

1 BEFORE THE TEACHER STANDARDS AND PRACTICES COMMISSION
2 OF THE STATE OF OREGON
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6 In the Matter of the)
7 Teaching License of) FINAL ORDER
8)
9 SHERRY DIANE COLE) Case No. 1102248
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12 On August 16, 2012, Senior Administrative Law Judge (ALJ) Ken L. Betterton issued a
13 Proposed Order in this case. The Commission considered the Proposed Order along with the
14 written exceptions filed by Licensee on August 28, 2012.
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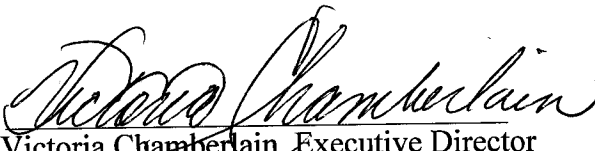
16 The Commission does not find Licensee's exceptions persuasive, and hereby adopts the
17 Findings of Fact, Conclusion of Law and Order contained in the attached Proposed Order as the
18 Final Order.
19

20
21 ORDER

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23 The Commission adopts the Proposed Order in its entirety and revokes the teaching
24 license of Sherry Diane Cole.
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26 Dated this 21st day of November 2012.
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29 TEACHER STANDARD AND PRACTICES COMMISSION
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32 By: 
33 Victoria Chamberlain, Executive Director
34 Teacher Standards and Practices Commission
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41 **NOTICE:** You are entitled to judicial review of this order. Judicial review may be obtained by
42 filing a petition for review within 60 days of the service of this order. Judicial review is pursuant
43 to the provision of ORS 183.482 to the Oregon Court of Appeal.

CERTIFICATE OF MAILING

On December 18th, 2012, I mailed the foregoing Final Order and Proposed Order in OAH Case No. 1102248 to:

By: U.S. First Class Mail

Ralph E. Wiser
Attorney at Law
1 Centerpointe Drive, Suite 570
Lake Oswego OR 97035

By: Shuttle

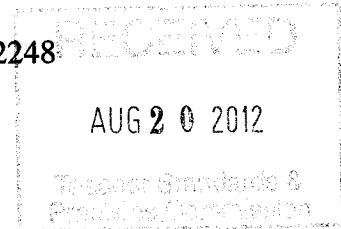
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Melody Hanson
Director of Professional Practices

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
TEACHER STANDARDS AND PRACTICES COMMISSION**

IN THE MATTER OF THE TEACHING) **PROPOSED ORDER**
LICENSE OF:)
) OAH Case No.: 1102248
SHERRY DIANE COLE)



HISTORY OF THE CASE

On August 14, 2009, the Teacher Standards and Practices Commission (TSPC) issued a Notice of Opportunity for Hearing to Sherry Diane Cole (Licensee), seeking to discipline her for violating laws regarding her license. Licensee filed a request for hearing on August 24, 2009.

On September 25, 2009, TSPC referred the case to the Office of Administrative Hearings (OAH). The case (OAH Case No. 901301) was assigned to Senior Administrative law Judge (ALJ) Dove Gutman.

A telephone pre-hearing conference was held on February 9, 2010. Attorney Ralph E. Wiser represented Licensee. Senior Assistant Attorney General (AAG) Raul Ramirez represented TSPC.

On March 25, 2010, Licensee filed a Motion to Dismiss and/or to Make More Definite and Certain.

On April 19, 2010, TSPC filed a Response to Licensee's Motion.

On April 21, 2010, Senior ALJ Gutman issued a Ruling on Licensee's Motion, denying the Motion to Dismiss and granting the Motion to Make More Definite and Certain.

On June 7, 2010, TSPC filed an Amended Notice of Opportunity for Hearing to Licensee.

The case was subsequently scheduled for hearing, but was withdrawn by TSPC prior to hearing.

On March 7, 2011, TSPC issued a Second Amended Notice of Opportunity for Hearing to Licensee, adding allegations to the Amended Notice.

TSPC referred the case to the OAH on March 14, 2011. The case (OAH Case No. 1102248) was assigned to Senior ALJ Ken L. Betterton.

A telephone pre-hearing conference was held on May 24, 2011. Attorney Wisner represented Licensee. Senior AAG Ramirez represented TSPC. The telephone pre-hearing conference was continued to June 21, 2011 for the parties to research a procedural issue. Attorney Wisner represented Licensee. Senior AAG Ramirez represented TSPC. The case was scheduled for a contested case hearing to start December 5, 2011.

On July 6, 2011, Licensee filed a Motion to Dismiss the Second Amended Notice. TSPC filed a Response to the Motion on July 22, 2011. Licensee filed a Reply to the Response on July 29, 2011. Senior ALJ Betterton on August 19, 2011 issued a Ruling Denying Motion to Dismiss.

A hearing was held in Salem, Oregon on December 5 and 6, 2011. Attorney Wisner represented Licensee. Senior AAG Ramirez represented TSPC. The following witnesses testified for TSPC: Licensee; Janie Radinovich-Brose, former Union-Baker Education Service District (UBESD) employee; and Nancy Campbell, former UBESD fiscal manager. Jack Adams, Ph.D., testified for Licensee. Licensee also testified on her own behalf.

A continued hearing was held in Salem, Oregon on May 2, 2012. Attorney Wisner represented Licensee. Senior AAG Ramirez represented TSPC. Jude Lehner testified for TSPC.

A telephone status conference was held on June 4, 2012 to schedule closing arguments. TSPC filed its written closing argument on July 2, 2012. Licensee filed her written closing argument on July 27, 2012. TSPC filed its reply closing argument on August 3, 2012, at which time the record was closed and the matter taken under advisement.

ISSUES

(1) Whether, by submitting improper claims for travel reimbursement, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b), OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties), and OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty).

(2) In the alternative to Issue (1), whether by submitting travel reimbursement for making one or more trips to the same locations using a separate vehicle from a co-worker who was driving to the same general locations and who was also claiming travel reimbursement, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b),

OAR 584-020-0040(4)(n), as it incorporates OAR 584-020-0010(5) (use of professional judgment), and OAR 584-020-0040(4)(o), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by obeying the law, exemplifying personal integrity and honesty).

(3) Whether, by participating with a co-worker to improperly receive reimbursement for a set of glass bowls, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

(4) If Licensee committed one or more of the above violations, what discipline should be imposed?

EVIDENTIARY RULING

Exhibits A1 through A8, A17, and A19 through A28, offered by TSPC, were admitted into evidence without objection. Exhibits A9 and A10 were admitted into evidence over Licensee's objection as to relevance. Exhibit A16 was admitted into evidence over Licensee's objection that the document was not reliable. Exhibit A18 was admitted into evidence over Licensee's objection as to relevance. Exhibits A13 through A15 were excluded from evidence based on Licensee's objection that their prejudicial effect outweighed their probative value. Exhibit A11, a duplicate of Exhibit A15, was also excluded from evidence.

Exhibits R1 through R4, offered by Licensee, were admitted into evidence without objection. Exhibits R5 and R6 were admitted into evidence over TSPC's objection as to relevance.

Pleadings P1 through P23 were also made a part of the record.

FINDINGS OF FACT

Factual background.

(1) The Union-Baker Education Service District (UBESD) hired Licensee in 1995 as a teacher. (Licensee's testimony.) The UBESD is an education service district (ESD) based in La Grande, Oregon. An ESD is a district created by statute to provide

regional educational services to constituent school districts.¹ (Dr. Jack Adams's testimony.)

(2) In the early 1990s, the UBESD was a relatively small education service district that contracted with a handful of school districts in northeastern Oregon near La Grande to provide educational services to those districts. (Jude Lehner's testimony.) Alternative education, programs designed to serve students not served by the traditional school setting, such as students who have dropped out of school, are incarcerated, or are pregnant, as well as home school programs, programs for children whose parents wish to educate them at home, were relatively new in Oregon in the early 1990s. (Licensee's testimony; Lehner's testimony.)

(3) The UBESD hired Ed Schumacher (Schumacher) as superintendent in 1997. Lyle Mann (Mann) was UBESD's director of alternative education in the late 1990s. He had been a long-time UBESD employee. As director of alternative education, Mann reported to Schumacher. (Lehner's testimony.) Nancy Campbell (Campbell) started working for the UBESD in August 2000. She soon became the fiscal manager for the alternative education program. In that position, she reported to Mann. (Campbell's testimony.)

(4) Alternative education and home school programs began to expand significantly in Oregon in the late 1990s. Schumacher and Mann saw an opportunity to expand UBESD's size and scope and influence by aggressively courting school districts over a large area of eastern Oregon to contract with UBESD to provide services to those school districts. By 2004, when the investigations began that led to the notice to discipline being filed against Licensee, UBESD had contracts with approximately 41 school districts in eastern Oregon. Those school districts ranged from The Dalles in the west, to Enterprise in the northeast, to Malheur County in the southeast, and covered hundreds of square miles over a large area of eastern Oregon. (Lehner's testimony; Dr. Adams's testimony.)

(5) Licensee's duties gradually began to expand from teaching to other areas in the UBESD. By approximately 1999 or 2000, she had become a coordinator for UBESD's home school, school-to-work, and youth corrections programs with the various contracted school districts. As a home school coordinator, her job duties included developing curriculums for her programs; working with parents and teachers regarding instructional materials; making certain school districts and parents had the materials and supplies they needed; and organizing and presenting in-service training. Licensee's job required a great deal of travel. Her territory also covered much of northeastern and parts of eastern Oregon. As a home school coordinator, Licensee reported to Mann. Licensee earned a monthly salary and was not paid overtime. Although her standard work week was Monday through Friday, 8:00 a.m. to 5:00 p.m., she sometimes worked extra hours

¹ "There is created in each region a district to be known as the education service district to consist of counties and the area of the common school districts as listed in ORS 334.020, with a governing body thereof to be known as the education service district board." ORS 334.010.

during the week. She also sometimes worked on weekends. Her home office was in Island City, a town just northeast of La Grande. (Licensee's testimony.)

(6) The UBESD hired Jude Lehner (Lehner) in the mid-1990s as a teacher. In approximately 1997, the UBESD made him an alternative education coordinator for the UBESD. As an alternative education coordinator, Lehner reported to Mann. Lehner's home office was also in Island City. (Lehner's testimony.)

(7) Licensee and Lehner became acquainted at work. They started living together in approximately 2001, as Lehner was going through a divorce from his wife. Licensee and Lehner have never married, although they have lived together as husband and wife since they first started living together. (Licensee's testimony; Lehner's testimony.)

(8) In late 2003 or early 2004, a citizen watchdog group in the La Grande area began to look into the UBESD's operations for alleged wasteful spending and mismanagement after Mann purchased an airplane for the UBESD's use for travel. Actions by the watchdog group led to a number of articles in local and regional newspapers that drew attention to the UBESD for alleged wasteful spending and mismanagement. (Dr. Adams's testimony.)

(9) The investigation by the watchdog group and the publicity of alleged wasteful spending and mismanagement led to investigations in 2004 and 2005 of the UBESD by numerous federal agencies, including the Internal Revenue Service, the U.S. Department of Education, and the U.S. Attorney's Office. The watchdog group's efforts also led to investigations by State of Oregon agencies, including the Department of Education, the State Police, the Secretary of State's Office, TSPC, and the Department of Justice. Some UBESD administrators and employees resigned or were terminated as a result of the investigations. Some UBESD board members resigned. Schumacher and Mann were terminated from employment in approximately September 2004 for alleged misconduct. (Dr. Adams's testimony; Lehner's testimony.)

(10) A grand jury was convened to look into possible criminal conduct by number of former and current UBESD employees. Lehner testified before the grand jury in the spring of 2005. He was not indicted for any crime in connection with his involvement with the UBESD. Lehner was placed on administrative leave in September 2004. He remained on administrative leave until September 2005, when he was allowed to return to work for the UBESD. (Lehner's testimony.) Several individuals employed by the UBESD were indicted and prosecuted, including Schumacher and Mann. Both Schumacher and Mann were acquitted after a jury trial. Only one UBESD employee, Matt Combe, was convicted of any crime in connection with the numerous investigations into the UBESD's operations. (Dr. Adams's testimony.)

(11) In approximately July 2005, the UBESD hired Jack Adams, Ph.D., as superintendent to restructure the UBESD and put it on a sound financial footing. Dr. Adams had retired in 2003 after approximately 33 years of experience as a school

superintendent for a number of school districts in Washington state. (Dr. Adams's testimony.)

(12) Dr. Adams reviewed boxes of UBESD records, talked to current and former employees, talked to UBESD board members, and talked to superintendents of school districts that contracted with the UBESD, in order to grasp the magnitude of the problems facing the UBESD. Dr. Adams spent much of the year following his hiring as superintendent, assembling documents to respond to requests and subpoenas from the numerous agencies investigating the UBESD. He filled the back of his personal pickup several times with boxes of records to deliver them to Salem for the various investigations. (Dr. Adams's testimony.)

(13) In the course of examining the UBESD's records, Dr. Adams found a Travel Reimbursement Procedures for the UBESD that was last updated in March 1996. (Ex. A22.) The policy stated, in part, that employees would be reimbursed for mileage, for the "most direct and common route," for use of a personal vehicle, meals and lodging, for UBESD travel. (*Id.* at 1.) In talking to employees, Dr. Adams learned that the policy was not consistently followed. The policy did not require or expect UBESD employees to share rides, either in UBESD vehicles or in their personal vehicles, when traveling on UBESD business. In reviewing records and talking to UBESD employees, Dr. Adams learned that it was common practice for UBESD employees traveling to the same town on the same day, to drive separate personal vehicles, and for each to claim reimbursement for mileage from the UBESD. Employees traveling on the same day to the same building in other towns were not required or expected by the UBESD's administration to share rides. (Dr. Adams's testimony.)

(14) In 2004, the UBESD board hired Dickey and Tremper, LLP, (Dickey and Tremper), certified public accountants and business advisors, in Pendleton, Oregon, to investigate allegations of misappropriation of assets, violation of the UBESD policies and procedures, violation of state and federal laws, and fraudulent reporting, for fiscal years ended June 30, 2002, 2003 and 2004. (Dr. Adams's testimony; Ex. A5.)

(15) Dickey and Tremper issued a 62-page report dated August 22, 2004 (Ex. A5), which concluded, in part, as follows: The UBESD had an enormous amount of travel, with some employees each claiming between 30,000 and 45,000 miles per year (*Id.* at 4.); there was a lack of internal controls regarding district policies; long-time practices conflicted with some written policies; current business managers did not have the power to question expenditures approved by administrators; and Superintendent Schumacher did not have complete control of the organization, and that he had particular difficulty controlling the actions of Mann and Williams [another UBESD administrator]. (*Id.* at 5.)

(16) Licensee was never charged with any crime in connection with the investigations into the UBESD's operation. She continued to work for the UBESD through the time of the investigations and the attendant turmoil until June 2010, when she took a job with a school district in eastern Oregon. (Licensee's testimony.)

(1) Submitting false or improper mileage reimbursement claims; and (2) Failing to share travel expenses with a co-worker who was traveling to the same locations.

(17) Between August 2001 and June 2004, Lehner claimed mileage reimbursement from the UBESD for 95,527 miles of travel. (Ex. A12 at 30.) Between August 2001 and June 2004, Licensee claimed mileage reimbursement from the UBESD for 90,171 miles of travel. (*Id.* at 62.) During this time period, the UBESD reimbursed employees at the rate of 30 cents per mile. During this time period, the UBESD reimbursed employees for meals at the per diem rate of \$5.75 for breakfast, \$8.75 for lunch, and \$14.35 for dinner. (Exs. A1, A2.) An amount claimed for meals that exceeded the per diem rate needed to be supported by a receipt. (Lehner's testimony.)

(18) Licensee and Lehner submitted their mileage and travel reimbursement requests to Campbell. Campbell reviewed the requests, organized them and forwarded them to Mann for his approval and signature. After Mann approved the requests, the requests were sent to the UBESD's accounting office for payment. (Campbell's testimony.)

(19) Licensee and Lehner usually traveled several times a week to various towns and education sites in eastern Oregon in connection with their respective jobs. Sometimes their travel took them to the same town on the same day. Sometimes they rode together in the same vehicle. However, because their job duties and the sites they needed to visit were different, it usually was not practical for them to ride together. Although the UBESD owned numerous vehicles that employees could use for work-related travel, Mann and UBESD administrators did not encourage their use, and did not encourage employees to ride together. Mann, in particular, encouraged employees to be as "efficient" as possible, meaning drive directly to their education sites, do their work, and return to their home station as soon as possible, and not "waste time" trying to coordinate travel plans to share rides. (Licensee's testimony; Lehner's testimony.)

(20) TPSC in its Second Amended Notice accused Licensee on approximately 104 occasions between August 2001 and August 2004, of either claiming reimbursement for mileage when she and Lehner actually rode together and each of them separately claimed reimbursement for mileage, or of claiming mileage separately when they should have shared rides and only one of them claim reimbursement for mileage. (P13 at 2-3.)

(21) During the late summer and early fall of 2001, the UBESD established an alternative education school in the Baker City area, in a building on the ranch owned by Benny Ruda (Ruda). (Lehner's testimony.) Two teachers with the Baker City School District, Donna Valentine and Janie Radinovich-Brose (Radinovich-Brose), became employees of the UBESD and started working at the school on Ruda's ranch. Lehner and Licensee were actively involved in setting up the school at Ruda's ranch and often traveled as many as three times a week from La Grande to Baker City and back to get the school up and running. (Radinovich-Brose's testimony; Lehner's testimony.)

Radinovich-Brose observed that Lehner and Licensee usually arrived at the school on Ruda's ranch together and left in the same vehicle. (Radinovich-Brose's testimony.)

(22) For the month of August 2001, Lehner claimed reimbursement for mileage from La Grande to Baker City and back on 11 days. (Ex. A2 at 1 and 4.) For August 2001, Licensee claimed mileage reimbursement from La Grande to Baker City and back on 10 days. (Ex. A1 at 1.) Of those dates, they each claimed mileage from La Grande to Baker City and back on six days, August 1, 2, 3, 13, 14 and 20. (Compare Exs. A1 at 1 and Ex. A2 at 1-4.)

(23) After a few months at the Ruda ranch, the alternative education school was forced to move to a location in Baker City because of building code problems with the building on the ranch. (Lehner's testimony.)

(24) Lehner claimed reimbursement for 320 miles of travel on August 15, 2001 from La Grande to Baker City/Huntington/Malheur County and back. (Ex. A2 at 4.) Baker City, Huntington and Malheur County are all on or near I-84. Interstate 84 is a major highway that runs from Portland through Pendleton, La Grande, Baker City, Ontario, Boise, Idaho, and east across the western United States. (Ex. A22 at 2.) Licensee claimed mileage reimbursement for 316 miles of travel on August 15, 2001 to Malheur/Adrian/Nyssa and back. (Ex. A1 at 1.) The locations where Licensee claimed mileage reimbursement also line up along I-84 and are close to the locations where Lehner requested reimbursement for travel. (Ex. A22 at 2.) Lehner claimed reimbursement for dinner in the amount of \$48.55 on August 15. (Ex. A2 at 4, 7.) Licensee did not claim reimbursement for any meals on August 15. (Ex. A1 at 1.) Lehner's reimbursement records show that he claimed mileage of 95 miles from La Grande to Baker City and back on August 14, 2001. (Ex. A2 at 4.) Licensee claimed mileage reimbursement of 86 miles from La Grande to Baker City and back on August 14, 2001. (Ex. A1 at 1.)

(25) Lehner claimed reimbursement for 267 miles of travel from La Grande to John Day/Grant County and back on August 21, 2001. (Ex. A2 at 4.) He claimed reimbursement for dinner on August 21 in the amount of \$22.50. He did not claim reimbursement for breakfast that day. (*Id.* at 7.) Licensee claimed reimbursement for 252 miles of travel to John Day and back on August 21, 2001. (Ex. A1 at 1.) She claimed reimbursement for breakfast on August 21 for \$31.60, but did not claim reimbursement for dinner. (Ex. A1 at 1; Licensee's testimony.)

(26) Lehner claimed reimbursement for 290 miles of travel from La Grande to Malheur and Boise, Idaho and back on August 30, 2001. He claimed reimbursement of \$43.87 for dinner, but claimed no reimbursement for breakfast for August 30. (Ex. A2 at 20, 25.) Licensee claimed reimbursement for 410 miles of travel to Malheur/Adrian/Nyssa/Boise and back on August 30, 2001. She claimed reimbursement of \$7.95 for breakfast, but made no claim for dinner on August 30. (Ex. A1 at 1, 3.) Licensee also claimed reimbursement for lodging of \$87.68 for double occupancy in a motel in Boise on August 30/31. (Ex. A1 at 1, 6.) The checkout time from the motel was

5:25 a.m. (*Id.* at 6.) On her reimbursement request form, Licensee listed the reason for going to Boise as "Costco." (Ex. A1 at 1.) She did not claim reimbursement for any purchases for the UBESD at Costco on August 30 or 31. (*Id.*)

(27) Licensee submitted her request for reimbursement for August 2001 on September 11, 2001. (Ex. A1 at 1.) Lehner submitted his request for reimbursement for August 2001 on September 27, 2001. (Ex. A2 at 20.)

(28) Lehner claimed reimbursement for 600 miles for travel from La Grande to Portland on June 16, and back to La Grande on June 18, 2002, to attend an accreditation meeting. (Lehner's testimony.) He claimed reimbursement at the per diem rate for meals for the trip. (Ex. A2 at 63.) Licensee claimed reimbursement for 606 miles from La Grande to Salem on June 16 to attend a meeting, and back to La Grande on June 18, 2002. (Ex. A1 at 57.) She claimed reimbursement at the per diem rate for dinner on June 16, claimed reimbursement at the per diem rate for breakfast, lunch and dinner on June 17, and claimed reimbursement at the per diem rate for breakfast and lunch on June 18. She claimed reimbursement for \$32.40 for dinner on June 18 at 4:29 p.m., for two guests at a restaurant in Hood River. (*Id.* at 61.) Neither Lehner nor Licensee claimed reimbursement for lodging for June 16 or 17. The UBESD had a direct billing arrangement with some motels in cities where UBESD employees traveled. The motel would directly bill the UBESD for lodging, making it unnecessary for employees to pay for lodging and later seek reimbursement from the UBESD. (Licensee's testimony.)

(29) Lehner claimed reimbursement for 252 miles of travel from La Grande to John Day and back on Wednesday, August 7, 2002. (Ex. A2 at 69.) He did not claim reimbursement for mileage, or for anything else, until Monday, August 12, 2002. (*Id.*) Licensee claimed reimbursement for 688 miles of travel from La Grande to Lakeview and back, between August 7 and 9, 2002. (Ex. A1 at 64.) A commonly traveled major highway from La Grande to Lakeview passes through John Day. (Ex. A18 at 14.) Licensee claimed reimbursement for lodging for \$144.16 at a motel in Lakeview for two guests for the nights of August 7 and 8. (Ex. A1 at 66.)

(30) Lehner claimed reimbursement for 650 miles of travel from La Grande to Salem and back on August 20, 2002, to purchase supplies at Costco in Salem for the UBESD for "alt ed." (Ex. A2 at 69.) He claimed reimbursement for dinner in Baker City on August 19, 2002 at the per diem rate. (*Id.*) Lehner purchased \$2,136 of supplies at Costco in Salem at 6:23 p.m. on August 20. (*Id.* at 70.) He returned to La Grande after making the purchase, and claimed reimbursement at the per diem rate for breakfast, lunch and dinner for August 20. (*Id.* at 69.) Licensee claimed reimbursement for 606 miles from La Grande to Salem/Aurora and back on August 19/20, 2002, for "greenhouse and supplies." (Ex. A1 at 70.) She claimed reimbursement for 252 miles of travel from La Grande to Baker City/Grant County and back on the morning of August 19, 2002. (*Id.*) Licensee claimed reimbursement at the per diem rate for dinner on August 19, and claimed reimbursement at the per diem rate for breakfast and for lunch on August 20. She claimed reimbursement for dinner on August 20 at 9:28 p.m. for \$21.55 for two guests at Sharis in Troutdale. (Ex. A1 at 70, 72; Licensee's testimony.) Licensee did not

claim reimbursement for the purchase of any "greenhouse and supplies" on August 19 or 20. (Ex. A1 at 70.)

(31) Lehner claimed reimbursement for 260 miles from La Grande to John Day and back on May 29, 2003 for "senior graduation." (Ex. A2 at 135; Lehner's testimony.) Licensee claimed reimbursement for 252 miles from La Grande to John Day and back on May 29, 2003 for a "parent BBQ." (Ex. A1 at 115; Licensee's testimony.)

(32) Lehner claimed reimbursement for 252 miles of travel from La Grande to Prairie City/Grant County and back on February 19, 2004, to attend a meeting. (Ex. A2 at 175.) Licensee claimed reimbursement for 252 miles from La Grande to Prairie City/Grant County and back on February 19, 2004. (Ex. A1 at 167.)

(3) Improperly receiving reimbursement for a set of glass bowls.

(33) Radinovich-Brose, during the late summer of 2001, saw Lehner and Licensee deliver supplies they had purchased for the alternative education program at Ruda's ranch near Baker City. Among the supplies delivered, she saw sets of Pyrex bowls that she liked. She wanted to buy a set for herself. She asked Lehner to buy her a set of the bowls when he made a future trip to Costco to buy supplies, and advised that she would reimburse him. (Radinovich-Brose's testimony.)

(34) On September 21, 2001, Lehner made a trip to Costco and purchased supplies totaling \$4,021.68 for the alternative education program at the Ruda ranch. The purchases consisted of many food stuffs, cleaning supplies and other household items, including three sets of Pyrex bowls, each set costing \$29.99. (Lehner's testimony.) The lengthy receipt that Costco gave Lehner specifically identified each item purchased. (Ex. A2 at 12-19.) Licensee accompanied Lehner on the trip. (Licensee's testimony; Lehner's testimony.)

(35) On or about September 24, 2001, Lehner and Licensee delivered the supplies to Ruda's ranch. Radinovich-Brose picked up her set of Pyrex bowls. She started to write a check payable to Lehner for the bowls. (Radinovich-Brose's testimony.) As she began writing "J" [for Jude], Lehner told her to make the check payable to Licensee. (Ex. A16 at 12.) She then wrote the check to "Sherry Cole" for \$30.00 for the bowls and handed the check to Licensee, who was standing next to Lehner. (Radinovich-Brose testimony; Ex. A16 at 12.) Licensee deposited the check shortly after September 21. (Licensee's testimony.)

(36) At the end of September 2001, Lehner submitted a reimbursement request form to the UBESD for reimbursement of \$4,021.68 for the purchases he made at Costco on September 21. (Lehner's testimony; Ex. A2 at 12-19.) He attached a copy of the lengthy, detailed Costco receipt to his reimbursement request form. He did not deduct \$29.99 from his reimbursement request for the set of Pyrex bowls that Radinovich-Brose took, nor did he ever reimburse the UBESD for the bowls. Lehner received

reimbursement from the UBESD for \$4,021.68 shortly after he submitted his reimbursement request. (Lehner's testimony.)

(37) Licensee also made purchases at Costco on September 21, 2001. (Licensee's testimony.) She wrote a personal check to Costco dated September 21, 2001, for \$461.49 for the purchases she made. (Ex. R2 at 12.) Licensee did not keep a copy of her receipt. She did not later try to get a copy of her receipt from Costco to verify her purchases. Licensee did not seek reimbursement from the UBESD for any of the purchases she made at Costco on September 21, 2001. (Licensee's testimony.)

CONCLUSIONS OF LAW

(1) Licensee engaged in gross neglect of duty under ORS 342.175(1)(b) by submitting improper claims for travel reimbursement.

(2) Licensee did not engage in gross neglect of duty under ORS 342.175(1)(b) by submitting travel reimbursement for making one or more trips to the same locations using a separate vehicle from a co-worker who was driving to the same general locations and who was also claiming travel reimbursement.

(3) Licensee engaged in gross neglect of duty under ORS 342.175(1)(b) by participating with a co-worker to improperly receive reimbursement for a set of glass bowls.

(4) Licensee's teaching license should be revoked.

OPINION

TSPC seeks to revoke Licensee's teaching license. TSPC has the burden of proof to establish its allegations. ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982). The allegations must be proven 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 true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

TSPC is charged with the responsibility of disciplining teachers and administrators in Oregon. ORS 342.175 *et seq.* One basis for disciplining a teacher or administrator is gross neglect of duty. ORS 342.175(1)(b). TSPC has alleged that Licensee engaged in gross neglect of duty by violating three sections in OAR 584-020-0040(4). OAR 584-020-0040(4) defines gross neglect of duty, in relevant part, as follows:

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:

* * * * *

(c) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

* * * * *

(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[.]

OAR 584-020-0010(5) states that the "competent educator" demonstrates a commitment to the "use of professional judgment."

OAR 584-020-0035(3) states that the ethical educator, in fulfilling obligations to the profession, will:

(a) Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty[.]

The three allegations against Licensee are addressed in turn.

(1) Whether, by submitting improper claims for travel reimbursement, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b), OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

TSPC has accused Licensee of gross neglect of duty by submitting false claims for travel reimbursement. Licensee denies the allegation. If Licensee and Lehner in fact rode together and each claimed reimbursement for mileage, their conduct would constitute "double billing," would be misappropriation of UBESD funds, and in essence would constitute theft. Such conduct would clearly constitute gross neglect of duty under the above administrative rules.

The evidence that Licensee and Lehner rode together but each claimed reimbursement for mileage is circumstantial. However, TSPC presented evidence

establishing more likely than not that on at least several occasions, Licensee and Lehner in fact rode together but each separately claimed reimbursement for mileage.

Lehner claimed reimbursement for 290 miles of travel from La Grande to Malheur and Boise and back on August 30, 2001. He claimed reimbursement for \$43.87 for dinner, but claimed no reimbursement for breakfast. The amount of \$43.87, substantially more than the per diem rate of \$14.35, most likely would have covered two dinners rather than one. It is unclear why Lehner needed to go to Boise, in another state, on business for the UBESD. Licensee claimed reimbursement for 410 miles of travel to Malheur/Adrian/Nyssa/Boise and back on August 30, 2001. She listed the reason for traveling to Boise as "Costco." Exhibit A1 at 1. However, Licensee did not submit any request for reimbursement for the purchase of any supplies at Costco for the UBESD on that date. She claimed reimbursement for breakfast in the amount of \$7.95, but claimed nothing for dinner. She claimed reimbursement for lodging of \$87.68 for double occupancy in a motel in Boise on August 30/31. Based on Licensee's reimbursement request, she traveled to Malheur on August 30, continued on to Boise, purportedly to shop at Costco for the UBESD, spent the night in Boise (with Lehner), and returned to La Grande early the following morning, yet apparently made no purchases at Costco for the UBESD. The evidence points to the conclusion that Lehner and Licensee rode together in one vehicle, but each claimed reimbursement for mileage. Neither Lehner nor Licensee offered any logical explanation to support a conclusion that they took separate vehicles. Consequently, a preponderance of the evidence demonstrates that Lehner and Licensee improperly double billed the UBESD for mileage for the August 30/31, 2001 trip.

Lehner claimed reimbursement for 600 miles for travel from La Grande to Portland on June 16 to attend a meeting, and returning to La Grande on June 18, 2002. He claimed reimbursement at the per diem rate for the meals for the trip. Licensee claimed reimbursement for 606 miles from La Grande to Salem on June 16 to attend a meeting, and returning to La Grande on June 18, 2002. She claimed reimbursement at the per diem rate for dinner on June 16, claimed reimbursement at the per diem rate for breakfast, lunch and dinner on June 17, and claimed reimbursement at the per diem rate for breakfast on June 18. She claimed reimbursement for \$43.40 for dinner on June 18, for two guests at a restaurant in Hood River at 4:29 p.m. Again, the evidence strongly points to the conclusion that Lehner and Licensee rode together on this trip, yet each claimed reimbursement for mileage.² More likely than not, Licensee dropped Lehner off at his meeting in Portland, drove on to Salem, attended her meeting, then picked Lehner up in Portland on the way back to La Grande. They stopped in Hood River and had dinner on June 18 at 4:29 p.m. Licensee had no persuasive explanation why she and Lehner would have taken separate vehicles and separately stopped and had dinner together at the same restaurant on the way back to La Grande. Lehner and Licensee improperly double billed the UBESD for mileage for the June 16-18, 2002 trip.

² The fact that neither Licensee nor Lehner claimed reimbursement for lodging might be explained because the UBESD had a direct billing arrangement with motels in some cities in Oregon for UBESD employees when they traveled to those cities.

Lehner claimed reimbursement for 252 miles of travel from La Grande to John Day and back on Wednesday, August 7, 2002. He did not claim for reimbursement for mileage, or any other expenses, until Monday, August 12, 2002. Licensee claimed reimbursement for 688 miles of travel from La Grande to Lakeview and back, between August 7 and 9, 2002. John Day is on a commonly traveled highway between La Grande and Lakeview. Licensee claimed reimbursement for lodging for \$144.16 at a motel in Lakeview for two guests for the nights of August 7 and 8. Licensee had no recollection of who shared the motel room with her, but acknowledged that it probably was Lehner. It is possible that Lehner and Licensee could have driven in separate vehicles from La Grande to John Day on August 7; Lehner could have conducted his business in John Day while Licensee waited; Lehner could have left his vehicle in John Day and ridden with Licensee from John Day to Lakeview, where she conducted her business for the next two days; both of them could have returned in Licensee's vehicle to John Day on August 9, where Lehner picked up his vehicle; and they could have driven back to La Grande in separate vehicles. However, such a scenario is illogical. The more likely scenario is that they rode in the same vehicle from La Grande to Lakeview and back, and each claimed mileage for separate trips to different locations so as not to arouse suspicion. Lehner and Licensee improperly double billed the UBESD for mileage for the August 7-9, 2002 trip.

Lehner claimed reimbursement for 650 miles of travel from La Grande to Salem and back on August 20, 2002, to purchase supplies at Costco for the UBESD. He purchased \$2,136 of supplies at Costco at 6:23 p.m. He returned to La Grande after making the purchase and claimed reimbursement at the per diem rate for all three meals that day. Licensee claimed reimbursement for 606 miles from La Grande to Salem/Aurora and back on August 19/20, 2002, for "greenhouse and supplies." Exhibit A1 at 70. She claimed reimbursement for meals at the per diem rate for August 19, and claimed reimbursement at the per diem rate for breakfast and lunch on August 20. She claimed reimbursement for dinner on August 20 for \$21.55 for two guests at Sharis restaurant in Troutdale at 9:28 p.m. She did not claim reimbursement for any purchase of greenhouse and supplies on the trip. Licensee failed to present persuasive evidence why she and Lehner would drive separate vehicles on this trip, why Licensee would make the trip to purchase greenhouse and supplies, yet not make any such purchases, and why they would happen to stop in separate vehicles to eat dinner at the same restaurant in Troutdale late in the evening on August 20. Again, more likely than not, Licensee and Lehner rode together in one vehicle on this trip and each claimed reimbursement for mileage. Licensee and Lehner improperly double billed the UBESD for mileage for the August 19-20, 2002 trip.

For August 15 and 21, 2001, May 29, 2003, and February 19, 2004, Licensee and Lehner each claimed reimbursement for mileage for traveling to the same town. Given the pattern of the specific locations for their trips and the claimed purpose of the trips, and given their claims for reimbursement for meals on these trips—one claiming reimbursement in excess of the per diem rate for a meal and the other not claiming anything for that meal, then switching their reimbursement request for other meals on the trip—more likely than not they rode in the same vehicle and each separately claimed

reimbursement for mileage. They improperly double billed the UBESD for mileage on these occasions.

Considering the pattern of Licensee's and Lehner's travel for approximately three years, and the clear pattern of each claiming reimbursement for mileage on numerous occasions when they rode together, more likely than not they rode together on at least six days in August 2001, when they each claimed reimbursement for mileage from La Grande to Baker City and back to set up the school at Ruda's ranch. Radinovich-Brose testified that she usually saw Lehner and Licensee arrive and leave in the same vehicle during the time period the school at Ruda's ranch was getting established. The evidence demonstrates that Licensee and Lehner improperly double billed the UBESD for reimbursement for mileage for at least several days in August 2001.

Licensee and Lehner were able to get away with making duplicate claims for mileage for such a long period of time, in part, because of lax oversight by the UBESD's administration.

In sum, TSPC proved, more likely than not, that Licensee knowingly claimed and was reimbursed by the UBESD on numerous occasions for mileage worth at least several hundred dollars to which she was not entitled. Licensee's conduct of knowingly submitting false reimbursement forms constituted gross neglect of duty under ORS 342.175(1)(b) and the administrative rules cited above.

(2) Whether, by submitting travel reimbursement for making one or more trips to the same locations using a separate vehicle from a co-worker who was driving to the same general locations and who was also claiming travel reimbursement, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b), OAR 584-020-0040(4)(n), as it incorporates OAR 584-020-0010(5) (use of professional judgment), and OAR 584-020-0040(4)(o), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by obeying the law, exemplifying personal integrity and honesty).

TSPC has accused Licensee of gross neglect of duty by not sharing rides with a co-worker (*i.e.*, Lehner) who was traveling to the same general locations as Licensee, resulting in both of them claiming reimbursement for mileage from the UBESD. Licensee denies that her conduct constituted gross neglect of duty.

Licensee's job duties differed from Lehner's. While their travel sometimes took them to the same towns or areas on the same days, they needed to be at different locations within those towns at different times during the day. There may have been times when they could have arranged their schedules to ride together, and in fact they did so on occasion. However, the UBESD had no policy that required employees share rides. In fact, the UBESD's administration encouraged employees to do just the opposite. As part of Schumacher's and Mann's goal of building the UBESD into an empire by collecting more and more state money, the administration and the overall culture within the UBESD encouraged employees to take their personal vehicles for travel, and to ride separately and claim mileage separately.

TSPC failed to prove that Licensee engaged in gross neglect of duty by not riding together with Lehner to share travel expenses when the UBESD had no policy or expectation that employees would do so.

(3) Whether, by improperly receiving reimbursement for a set of glass bowls, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

TSPC accuses Licensee of gross neglect of duty by improperly receiving reimbursement for a set of glass bowls. Licensee denies the accusation. The allegation regarding the Pyrex bowls as to Licensee differs from the allegation against Lehner. Whereas TSPC alleged that Lehner submitted a false reimbursement request and received \$29.99 from the UBESD to which he was not entitled, TSPC alleges that Licensee improperly received money from Radinovich-Brose.

Licensee's claim that she purchased the set of Pyrex bowls that Radinovich-Brose received is not persuasive. Licensee purchased items at Costco on September 21, 2001. She did not present a receipt at the hearing to document that she purchased a set of Pyrex bowls. If she had purchased a set of Pyrex bowls, she could have obtained and presented a receipt at the hearing to verify that at least she purchased this item. Licensee presented a copy of the check she wrote to Costco on September 21, 2001, together with a copy of her check register for that check. She failed to present persuasive reasons why she could not have obtained and presented at the hearing a copy of the receipt documenting her purchases at Costco on September 21, 2001.

The allegation against Lehner centers on his receiving reimbursement from the UBESD for a set of bowls to which he was not entitled. The UBESD reimbursed Lehner for three sets of bowls, but only received two sets of bowls. Lehner in essence converted the value of one set of bowls that belonged to the UBESD.

Licensee did not receive any money from the UBESD for Pyrex bowls. She received a check for \$30 from Radinovich-Brose for a set of bowls. She did not convert money to herself that belonged to the UBESD.

The gravamen of Licensee's conduct with respect to the set of bowls centers on her knowledge of Lehner's conduct regarding the bowls and playing along with the scheme. Licensee and Lehner lived together and had collaborated on numerous occasions over a lengthy period of time to submit requests for duplicate reimbursement for mileage and other expenses from the UBESD. Licensee knew on September 24, 2001

precisely what Lehner was doing by having Radinovich-Brose make the \$30 check payable to her. Licensee played along, and in essence assisted Lehner in converting money that belonged to the UBESD. Her acceptance of the money from Radinovich-Brose that she knew she was not entitled to receive demonstrated a failure to maintain the dignity of the teaching profession by failing to exemplify personal integrity and honesty, and a failure to use good professional judgment reasonably expected of a teacher. Her conduct constituted gross neglect of duty under ORS 342.175(1)(b), OAR 584-020-0040(4)(n) and (o), and 584-020-0010(5) and 584-020-0035(3)(a).

(4) If Licensee committed one or more of the above violations, what discipline should be imposed?

ORS 342.177(3) sets forth the form of discipline TSPC may take against a licensee as follows:

* * *. If the decision of the commission is that the charge described in ORS 342.175(1) had 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 privilege to apply for a license or registration.

TSPC seeks to revoke Licensee's teaching license. The evidence establishes that Licensee and Lehner engaged in a pattern of conduct over approximately three years in which they repeatedly and unlawfully submitted false claims for reimbursement of mileage and other expenses from the UBESD. Licensee essentially committed theft of at least hundreds of dollars of the UBESD's money. Any discipline other than revocation would be inappropriate.

ORDER

I proposed TSPC issue the following order:

Revoke Licensee Sherry Diane Cole's teaching license.

Ken L. Betterton

Senior Administrative Law Judge
Office of Administrative Hearings

EXCEPTIONS

The proposed order is the Administrative Law Judge's recommendation to the Teacher Standards and Practices Commission. If you disagree with any part of this proposed order, you may file written objections, called "exceptions," to the proposed order and present written argument in support of your exceptions. Written argument and exceptions must be filed **within fourteen (14) days after mailing of the proposed order** with the:

Teacher Standards and Practices Commission
250 Division Street, N.E.
Salem, Oregon 97301

The Commission need not allow oral argument. The Executive Director may permit oral argument in those cases in which the Director believes oral argument may be appropriate or helpful to the Commissioners in making a final determination. If oral argument is allowed, the Commission will inform you of the time and place for presenting oral argument.

CERTIFICATE OF MAILING

On August 16, 2012, I mailed the foregoing Proposed Order issued on this date in OAH Case No. 1102248.

By: First Class and Certified Mail

Certified Mail Receipt #7010 2780 0000 2132 9219

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