

BEFORE THE TEACHER STANDARDS AND PRACTICES COMMISSION

IN THE MATTER OF:) **FINAL ORDER**
)
DANIEL J. HIATT,) OAH Case No.: 901312
RESPONDENT.)

HISTORY OF THE CASE

On August 26, 2009, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing to Daniel J. Hiatt (Respondent). On August 27, 2009, Respondent requested a hearing. On September 28, 2009, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Stephen Elmore was assigned to preside at hearing.

On December 15, 2009, a pre-hearing telephone conference was held. ALJ Elmore presided. Aruna Masih, attorney at law, represented Respondent. Assistant Attorney General (AAG) Judith Anderson represented the Commission. Lynn Beaton appeared on behalf of the Commission. On December 16, 2009, ALJ Elmore issued a letter setting forth the schedule for hearing. On December 29, 2009, the case was reassigned to Senior ALJ Dove L. Gutman.

On February 23, 2010, a hearing was held in Salem, Oregon. ALJ Gutman presided. Ms. Masih represented Respondent. Ms. Anderson represented the Commission. Ms. Beaton appeared on behalf of the Commission. The following individuals provided testimony: C.J. Easterling, Denise Easterling, Gary Carlton, Trevor Barratt, Steve Johnson, Daniel Hiatt, Rick Hassmann, Margaret Sturza, Evan Brown, Rory Oster, Mike Dennis, Austin Say, Caleb Pugh, Rusty Clemons, Wayne Marshall, Anna Wallace, and Gavin Romanick. The record closed on February 23, 2010.

ALJ Gutman issued a Proposed Order on April 7, 2010. The Commission issued an Amended Proposed Order on June 15, 2010 that adopted the ALJ's findings of fact and reasoning for Conclusions of Law (1), but rejected the ALJ's reasoning for Conclusions of Law (2) and added 4 years probation to the ALJ's recommended Public Reprimand. Licensee filed exceptions to the Amended Proposed Order on June 29, 2010. The Commission considered the exceptions on August 6, 2010 during its meeting and finds them unpersuasive, with the exception of a reference in the opinion section to CJ quitting the football team. The reference is amended to reflect the language in Findings of Fact (13). For the foregoing reasons, the Commission adopts the Amended Proposed Order, with this correction, as the Final Order.

ISSUES

1. Whether, on or about October 9, 2008, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1) and OAR 584-020-0010(5).

2. Whether Respondent shall be disciplined by the Commission for his conduct. ORS 342.175, ORS 342.177.

EVIDENTIARY RULING

The Commission's Exhibits A1 through A15 and Respondent's Exhibits R1 through R38 were admitted into the record without objection.

CREDIBILITY DETERMINATION

A witness testifying under oath or affirmation is presumed to be truthful unless it can be demonstrated otherwise. ORS 44.370 provides, in relevant part:

A witness is presumed to speak the truth. This presumption, however, may be overcome by the manner in which the witness testified, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence.

A determination of a witness' credibility can be based on a number of factors other than the manner of testifying, including the inherent probability of the evidence, internal inconsistencies, whether or not the evidence is corroborated, and whether human experience demonstrates that the evidence is logically incredible. *Tew v. DMV*, 179 Or App 443 (2002).

C.J. Easterling testified that Respondent made the following statement to him, "I should get a rope and hang you with it." Mr. Easterling's testimony was logical, credible, and corroborated in-part by the testimony of Caleb Pugh and Exhibits A1, A2, and A4.

Respondent, on the other hand, testified that he made the following statement to C.J., "I should get a rope." However, Respondent's testimony was contradicted by the statements he made to Steve Johnson and Gary Carlton during the investigation. Accordingly, Respondent's testimony will not be relied upon when it contradicts evidence presented by the Commission.

FINDINGS OF FACT

Background

1. Respondent has been teaching for approximately 35 years. His record is exemplary. Respondent's evaluations have all been positive. He has met or exceeded expectations. Respondent is respected by his colleagues and supervisors, and he gets along with students and parents. Respondent's reputation is tough but fair. He expects 110 percent. Respondent is a good teacher. He cares about his students. Respondent has had a positive impact on staff, students, and parents. He is a good mentor. Respondent has held fundraisers for school equipment. He is respected in the community. Respondent has not previously received any

complaints or disciplinary actions. (Test. of Hiatt, Hassman, Sturza, Brown, Oster, Clemons, Marshall, Wallace, Romanick; Exs. R1-R7, R11-R20.)

2. During the period of August 29, 2001 through October 16, 2008, Respondent was employed with the Jefferson County School District 509-J as the Physical Education (PE) teacher and head football coach at Madras High School (MHS). Respondent also served as the boy's golf coach. (Test. of Hiatt; Exs. A7, R10.)

3. MHS has approximately 800 students of diverse ethnicity. MHS employs three PE teachers. MHS does not employ any African Americans. (Test. of Carlton.)

4. C.J. Easterling is an 18-year-old senior student at MHS. He grew up in Madras, Oregon, and is African American. CJ enjoys athletics, including basketball and football. He is outgoing, conscientious and well-adjusted. C.J. does not overreact to situations and does not get into trouble. (Test. of Mrs. Easterling, Carlton, Johnson.)

5. In fall 2008, C.J. was a member of the MHS football team. (Test. of C.J. Easterling)

Incident

6. On October 9, 2008, C.J. informed Respondent that he was going to be late to football practice because he had homework to finish with another teacher. The homework took longer than C.J. thought it would. He arrived at the locker room after football practice was over. (*Id.*)

7. As C.J. walked into the locker room, Respondent asked where he had been. C.J. responded that he had been doing homework. Respondent then stated, "I should get a rope and hang you with it." C.J. said, "What?" Respondent repeated the statement. (*Id.*; Exs. A4 at 1-4, R38 at 1.)

8. There were four other students in the locker room who overheard Respondent make that statement or something similar. (Ex. A4 at 1-4.)

9. C.J. was shocked and hurt by the statement. C.J. felt the statement was racially motivated. (Test. of C.J. Easterling.)

10. Respondent was frustrated because C.J. had missed football practice. He did not mean to hurt C.J. when he made the statement. Respondent did not intend to make a racially motivated statement. (Test. of Hiatt.)

11. That evening, C.J. informed Steve Johnson, the Athletic Director of MHS, about the incident. C.J. admitted that Respondent made the statement in a joking manner. Mr. Johnson indicated that he would address the issue with Respondent. C.J. also told his mother, Denise Easterling, about the statement. Mrs. Easterling was very upset and could not sleep. (Test. of Johnson, Mrs. Easterling; Ex. A1.)

Investigation

12. On October 10, 2008, at 8:15 a.m., Mrs. Easterling and C.J. met with Gary Carlton, Principal of MHS, and reported the incident involving Respondent. Also present were the two Assistant Principals. Mrs. Easterling made a formal complaint against Respondent. Principal Carlton initiated an investigation. (Test. of Carlton, Mrs. Easterling; Exs. A1 at 1, R38.)

13. C.J. quit the football team, in part, because of the statement that Respondent made to him. (Test. of C.J. Easterling.)

14. On October 10, 2008, at 10:15 a.m., Mr. Johnson, at the direction of Principal Carlton, spoke with Respondent regarding the incident. Respondent admitted that he made a statement to C.J. Respondent told Mr. Johnson that he said he "should take a rope and hang you from the fence post." Respondent said it was made in a joking manner, not meant to harm C.J., and not meant in a racial manner. (Test. of Johnson; Ex. A1.)

15. Respondent was suspended from coaching the football game that night and from traveling with the team. Respondent took leave for the rest of the day. (*Id.*)

16. On October 10, 2008, at 11:35 a.m., Principal Carlton gave Respondent a ride to the Redmond Safeway store where he had parked his car. On the way there, Respondent told Principal Carlton that he was not a racial person, he liked C.J., and although he said, "I ought to get a rope and hang you from a fence post," it was a mistake and he was joking with C.J. (Exs. A2, A5.)

17. Principal Carlton placed Respondent on paid administrative leave. (*Id.*)

18. On October 14, 2008, Principal Carlton and Melinda Bryce, Human Resource Director, held an investigative meeting with Respondent and his representative regarding the incident. Respondent denied making a statement containing the words "fence," "fencepost," or "hanging." (Ex. A3.)

19. On October 15, 2008, Principal Carlton issued a Letter of Reprimand to Respondent, finding the following:

- Respondent engaged in unprofessional conduct towards a student at MHS, which created a hostile educational environment.
- On the evening of October 9, 2008, Respondent made an unprofessional and inappropriate comment to C.J. Easterling.
- Multiple witnesses verified that the comment Respondent made was "I should take a rope and just hang you."
- Respondent's conduct violated school board policies and State standards.

(Ex. A5.)

20. On October 16, 2008, Respondent issued a letter of apology to C.J. and resigned as head football and golf coach at MHS. (Exs. A6, A7.)

21. On October 20, 2008, Respondent returned to his teaching position at MHS. (Ex. R28 at 2.)

22. On October 22, 2008, Rick Molitor, Superintendent of the Jefferson County School District 509-J, notified the Commission of the incident involving Respondent. (Ex. A8.)

23. On November 10, 2008, the Commission initiated an investigation. (Ex. A10.)

24. On March 12, 2009, Respondent's teaching contract with Jefferson County School District 509-J was renewed for two years. (Ex. R35.)

25. C.J. Easterling is currently taking classes from Respondent. (Ex. R37.)

26. Respondent deeply regrets his actions. (Test. of Hiatt.)

CONCLUSIONS OF LAW

1. On October 9, 2008, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1) and OAR 584-020-0010(5).

2. Respondent should receive a public reprimand for his conduct and four years of probation with the condition that he completes a cultural competency training program.

OPINION

The Commission contends that Respondent engaged in gross neglect of duty. The Commission has the burden of proving by a preponderance of evidence that Respondent's conduct constituted gross neglect of duty. ORS 183.450(2), *Reguero v. Teacher Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on TSPC in disciplinary action); *Cook v. Employment Division*, 47 Or App 437 (1980) (the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987). As set forth below, the Commission has met its burden.

Gross neglect of duty

OAR 584-020-0040 is titled "Grounds for Disciplinary Action" and provides, in relevant part:

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

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

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

The educator demonstrates a commitment to:

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

(5) Use professional judgment[.]

As a competent educator, Respondent is required to recognize the worth and dignity of all persons, demonstrate respect for each individual and use professional judgment.

On October 9, 2008, while in the locker room of MHS and in the presence of other students, Respondent told C.J., "I should get a rope and hang you with it." By making that statement to an African-American student, and in the presence of other students, Respondent failed to recognize the worth and dignity of C.J.; failed to demonstrate respect for C.J.; and failed to use professional judgment.

Accordingly, the Commission finds, by a preponderance of the evidence that Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1) and (5).¹

Discipline

The ALJ's reasoning is set forth below in italics. *The Commission contends that Respondent should be disciplined for his conduct. Respondent contends that he has received sufficient discipline from the Jefferson County School District and should not receive any additional discipline from the Commission. As set forth below, I agree with the Commission, but propose that Respondent should receive a public reprimand only.*

¹ I would have made the same finding had the statement been made to any student of any ethnicity.

ORS 342.175 provides:

(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 license, 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[.]

ORS 342.177 is titled "Hearing and decision on charges; notice" and provides, in relevant part:

(3) 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.

As indicated above, the Commission may discipline a teacher for gross neglect of duty. In this case, after reviewing the record and taking into account the factors set forth in OAR 584-020-0045, including Respondent's past performance, the fact that the behavior was an isolated incident, the fact that there is no likelihood of recurrence, the need for deterrence, the effect on the school, and most importantly, the effect on the victim, I propose that Respondent receive a public reprimand for his conduct.


The Commission accepts ALJ Gutman's recommendation of a public reprimand, but concludes that Respondent should also be subject to a 4-year period of probation. The victim, C.J., was "shocked and hurt" by the comment, which he felt was racially motivated, and he quit the football team after the incident, partially because of the statement made by Hiatt. The

statement to C.J. was made in the presence of four other students. While there has been no documented recurrence of this behavior, the Commission finds that probation will deter Respondent from engaging in similar behavior in the future. The Commission therefore adds an additional sanction of 4 years probation pursuant to ORS 342.177(3) with the condition that licensee complete cultural competency training and present verification of such training to the commission prior to the end of the 4 year period of probation.

ORDER

Based on the foregoing, the Commission hereby imposes a Public Reprimand and four (4) years of probation on Daniel Hiatt, subject to completion of cultural competency training prior to the end of his probation.

It is so ordered this 16th day of August, 2010


Victoria Chamberlain, Executive Director
Teachers Standards and Practices Commission

You are entitled to judicial review of this final 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 Court of Appeals

CERTIFICATE OF MAILING

On December 13, 2010, I mailed the foregoing Final Order in OAH Case No. 901312.


By: First Class Mail

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