on allegations that he engaged in conduct that constituted gross neglect of duty. As the proponent of the allegations, the Commission has the burden to establish, by a preponderance of the evidence, that the allegations are correct and that it is entitled to impose the proposed discipline. *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is

on Commission in disciplinary action); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (in administrative actions, burden of proof is by a preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

Gross Neglect of Duty

ORS 342.175(6) provides:

Violation of rules adopted by the commission relating to competent and ethical performance of professional duties shall be admissible as evidence of gross neglect of duty or gross unfitness.

OAR 584-020-0040(4) provides, in part:

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:

* * * * *

(d) Unreasonable physical force against students, fellow employees, or visitors to the school, except as permitted under ORS 339.250;²

* * * * *

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

In OAR Chapter 584, Division 20, the Commission promulgated administrative rules to define standards for the competent and ethical performance of the professional duties of Oregon educators. OAR 584-020-0010 titled “The Competent Educator” provides, in part:

The educator demonstrates a commitment to:

² ORS 339.250(8) provides:

Each district school board shall adopt and disseminate written policies for the use of physical force upon a student. The policies must allow an individual who is a teacher, administrator, school employee or school volunteer to use reasonable physical force upon a student when and to the extent the application of force is consistent with ORS 339.285 to 339.303.

As discussed below, Mr. Lillebo’s use of physical force during the incident did not comply with the District’s policy; therefore, the exception in OAR 584-020-0040(4)(d) does not apply.

* * * * *

(5) Use professional judgment[.]

OAR 584-020-0020(2) provides, in part:

The competent teacher demonstrates:

* * * * *

(d) Skill in the supervision of students[.]

OAR 584-020-0025(2) provides, in part:

The competent teacher demonstrates skills in:

* * * * *

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

Neither Mr.³ Lillebo nor the Commission dispute that, on September 23, 2019, Mr. Lillebo grabbed a student by the front collar of the student's sweatshirt in response to the student touching Mr. Lillebo on the head. At the hearing, Mr. Lillebo contended that by touching him, the student made him feel sexually harassed, intimidated, and violated and that he was in fear for his life. He further contended that the student had threatened to use a "shank" on him just prior to the incident. His contentions were not credible. Prior to and after the incident, Mr. Lillebo had a relaxed posture and did not appear concerned with his physical safety—he sat slouched in his chair with his legs crossed much of the time. He allowed the student to sit directly behind him before the incident and for approximately 18 seconds after the incident, which also belies his contention that the student made him fear for his life. Moreover, the student's conduct did not appear to be sexual in nature; rather, it appeared that the student was merely fooling around in front of the other students by making hand gestures above Mr. Lillebo's head. Mr. Lillebo's response to the student inappropriately touching his head was disproportionate to the student's conduct. The student's touch, although inappropriate and unwanted, was brief and without force. Mr. Lillebo's use of physical force to restrain the student and attempt to gain control of the situation was unreasonable and in violation of OAR 584-020-0040(4)(d).

As established by Ms. Hunter, an administrator and teacher with multiple years of experience, and Mr. Quick, a superintendent of five years, Mr. Lillebo's conduct on September 23, 2019, substantially deviated from the professional standards of competency for teachers. First, Mr. Lillebo failed to follow the District's policies that prohibited teachers from threatening students and physically intervening with students in the absence of a safety risk. Mr. Lillebo's conduct in grabbing the student's sweatshirt near the collar to restrain the student was a physical

³ The Commission modified this paragraph to specify the ALJ's use of "the parties" refers to Mr. Lillebo and the Commission.

intervention, and Mr. Lillebo's statement to the student regarding sending him to "the dentist" for similar misbehavior in the future was a threat to the student. Because the evidence does not establish that Mr. Lillebo's (or anyone else's) safety was at risk from the student's actions, Mr. Lillebo's responsive conduct violated the District's reasonable regulations and was a substantial deviation from the professional standard of competency set forth in OAR 584-020-0025(2)(e). Second, Mr. Lillebo failed to demonstrate skill in the supervision of students, pursuant to OAR 584-020-0020(2)(d), when he permitted a student to sit directly behind him during class. The student was able to make hand gestures above Mr. Lillebo's head without Mr. Lillebo noticing, which clearly demonstrated that Mr. Lillebo lacked situational awareness at that moment. Finally, Mr. Lillebo's responsive conduct towards the student demonstrated a lack of professional judgment under OAR 584-020-0010(5). Rather than take actions that might have deescalated the situation with the misbehaving student, Mr. Lillebo escalated it by use of physical restraint and a verbal threat. For the reasons discussed, Mr. Lillebo's conduct on September 23, 2019 was a substantial deviation from the professional standards of competency for teachers, and thereby constitutes gross neglect of duty under OAR 584-020-0040(n).

As shown above, Mr. Lillebo's conduct on September 23, 2019 involved unreasonable use of physical force and was a substantial deviation from the professional standards of competency of an educator. Pursuant to ORS 342.175(6) and OAR 584-020-0040(4), his conduct constituted gross neglect of duty.

Discipline of Licensee

ORS 342.175(1) provides, in part:

The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator, or suspend or revoke the right of any person to apply for a license or registration, if the licensee, registrant or applicant has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 339.390 or 342.176 based on the following:

* * * * *

(b) Gross neglect of duty[.]

ORS 342.177(3) provides:

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

(a) Issue a public reprimand.

- (b) Place the person on probation for a period not to exceed four years and subject to such conditions as the commission considers necessary.
- (c) Suspend the license or registration of the teacher or administrator for a period not to exceed one year.
- (d) Revoke the license or registration of the teacher or administrator.
- (e) Revoke the right to apply for a license or registration.

Based upon Mr. Lillebo's conduct that constituted gross neglect of duty, the Commission has the authority under OAR 342.175(1) and OAR 342.177(3) to take disciplinary action against him.

Mr. Lillebo's reaction of grabbing the student's sweatshirt by the collar and verbally threatening the student on September 23, 2019 was grossly disproportionate to the student's misbehavior. Mr. Lillebo failed to express remorse for his actions or demonstrate an understanding of the error of his conduct. Instead, Mr. Lillebo sought to blame the student and claimed unconvincingly that the student caused him to fear for his personal safety. Additionally, Mr. Lillebo attempted to blame his employer and OYA for failing to maintain an appropriate educational environment by allegedly permitting activities, such as cheating and the distribution of pornography, although it was unclear how these alleged activities related to his conduct at issue. Because of these factors and Mr. Lillebo's prior disciplinary history involving gross neglect of duty, the Commission's agrees with the ALJ's recommendation, and finds that revocation of Mr. Lillebo's teaching license is appropriate. Mr. Lillebo will be eligible to apply for reinstatement of his revoked license one year from the date of this Final Order.⁴

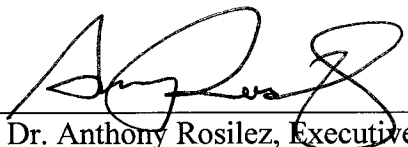
FINAL ORDER

Based on the foregoing, the Commission orders as follows:

1. Jeffrey K. Lillebo's professional teaching license is hereby revoked.
2. Jeffrey K. Lillebo will be eligible to apply for reinstatement of his license after one year from the date of this final order.

It is so Ordered this 13 day of September, 2021.

TEACHER STANDARDS AND PRACTICES COMMISSION

By: 
Dr. Anthony Rosilez, Executive Director

⁴ The Commission modified this paragraph to incorporate the ALJs recommendation of revocation as the Commission's finding of the appropriate sanction.

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