

CERTIFICATE OF MAILING


On July 6, 2017, I mailed the foregoing Final Order Adopting Proposed Order in OAH Case No. 1403653 to:

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

IN THE MATTER OF:) **PROPOSED ORDER**
)
DENNIS E. JOHNSON) OAH Case No. 2016-ABC-00013
)

HISTORY OF THE CASE

On April 25, 2016, the Teacher Standards and Practices Commission (TSPC or Commission) issued a Notice of Opportunity for Hearing to Dennis E. Johnson (Respondent). On May 16, 2016, Dennis E Johnson requested a hearing.

On July 21, 2016, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Dove L. Gutman to preside at hearing.

On September 22, 2016, ALJ Gutman convened a prehearing telephone conference. Attorney Rebekah Jacobson represented Respondent. Senior Assistant Attorney General Raul Ramirez represented the Commission. Jeff Van Laanen appeared on behalf of the Commission. During the prehearing conference, ALJ Gutman scheduled the hearing for March 1 and 2, 2017. On September 23, 2016, ALJ Gutman issued a Pre-Hearing Order, setting forth the issues, burden of proof, and schedule for hearing.

On March 1 and 2, 2017, a hearing was held in Salem, Oregon. ALJ Gutman presided. Attorney J. Hank Stebbins represented Respondent. Mr. Ramirez represented the Commission. Mr. Van Laanen appeared on behalf of the Commission. The following individuals testified: Respondent, Burney Krauger, SP, CP, Officer Matt Smart, Dana Newdall, Dakota Hensley, and Greg Olson. The record closed on March 2, 2017.

ISSUES

1. Whether, in October 2014, Respondent engaged in gross neglect of duty. ORS 342.175(1)(b); OAR 584-020-0040(4)(n), (o).
2. If so, whether Respondent should receive a sanction of 90 days of suspension.

EVIDENTIARY RULING

The Commission's Exhibits A1 through A12 were admitted into the record without objection. Respondent's Exhibits R1 through R10 and R12 through R19 were admitted into the

record without objection. Respondent withdrew Exhibit R11.

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).

The evidence presented in the hearing is in dispute regarding the incident that took place between Assistant Coach Brown and CP during a football game on October 10, 2014. As such, a credibility determination is necessary.

Officer Matthew Smart. Officer Smart is employed by Reedsport Police Department. Officer Smart has been in law enforcement for 22 years. On October 10, 2014, Officer Smart was volunteering at the football game between Gold Beach High School and Reedsport High School. Officer Smart was on the visitor's (Gold Beach High School) side of the field. Officer Smart observed the incident between Gold Beach Assistant Coach Brown and student CP.

Officer Smart testified (by affirming his police report) to the following: Officer Smart observed Brown charge CP and strike CP's helmet with a closed fist. Officer Smart observed Brown grab CP by the face mask and start screaming at CP. Officer Smart observed that Brown was emotionally out of control. Officer Smart also observed that CP and others around the incident were shocked by Brown's behavior. Officer Smart told a referee that if Brown touched another player he would have Brown removed from the field. The following day Officer Smart reported the incident to the administrative assistant of the Reedsport School District, as well as his supervisors at the Reedsport Police Department.

Officer Smart's testimony was logical, consistent, and corroborated by his police report (Ex. A7 at 54), and the testimony of CP's father. Officer Smart's testimony was also unbiased.

I find that Officer Smart's testimony is supported by the reliable evidence in the record.

Dana Newdall. Dana Newdall is employed as a teacher at Gold Beach High School. Ms. Newdall has been a teacher for approximately 25 years. On October 10, 2014, Ms. Newdall was taking photographs at the football game and observed the incident between Assistant Coach Brown and student CP.

Ms. Newdall testified to the following: Assistant Coach Brown reached out towards CP and his hand glanced off CP's shoulder pad and unintentionally hit CP's helmet causing it to go up. Brown then grabbed CP's helmet and pulled it down. It was not a big deal.

A portion of Ms. Newdall's testimony (grabbing CP's helmet) is corroborated by Officer Smart's testimony and Brown's stipulation (Ex. A9). The remaining part of Ms. Newdall's testimony regarding the incident was inconsistent with the reliable evidence in the record and will be given no weight.

Dakota Hensley. Dakota Hensley was a student and football player at Gold Beach High School in 2014. Mr. Hensley observed the incident between Assistant Coach Brown and CP.

Mr. Hensley testified to the following: CP had an attitude towards Assistant Coach Brown. Brown brought CP in with the face mask and told him to play. Brown then shoved CP back onto the field. It seemed minor.

A portion of Mr. Hensley's testimony (pulling CP in with the face mask) is corroborated by Officer Smart's testimony and Brown's stipulation (Ex. A9). The remaining part of Mr. Hensley's testimony regarding the incident was inconsistent with the reliable evidence in the record and will be given no weight.

Therefore, the findings of fact regarding the incident between Brown and CP are made in reliance on Officer Smart's testimony and Brown's stipulation (Ex. A9).

FINDINGS OF FACT

Background

1. Dennis E. Johnson (Respondent) holds an Initial Administrator License with the Commission. The license is valid through April 23, 2018. (Ex. A1.)
2. During the period of July 1, 2013 through July 1, 2015, Respondent was employed by the Central Curry School District (CCSD) as Superintendent of CCSD and Principal of Gold Beach High School (GBHS) in Gold Beach, Oregon.¹ (Test. of Johnson; Ex. A7 at 4.)
3. Respondent supervised approximately 10 teachers at GBHS, including Gregory Brown (Brown), special education and lower level math teacher. Respondent's duties covered school sponsored activities, including GBHS football games. (Test. of Johnson; Ex. A9.)

Incident during football game

4. During the 2014 to 2015 school year, CP was a student at GBHS and a player on the

¹ Respondent moved from New York to Oregon in 2013 to take the position of Superintendent. (Test. of Johnson; Ex. A7 at 4.)

GBHS football team. CP played the positions of running back and safety. Justin Storns (Storns) was the head coach of the GBHS football team. Storns was not a licensed teacher, nor was he a licensed administrator. Brown was the defensive coordinator and an assistant coach of the GBHS football team. (Test. of CP, Johnson; Exs. A3, A7, A9.)

5. On Friday, October 10, 2014, the GBHS football team had an away game at the Reedsport High School in Reedsport, Oregon. CP was playing in the game.

During the third quarter of the game, Coach Storns called for a time out to change formations.² CP was on the sideline taking ibuprofen for a groin injury he had sustained earlier in the season. CP had taken his helmet off in order to take the medication with water.³ Storns called out for CP, wanting to put CP back into the game. Assistant Coach Brown yelled at CP to get his helmet on. CP put his helmet back on but did not fasten the chin strap. Brown then physically struck CP on his helmet near the facemask, forcibly pushing CP's unsnapped helmet back along his head. Brown then grabbed CP's facemask and used it to pull CP closer to him while continuing to yell at CP.

Coach Storns and a referee intervened and physically separated Brown from CP. Brown then walked down the sideline away from the players. CP was not injured by Brown's actions. Storns spoke with CP and sent him back into the game. CP subsequently scored a touchdown.⁴

CP's mother, MP, was a few feet from the incident and observed it when it occurred. CP's father, SP, was in the stands across the field and witnessed the interaction between Brown and his son. SP was furious. SP ran to the other side of the field and confronted Brown, telling Brown if he ever touched CP again SP would roll Brown up on that field.

Respondent was at the football game and saw a "commotion." Respondent did not see the details of the incident. GBHS teacher Dana Newdall (Newdall) was at the game taking photographs. Respondent asked Newdall what the commotion was about. Newdall said Brown and CP "got into it." Respondent knew Brown was a teacher and CP was a student. Respondent did not speak to Brown, CP, or CP's parents about the incident that evening.

Officer Matt Smart, with the Reedsport Police Department, was at the football game volunteering on the visitor's side of the field. Officer Smart observed the incident when it occurred. Officer Smart observed Brown charge CP and strike CP's helmet with a closed fist. Officer Smart observed Brown grab CP by the face mask and start screaming at CP. Officer Smart observed that Brown was emotionally out of control. Officer Smart also observed that CP and others around the incident were shocked by Brown's behavior. Officer Smart told a referee

² The score at that time was GBHS 8 and Reedsport 6. (Ex. A7 at 20.)

³ Players on the GBHS football team were required to have their helmets on even when they were on the sidelines for their own safety. (Ex. A7 at 20.)

⁴ After scoring the touchdown, CP came off the field and hugged Brown, who apologized for his behavior. (Ex. A7 at 9, 12, 17.)

that if Brown touched another player he would have Brown removed from the field.

After the game was over, CP's parents spoke with Coach Storns regarding the incident.⁵ CP's parents told Storns that they were not okay with Brown hitting their son. Storns told CP's parents that he would report what happened to Respondent and GBHS Athletic Director Kevin Swift (Swift).

In the locker room following the game, Brown apologized to the football team regarding his behavior. Brown also apologized to CP in the parking lot as he was leaving. (Test. of Smart, Johnson, Newdall; Exs. A3 at 1-3, A7 at 6, 9, 10, 11, 12, 17, 20, 54, A9 at 1-2.)

The investigation

6. On October 11, 2014, Officer Smart reported the incident between Brown and CP to the administrative assistant of the Reedsport School District, as well as his supervisors at the Reedsport Police Department. (Test. of Smart.)

7. On the morning of October 11, 2014, CP's parents attended a youth football game at GBHS. CP's parents spoke with Storns and Swift, who were present at the game. CP's parents stated that they were still angry about the prior evening and something needed to be done. CP's parents stated that they expected the school to handle the matter and follow proper procedure. Swift told CP's parents that he was the right person to tell and it was his job to take care of it. (Ex. A3 at 2.) Brown was at the game and apologized to CP's parents for his behavior. CP's parents left it up to the school and Respondent to handle the incident. (*Id.*)

8. On October 11, 2014, Respondent met with Storns and Brown at GBHS.⁶ During the meeting, the participants discussed the incident involving Brown and CP.⁷ Storns and Brown reported that Brown had attempted to grab CP's face mask during a time out, that there had been no punch thrown, and that Brown had apologized to the team after the game. Storns and Brown also reported that they had spoken with CP's parents that morning and the issue was resolved between all parties.⁸ (Test. of Johnson; Ex. A4 at 7, 13.)

9. During the week of October 13, 2014, Storns and Brown reviewed the game films and found no video evidence of the incident.⁹ (Ex. A4 at 7.)

10. During the week of October 13, 2014, Respondent spoke with Swift, who confirmed

⁵ After the game, Brown also approached SP, but SP did not want to talk to Brown. (Ex. A7 at 9.)

⁶ The meeting was prearranged (before the incident took place). Respondent could not recall if Swift was also present in the meeting. (Test. of Johnson.)

⁷ Respondent was unaware that he should not interview witnesses together. (Test. of Johnson.)

⁸ Respondent left it up to the coaches to resolve the matter. (Test. of Johnson.)

⁹ The video footage of the game only showed the actual plays during the game. There is no footage of the time between plays, time outs, half time, or after the end of the game. (Ex. A7 at 8.)

that he had spoken with Storns and Brown and that the matter was resolved between the parties. (Ex. A4 at 7.)

11. On October 15, 2014, Respondent issued an email to Brown that stated, in part:

I am [writing] this letter to you in reference to the incident that occurred at Reedsport on Friday night, October 10th. During this game you wanted to get the attention of a player during a hotly contested game. In my day, this was called “rattling the cage” and it was a game honored practice. Even today, it is used quite often, as it has been at Gold Beach, but this incident and how it was perceived caused some concern from the parents. In the future you need to be more careful in getting player’s attention.

From what I gathered, you reached for the player’s face mask (which wasn’t fastened) and during this move his helmet was pushed back. Some people witnessed this and conclude that you stuck [sic] the students [sic]. There is no evidence to support this claim. You spoke with a parent during the game and afterwards and from what I have been told everything has been resolved. I also spoke with the player [CP] and he agrees.¹⁰ We also spoke on Saturday, October 11th regarding this matter.

I recognize that you are a very passionate teacher and coach and I do not want you to lose your enthusiasm and passion for the profession. This was an unfortunate incident and it has been resolved. Keep up the good work!

(Test. of Johnson; Ex. A4 at 12-13.) Brown considered the email a “Letter of Counsel” from Respondent regarding the incident with CP. (Ex. A7 at 11.)

12. Prior to issuing the email to Brown, Respondent did not interview CP, CP’s parents, or any other witnesses to the incident except Storns, Brown, and Newdall.¹¹ Prior to issuing the email to Brown, Respondent did not try to determine if there were other witnesses that could provide information regarding the incident. Respondent believed the matter was resolved. (Test. of Johnson, SP; Exs. A3 at 1, A4 at 7.)

13. Prior to issuing the email to Brown, Respondent did not confirm with CP’s parents

¹⁰ Respondent testified that during the week of October 13, 2014, he approached CP in the school hallway and spoke to him for one or two minutes. Respondent testified that he asked CP how he was doing, and that CP confirmed the issue was resolved. (Test. of Johnson.) CP testified that Respondent did not talk to him regarding the incident. (Test. of CP.)

¹¹ Newdall told Respondent that there was no punch thrown, and that Brown made contact with CP in the shoulder pad/facemask area. (Ex. A4 at 8.)

that the matter was resolved. (Exs. A3 at 1, A4 at 7.)

14. During the period of October 12 to October 20, 2014, CP's parents heard nothing from Respondent regarding the incident involving Brown and their son.¹² (Test. of SP.)

15. On October 20, 2014, at 8:15 a.m., GBHS teacher Corrine McGinnis sent an email to GBHS counselor Holly Stephens, indicating that she had received information that student CP had been punched by Coach Brown during an away game. In the email, McGinnis requested that Stephens, in her neutral position, interview CP regarding the incident.

At or around 2:00 p.m., Stephens spoke with CP regarding the incident. CP confirmed that Brown hit him on the face mask of his helmet. Stephens immediately contacted MP regarding the incident. MP told Stephens that she was standing on the sidelines and saw the entire incident occur. MP said she saw Brown punch CP on the helmet and then shake his face mask. MP said the punch was a full-on man punch. MP said that after Brown punched CP, Coach Sterns pushed Brown off of CP. MP told Stephens that she felt conflicted about the situation because CP did not want her or his father to do anything and because Brown had been repeatedly apologetic. MP said that she was leaving it in the school's hands. MP said she did not want Brown fired but maybe mandated to take some anger management classes. (Exs. A4 at 11, A7 at 15, 28-29, 41.)

16. On October 21, 2014, at 7:45 a.m., Stephens and McGinnis attempted to report the information they had obtained regarding the incident to Respondent, but he was not in his office.

At 8:00 a.m., Stephens and McGinnis filed a report with the Department of Human Services, Child Protective Services (CPS).

At 8:10 a.m., Stephens and McGinnis met with Respondent and advised him of the information they had obtained and what they had reported to CPS. Respondent told Stephens and McGinnis that the incident had been handled; that it was just the culture of football and being out in full football gear was different than being in the classroom; that Brown had just smacked CP's face mask; that he (Respondent) could not control the blame that might come back from the community to them, CP, and Swift; and that it would just be best to ignore the situation. Respondent also told Stephens and McGinnis that he was planning on calling CP to his office so he could talk with him about the incident.

Stephens subsequently contacted CP's parents and notified them of Respondent's intention to speak with CP. Stephens also notified CP's parents that the school was making the incident out as a slap (or smack) rather than a punch.

At or around 10:00 a.m., SP arrived at the school to speak with Respondent. Respondent met with SP for less than five minutes. Respondent told SP that he had talked to all the parties involved and that the report was filed as a smack/slap to the helmet. SP told Respondent several

¹² CP told the Commission's investigator that a week or so after the incident, Athletic Director Swift called CP out of his class to discuss the incident involving Brown. CP told the investigator that he felt that Swift was trying to get him to say that Brown did not hit him. (Ex. A7 at 18.)

times that it was a punch, not a smack/slap. Respondent told SP that he had not discovered any evidence to support the claim of a punch. Respondent told SP that he had conducted an investigation but would continue the investigation further. SP told Respondent that he expected Respondent to do his job. SP also told Respondent that whether or not he fired Brown, Respondent had rules he had to follow. Respondent told SP that he could speak with a few more witnesses. Respondent did not arrange to interview SP (witness), CP (alleged victim), or MP (witness) at that time.

Respondent then notified Brown and Swift that he was conducting further investigation into the incident. Respondent asked Brown (the alleged perpetrator) and Swift if they had anyone else who had witnessed the incident. (Test. of SP, CP, Johnson; Exs. A3, A4 at 7, 11, A7 at 15-16, 28-29.)

17. During the period of October 21 through October 24, 2014, Brown and/or Swift located two additional witnesses to confirm that there was no punch. One of the witnesses was a trainer on the football team. The other witness was a parent, who admitted his view was partially obstructed by Coach Storns. (Ex. A4 at 4, 7-8.)

18. During the period of October 21 through October 24, 2014, Respondent did not interview CP or CP's parents regarding the incident. (Test. of Johnson.)

19. During the period of October 21 through October 24, 2014, Respondent contacted the Oregon State Bar Association (OSBA) and spoke with attorney Jackie Marks, who told Respondent that since there was no evidence to support the claim (intent to hit or punch a student), a TSPC notice was not required. (Test. of Johnson; Ex. A4 at 8.)

20. On or about October 23, 2014, Respondent told Stephens that he would not have reported the incident to Child Protective Services. (Ex. A7 at 16.)

21. On October 24, 2014, McGinnis filed a complaint against Brown with the Commission, asserting, among other things, that Brown had physically assaulted a student athlete during a high school football game. (Ex. A7 at 1-2, 26.)

22. On November 3, 2014, CP's parents filed a complaint against Respondent with the Commission, asserting, among other things, that Respondent's handling of the incident between Brown and CP was improper, that Respondent's report regarding the incident was erroneous, and that Respondent had never even spoken with them or CP regarding the incident. (Ex. A3.)

23. On November 17, 2014, SP went to GBHS and asked Respondent to be placed on the agenda of the upcoming School Board meeting. Respondent did not arrange to interview SP, CP, or MP at that time. (Test. of Johnson, SP, CP; Exs. A3, A4 at 8.)

24. On November 21, 2014, Respondent issued a written reprimand to Brown that stated, in part:

This correspondence is to memorialize the conversations we have

had around the incident that occurred at Reedsport on October 10th at a football game.

As you are aware [SP] came into my office on October 21 to discuss this football issue and I assured him that I would look into this incident further. I spoke with the head FB coach, Justin Storms, and he informed me that there was no punch thrown at [CP]. I also spoke with a student trainer [(in the presence of the A.D. in my office) who was present in the area and witnessed the incident. She also indicated that no punch was thrown, but it was rather an attempt by you to grab the attention of the student by grabbing at the face mask. Since the face mask with an attached face shield was not strapped and your hand made contact with the shield causing the helmet to go back, this may have given the impression that a punch was thrown. This evidence also supports my findings referenced on my previous email to you on Oct. 15th. I have one other account that there was a hit from the back but this cannot be corroborated by any evidence and is unfounded. Therefore I have also come to the conclusion that there was no punch thrown at the student. From my conversation with [C]oach Storms this incident was resolved by your apology to the team and the student and parents. I also spoke with the school attorney and shared this information and she provided counsel that since there was no intent on your part to throw or land [] a punch a TSPC notification was not warranted.

This week the parent came into my office and indicated that he may want to speak at the next board meeting during "Privilege of the Floor" regarding this incident. I informed him that he had this right but I advised him that if he spoke there could be no mention of specific individuals, but rather a general comment. As I referenced in my previous correspondence to you, "I recognize that you are a very passionate teacher and coach and I do not want you to lose your enthusiasm and passion for the profession. This was an unfortunate incident and it has been resolved."

This letter will be placed in your personnel file per CBA Article #13.

(Ex. A4 at 14.) Prior to issuing the written reprimand to Brown, Respondent did not interview CP or CP's parents regarding the incident. (Test. of SP, CP; Ex. A3.)

25. On November 24, 2014, SP attended the School Board meeting. During the open forum, SP notified the Board that his son had been assaulted by an assistant football coach, and that he wanted the Board to take action regarding this unacceptable behavior. SP also notified the Board that he had filed a complaint with the Commission and he had retained an attorney.

Respondent was present and responded to SP's statements. Respondent informed SP that the superintendent does the fact-finding for all staff conduct cases, that personnel issues could not be discussed in the forum, and that the issue was handled administratively. (Ex. R5.)

26. On or about November 24, 2014, following the School Board meeting, Respondent contacted the OSBA, spoke with an attorney, and obtained an OSBA investigation template to utilize in his investigation. (Test. of Johnson; Ex. A4 at 3-6.) The OSBA investigation template outlined the appropriate steps to take and/or questions to ask when conducting an investigation, as follows:

1. Interview the alleged victim (allowing his parent to be present)
 - a. Ask for every reason why he believes a school rule was violated? (After each answer, ask the witness "are there any other reasons" to ensure that we exhaust his reasons and he cannot claim that we did not take all of his reasons into account.)
 - b. Ask how he was harmed by the alleged rule violations? (After each answer, ask the witness "is there any other harm you believe to have suffered?")
 - c. Ask the victim about what he believes was the alleged harasser/bully's motivation?
 - d. Ask victim to identify all witnesses.
2. Interview the witnesses to learn their version of the facts.
 - a. Ask for any information they have regarding the facts in question.
 - b. Ask each witness whether they have reason to believe a school rule was violated, and if so, every reason why?
 - c. Do you know of any other witnesses to this incident.
3. Interview the alleged rule violator.
 - a. Ask for their version of the facts.
 - b. Ask him to articulate the decision they actually made and the basis/motivation for the decision.
4. Draft a chronological explanation of the facts.
 - a. To draft a concise chronology, credibility determinations must be made. It is not necessary to articulate why one witness's version of the facts is believed rather than another's version, but the determination should be reasonable.
5. Brainstorm/implement the "appropriate" response.

- a. "Appropriate" means action reasonably calculated to stop or prevent future rule violations (e.g. termination of employment or expulsion of student; counseling for the victim; training of staff; revamp policies).
- b. If no rule violation occurred, then the "appropriate" response may be simply reaffirming the district's commitment to investigating complaints.

(Test. of Johnson; Exs. A4 at 3-6.)

27. After receiving the OSBA template, Respondent made three attempts in early December 2014 to meet with CP's parents. (Exs. A4 at 8-9, A7 at 47.) By the time Respondent reached out to CP's parents, they were represented by counsel and were done talking with the school district and Respondent. (Test. of SP; Ex. A4 at 9.)

28. Between December 1 and December 12, 2014, Respondent filled out the OSBA template by interviewing witnesses to the incident and taking down their statements. (Test. of Johnson; Ex. A4 at 3-6.)

29. On or about December 12, 2014, Respondent typed up a chronological order of events based on his notes¹³ and his memory. (Test. of Johnson; Exs. A4 at 7-9.)

30. On December 12, 2014, Respondent issued a letter to the Coos Curry Board of Education that stated, in part:

This letter is to summarize my investigation of the complaint that was filed by [SP] on Monday, November 24, 2014. This complaint was filed at the board meeting that was held that evening.

I made several attempts to have the [P's] come into school so that I could interview them and their son [CP]. These attempts include a phone contact with [MP] early in the week of December 1, a letter sent by the main office on Friday, December 5th, and a subsequent phone call by Mrs. Theresa Hendrix on December 10th. On the last phone contact, December 10th, [SP] informed Mrs. Hendrix that I would be hearing from their attorney on this matter. As a result of not having the ability to interview the [P's], I have concluded my investigation of their complaint.

Over the course of the past two weeks I have interviewed Central Curry School employees, several non-school individuals and 3 students who were in attendance at the game and in the vicinity of the incident referenced in the complaint.

¹³ During the investigation, Respondent reportedly entered notes in his Google calendar. Respondent did not keep copies of those notes for review. (Test. of Johnson.)

The school employees include Justin Storns – Head Football Coach, Mr. Mike Becker – JV Head Coach, and Dana Newdall – high school teacher, Beau Hanson – Assistant Football Coach, Kevin Swift – Athletic Director and Coach Greg Brown Assistant Football Coach. In addition to these employees I interviewed two other adults who regularly go to games and three student athletes.

From these interviews there was a consistent response which described that [CP] did not have his helmet on when Coach Storns called him back into the game. This was during a transition after a turnover in the game. Since [CP] did not have his helmet on Coach Storns had to call a time out. Coach Brown was telling [CP] that the team rule is to have your helmet on when you are on the sidelines and [CP] was telling Mr. Brown that he had gone to the sidelines for some Tylenol or other pain medication since he had a headache. This verbal exchange could be described as yelling between both and some swearing words were most likely used by both the coach and player.

From the testimony provided by the witnesses they portrayed Coach Brown[’s] actions as initiating a hand motion as “reaching motion toward the should pad/face shield area”, “making contact with his facemask”, “grabbing the facemask”, “grabbing the facemask”, “pushed him above the facemask”, and “thrusting his open hand toward his helmet.” One witness testified that [MP] said several times, “Did he just push my son.” This witness observed the entire incident from start to finish. No testimony was provided that Coach Brown hit the student with a closed fist or a “man punch” that has been described by the father.

The witnesses also shared with me that some felt a school rule was violated by making contact with a student, he may have overacted by his actions, and that in the game of football this type of physical contact is used to redirect the attention of the athlete in practice and games. The videos of the game that we have in our possession have been reviewed two times and we have contacted the Reedsport Athletic Director to see if they have any videos of this incident. He has indicated that they do not have any video of this incident.

After this incident [CP] immediately returned to play and several plays later he scored a touchdown. After this touchdown Coach Brown and [CP] spoke on the sidelines and hugged each other (which I observed) and exchanged apologies per Mr. Brown testimony. Subsequent to this incident [CP] scored two more

touchdowns and the team won a very important and emotional game.

After the game, Coach Storns spoke with the parents and they indicated that they appreciated the way he handled the incident and Mr. Brown apologized to the team for his actions. The following day both coaches spoke with the [P's] and they informed me that this incident had been settled by all parties. As a result of my subsequent conversations with both coaches on Saturday, October 11th, I concluded that there was no need for me to intervene on this issue since it was mutually resolved. Our practice is to encourage having issues resolved at the lowest level and by the coaches actions this was achieved. During the following week I spoke with [CP] [and] he also indicated that this issue had been resolved. I also spoke with Coach Brown that in the future he needed to use more caution when directing students in practice and games and greater caution should be used when touching students.

My conclusions are that Coach Brown reacted in a state of high emotions but there was no intent or testimony evidence that he hit the student with a closed fist. With the helmet not being fastened and when contact was made, the helmet was pushed back giving the appearance of a greater impact than it was. I have counseled Coach Brown as above[.] I conclude no further action is required.

(Ex. A4 at 15-16.)

31. On December 12, 2014, Respondent issued a letter to CP's parents, notifying them of his conclusion regarding their complaint with the School Board, and enclosing a copy of the letter he had sent to the School Board. (Exs. A4 at 17, R8.)

32. On December 17, 2014, Burney Krauger, investigator with the Commission, spoke with Respondent regarding the incident and subsequent investigation. Mr. Krauger also issued a Subpoena Duces Tecum to Respondent, requesting copies of all complaints, investigations, reports, notes, recordings, working files, and any other related documents pertaining to Brown. (Test. of Krauger; Ex. A7 at 4-5.)

33. On January 9, 2015, Respondent issued a letter to the Commission regarding his investigation of Brown that stated, in part:

The above named individual has served as a teacher and athletic coach of Central Curry School District #1 during this current school year. It was brought to my attention on October 10, 2014 that Mr. Greg Brown made physical contact with a student-athlete at a football game at Reedsport, Oregon on October 10, 2014.

I spoke with Mr. Brown on the following day October 11th, along with the head coach Mr. Justin Storns regarding this incident. I was informed that this contact was an attempt to make sure that his helmet was fastened and to refocus his attention back to the game. There was no intent to discipline or physically injure the student. It was an attempt to make sure that his helmet was strapped and to refocus. On the following day, October 11th, both coaches spoke with the parents and this matter was resolved between all parties. I subsequently spoke with both coaches later that day and was informed that this incident was resolved. Since I was assured that this was effectively addressed and the parents did not contact me I completed my initial investigation by speaking with both coaches and the athletic director. I also spoke with the student the following week and he said that the matter was over. After this incident I cautioned the coach on using this type of action and sent him a notice via email. I also contacted OSBA to seek counsel on this matter and my contact. Ms. Jackie Marks informed me that I had addressed this in an appropriate manner.

Later in November, the student's father spoke with me and wanted to know what had happened. I informed him that this incident had been handled administratively. He requested to be placed on the next board agenda on November 24. I informed him that he would have the opportunity to speak at the November board meeting, which he did. At that meeting he again requested to know what had happened with the coach. In public session I assured him that it had been investigated and handled administratively and I could not go into further details since it was a personnel matter. After this meeting I once again contacted OSBA and spoke with a different counsel (since Jackie no longer worked for OSBA). They provided me an investigation template to work from. I followed this template and spoke with 6 adults; 4 who worked for the school, 2 who regularly attend our games, and 3 student-athletes and Mr. Brown. All of these people were in close proximity to the incident. I also had the athletic director speak with the Reedsport athletic director and reviewed the game films. I also reached out 3 times (2 by phone and one by mail) to have the parents come in and they refused to meet with me regarding this incident.

After speaking with the above witnesses, reviewing videos of the game, making contact with people from Reedsport I completed this investigation and finalized my report. This report was shared with the board of education and a copy was sent to the parents.

Attached are the documents related to the incident based upon my investigation along with other documents requested in the

subpoena.

(Ex. A4 at 1-2.) Respondent enclosed, among other things, copies of his investigation log, his chronological order of events, his email and letter to Coach Brown, his summary of findings to the Board, and his letter to CP's parents. (*Id.* at 3-19.)

34. Respondent did not provide the Commission with a copy of the investigative notes he placed on his Google calendar. (Test. of Johnson; Ex. A4.)

District policy

35. During the relevant time period, CCSD had a district policy strictly prohibiting hazing, harassment, intimidation, menacing or bullying by students, staff or third parties.¹⁴ (Ex. A10 at 1.) The district policy set forth the following pertinent definitions:

“Harassment, intimidation or bullying” means any act that substantially interferes with a student’s educational benefits, opportunities or performance, that takes place on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation or at any official school bus stop, and that has the effect of:

- a. Physically harming a student or damaging a student’s property;
- b. Knowingly placing a student in reasonable fear of physical harm to the student or damage to the student’s property;
- c. Creating a hostile educational environment.

“Harassment” also includes, but is not limited to, any act which subjects an individual or group to unwanted, abusive behavior of a nonverbal, verbal, written or physical nature on the basis of age, race, religion, color, national origin, disability and marital status.

“Intimidation” includes, but is not limited to, any threat or act intended to tamper, substantially damage or interfere with another’s property, cause substantial inconvenience, subject another to offensive physical contact or inflict serious physical injury on the basis of race, color, religion, national origin or sexual orientation.

“Menacing” includes, but is not limited to, any act intended to place a school employee, student or third party in fear of imminent serious physical injury.

(Ex. A10 at 1-3.)

¹⁴ The district provides forms for complainants and witnesses to fill out. (Ex. A10 at 9-10.)

36. In Respondent's written reprimand to Brown, Respondent did not address or determine whether Brown had violated the district's policy on Harassment. (Ex. A4.)

37. On June 12, 2015, Mr. Krauger interviewed Respondent regarding the incident. Respondent did not know or recall the district's policies regarding physical contact between teachers and students that were in place during relevant time period. (Ex. A12.)

Criminal charges

38. On December 2, 2014, SP filed a police report against Brown for hitting CP on October 10, 2014. Officer Terry Lohf, with the Reedsport Police Department, took the report. SP told Officer Lohf that he was reporting the assault two months after the fact because CCSD would not do anything about Brown hitting his son. Officer Lohf spoke with CP regarding the incident. Officer Lohf also spoke with Officer Smart. Officer Lohf requested and received a supplemental report from Officer Smart regarding the incident. Officer Lohf then referred the matter to the City Prosecutor on charges of Menacing and Harassment. (Ex. A7 at 6, 50-54.)

39. On February 3, 2015, Brown was charged in the Municipal Court for the City of Reedsport with Disorderly Conduct and Harassment. (Ex. A8 at 1-2.)

40. On or about April 15, 2015, Brown entered a 180-day Diversion on the charge of Harassment.¹⁵ (Ex. A8 at 3-6.)

41. On October 15, 2015, following Brown's completion of the Diversion, the charge of Harassment was dismissed. (Ex. A8 at 7.)

Federal lawsuit

42. On July 21, 2015, CP and CP's parents filed a lawsuit in the United States District Court in Eugene, Oregon, against CCSD, Respondent, and Brown. (Ex. A6 at 1.)

43. On or about December 14, 2015, the parties entered into a settlement agreement and mutual release of all claims. (Ex. A6.)

Other information

44. On August 25, 2016, Brown signed a Stipulation of Facts and Final Order of Reprimand and Probation with the Commission. (Ex. A9.) Brown stipulated to the following facts regarding the incident with CP:

On October 24, 2014, the Commission received a report of possible misconduct on Brown's part, from a patron of the Central Curry School District. Commission investigation determined that on or about October 10, 2014, while coaching a football game in

¹⁵ Presumably the charge of Disorderly Conduct was dismissed as part of the agreement to enter 180-day Diversion. (Ex. A7.)

Reedsport, Oregon, Brown physically struck a student, eighteen year old CP, on his helmet near the facemask, forcibly pushing CP's unsnapped helmet back along his head. Multiple witnesses reported that Brown was visibly angry and yelling a CP. After Brown struck CP on the front of the helmet, he used CP's facemask to pull CP closer to him while Brown continued to shout. Witness statements indicated a referee and other coaching staff intervened to separate Brown from your contact with CP. On February 18, 2015, Brown was criminally charged with Harassment (Class B misdemeanor) related to Brown's conduct during the October 10, 2014 incident. On October 15, 2015, these charges were dismissed pursuant to a court diversion agreement.

(Ex. A9.) Brown also stipulated to receiving a public reprimand and being placed on probation for four years for engaging in gross misconduct in violation of ORS 342.175(1)(b), and OAR 584-020-0040(4)(d), (n), and (o). (*Id.*)

45. In 2015, Respondent's employment contract with CCSD was not renewed. Respondent believes that his contract was not renewed because he is a "change agent." (Test. of Johnson.)

46. Respondent is currently working in Washington as a principal and superintendent. (Test. of Johnson.)

CONCLUSIONS OF LAW

1. In October 2014, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(n) and (o), and ORS 342.175(1)(b).

2. Respondent should receive a suspension of 90 days.

OPINION

The Commission contends that Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(n) and (o), and ORS 342.175(1)(b). The Commission also contends that Respondent should receive a suspension of 90 days for the violations. The Commission has the burden of proving the allegations by a preponderance of evidence. 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).

Violations

The Commission contends that Respondent engaged in gross neglect of duty by failing to

act as a competent educator and administrator, and by failing to act as an ethical educator. Respondent contends to the contrary. I agree with the Commission.

ORS 342.175 is titled "Grounds for discipline; reinstatement" and provides, in pertinent part:

(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[.]

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

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

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

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

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[.]

OAR 584-020-0015 is titled "Curriculum and Instruction" and provides, in relevant part:

(3) The competent administrator demonstrates:

(a) Skill in assisting individual staff members to become more competent educators by complying with federal, state and local laws, rules, and lawful and reasonable district policy and contracts;

OAR 584-020-0020 is titled "Supervision and Evaluation" and provides, in part:

(3) The competent administrator demonstrates:

(d) Skill in the use of employee and leadership techniques appropriate to the assignment and according to well established standards which ensure due process for the staff for which the administrator is responsible for evaluating.

OAR 584-020-0030 is titled "Human Relations and Communications" and provides, in pertinent part:

(3) The competent administrator demonstrates:

(c) Willingness to be flexible in cooperatively working with others;
and

(d) Skill in reconciling conflict.

OAR 584-020-0035 is titled "The Ethical Educator" and provides, in material part:

The ethical educator is a person who accepts the requirements of membership in the teaching profession and acts at all times in ethical ways. In so doing the ethical educator considers the needs of the students, the district, and the profession.

(2) The ethical educator, in fulfilling obligations to the district, will:

(b) Conduct professional business, including grievances, through

established lawful and reasonable procedures:

As indicated above, gross neglect of duty is any serious and material inattention to or breach of professional responsibilities, including substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030 and substantial deviation from professional standards of ethics set forth in OAR 584-020-0035.

On Friday, October 10, 2014, the GBHS football team had an away game at Reedsport High School in Reedsport, Oregon. During the third quarter of the game, Coach Storns called for a time out to change formations. CP was on the sideline taking ibuprofen for a groin injury he had sustained earlier in the season. CP had taken his helmet off in order to take the medication with water. Storns called out for CP, wanting to put CP back into the game. Assistant Coach Brown yelled at CP to get his helmet on. CP put his helmet back on but did not fasten the chin strap. Brown then physically struck CP on his helmet near the facemask, forcibly pushing CP's unstrapped helmet back along his head. Brown then grabbed CP's facemask and used it to pull CP closer to him while continuing to yell at CP. Coach Storns and a referee intervened and physically separated Brown from CP. Brown then walked down the sideline away from the players. CP was not injured by Brown's actions. Storns spoke with CP and sent him back into the game. CP subsequently scored a touchdown.

CP's mother, MP, was a few feet from the incident and observed it when it occurred. CP's father, SP, was in the stands across the field and witnessed the interaction between Brown and his son. SP was furious and ran across the field to confront Brown, telling Brown if he ever touched CP again SP would roll Brown up on that field.

Respondent was at the football game and saw a "commotion." Respondent did not see the details of the incident. GBHS teacher Newdall was at the game taking photographs. Respondent asked Newdall what the commotion was about. Newdall said Brown and CP "got into it." Respondent knew Brown was a teacher and CP was a student. Respondent did not speak to Brown, CP, or CP's parents about the incident that evening.

Officer Matt Smart, with the Reedsport Police Department, was at the football game volunteering on the visitor's side of the field. Officer Smart observed the incident when it occurred. Officer Smart observed Brown charge CP and strike CP's helmet with a closed fist. Officer Smart observed Brown grab CP by the face mask and start screaming at CP. Officer Smart observed that Brown was emotionally out of control. Officer Smart also observed that CP and others around the incident were shocked by Brown's behavior. Officer Smart told a referee that if Brown touched another player he would have Brown removed from the field.

After the game was over, CP's parents spoke with Coach Storns regarding the incident. CP's parents told Storns that they were not okay with Brown hitting their son. Storns told CP's parents that he would report what happened to Respondent and Athletic Director Swift.

The following morning, October 11, 2014, CP's parents attended a youth football game at GBHS. CP's parents spoke with Storns and Swift, who were present at the game. CP's parents stated that they were still angry about the prior evening and something needed to be done. CP's

parents stated that they expected the school to handle the matter and follow proper procedure. Swift told CP's parents that he was the right person to tell and it was his job to take care of it.

Shortly thereafter, on that same day, Respondent met with Storns and Brown at GBHS. During the meeting, the participants discussed the incident involving Brown and CP. Storns and Brown reported that Brown had attempted to grab CP's face mask during a time out, that there had been no punch thrown, and that Brown had apologized to the team after the game. Storns and Brown also reported that they had spoken with CP's parents that morning and the issue was resolved between all parties.

Respondent did not contact CP's parents to verify what was being reported by the coaches. Moreover, Respondent did not interview CP (the student victim) or CP's parents (witnesses to the incident) to obtain their version of the events at issue.

That following week, Respondent spoke with Athletic Director Swift, who confirmed that he had spoken with Storns and Brown and that the matter was resolved between the parties. Once again, Respondent did not verify the purported resolution with CP's parents. In addition, Respondent did not interview CP or CP's parents regarding the incident.

On October 15, 2014, Respondent issued an email to Brown, stating that there was no evidence that Brown struck CP, that the incident was resolved, and that in the future, Brown needed to be more careful in getting a player's attention.

Prior to issuing the email, Respondent did not interview CP, CP's parents, or any other witnesses to the incident except Storns, Brown, and Newdall (all district staff or employees). In addition, Respondent did not try to determine if there were other witnesses that could provide information regarding the incident. Respondent made his conclusions about the incident without fully investigating the incident.

On October 20, 2014, at 8:15 a.m., GBHS teacher McGinnis sent an email to GBHS counselor Stephens, indicating that she had received information that student CP had been punched by Coach Brown during an away game. In the email, McGinnis requested that Stephens, in her neutral position, interview CP regarding the incident.

At or around 2:00 p.m., Stephens spoke with CP regarding the incident. CP confirmed that Brown hit him on the face mask of his helmet. Stephens immediately contacted MP regarding the incident. MP told Stephens that she was standing on the sidelines and saw the entire incident occur. MP said she saw Brown punch CP on the helmet and then shake his face mask. MP said the punch was a full on man punch. MP said that after Brown punched CP, Coach Storns pushed Brown off of CP. MP told Stephens that she felt conflicted about the situation because CP did not want her or his father to do anything and because Brown had been repeatedly apologetic. MP said that she was leaving it in the school's hands. MP said she did not want Brown fired but maybe mandated to take some anger management classes.

On October 21, 2014, at 7:45 a.m., Stephens and McGinnis attempted to report the information they had obtained regarding the incident to Respondent, but he was not in the office.

At 8:00 a.m., Stephens and McGinnis filed a report with CPS. At 8:10 a.m., Stephens and McGinnis met with Respondent and advised him of the information they had obtained and what they had reported to CPS. Respondent told Stephens and McGinnis that the incident had been handled; that it was just the culture of football and being out in full football gear was different than being in the classroom; that Brown had just smacked CP's face mask; that he (Respondent) could not control the blame that might come back from the community to them, CP, and Swift; and that it would just be best to ignore the situation. Respondent also told Stephens and McGinnis that he was planning on calling CP to his office so he could talk with him about the incident.

Stephens subsequently contacted CP's parents and notified them of Respondent's intention to speak with CP. Stephens also notified CP's parents that the school was making the incident out as a slap (or smack) rather than a punch.

At or around 10:00 a.m., SP arrived at the school to speak with Respondent. Respondent met with SP for less than five minutes. Respondent told SP that he had talked to all the parties involved, and that the report was filed as a smack/slap to the helmet. SP told Respondent several times that it was a punch, not a smack/slap. Respondent told SP that he had not discovered any evidence to support the claim of a punch. Respondent told SP that he had conducted an investigation but would continue the investigation further. SP told Respondent that he expected Respondent to do his job. SP also told Respondent that whether or not he fired Brown, Respondent had rules he had to follow. Respondent told SP that he could speak with a few more witnesses. Respondent did not arrange to interview SP (witness), CP (the student victim), or MP (witness) at that time.

Respondent then notified Brown and Swift (two district employees, one of which was the perpetrator) that he was conducting further investigation into the incident and asked them to find anyone else who had witnessed the incident.

During the period of October 21 through October 24, 2014, Brown and/or Swift located two additional witnesses to confirm that there was no punch. One of the witnesses was a trainer on the football team. The other witness was a parent, who admitted his view was partially obstructed by Coach Storns. During that same time period, Respondent did not interview CP or CP's parents regarding the incident.

On November 3, 2014, CP's parents filed a complaint against Respondent with the Commission, asserting, among other things, that Respondent's handling of the incident between Brown and CP was improper, that Respondent's report regarding the incident was erroneous, and that Respondent had never even spoken with them or CP regarding the incident.

On November 17, 2014, SP went to GBHS and asked Respondent to be placed on the agenda of the upcoming School Board meeting. Respondent did not arrange to interview SP, CP, or MP at that time.

On November 21, 2014, Respondent issued a written reprimand to Brown, concluding that there was no punch thrown at CP, and that the issue was resolved. Respondent did not

address or determine whether Brown had violated district policy. Respondent formulated his conclusion without having interviewed CP (the student victim) or CP's parents (witnesses to the incident) regarding the incident.

On November 24, 2014, SP attended the School Board meeting. During the open forum, SP notified the Board that his son had been assaulted by an assistant football coach, and that he wanted the Board to take action regarding this unacceptable behavior. SP also notified the Board that he had filed a complaint with the Commission and he had obtained an attorney. Respondent was present and responded to SP's statements. Respondent informed SP that the superintendent does the fact-finding for all staff conduct cases, that personnel issues could not be discussed in the forum, and that the issue was handled administratively.

On or about November 24, 2014, following the School Board meeting, Respondent contacted the OSBA, spoke with an attorney, and obtained an OSBA investigation template to utilize in his investigation. The OSBA investigation template outlined the appropriate steps to take and/or questions to ask when conducting an investigation, including interviewing the alleged victim (step one), interviewing the witnesses to learn their versions of the facts (step two), interviewing the alleged rule violator (step three), drafting a chronological explanation of the facts (step four), and brainstorming/implementing the appropriate response (step five).

After receiving the OSBA template, Respondent made three attempts in early December 2014 to meet with CP's parents. By the time Respondent reached out to CP's parents, they were represented by counsel and were done talking with the school district and Respondent.

During the period of December 1, 2014 and December 12, 2014, Respondent filled out the OSBA template by interviewing witnesses to the incident and taking down their statements. Respondent never interviewed CP or CP's parents. On or about December 12, 2014, Respondent typed up a chronological order of events based on his notes and his memory.

On December 12, 2014, Respondent issued a letter to the Coos Curry Board of Education, concluding that there was no evidence that Brown hit CP with a closed fist, that Respondent had counseled Brown, and that no further action was required.

On December 12, 2014, Respondent issued a letter to CP's parents, notifying them of his conclusion regarding their complaint with the School Board, and enclosing a copy of the letter he had sent to the School Board.

Dignity and respect

Pursuant to OAR 584-020-0010(1), the competent educator is required to demonstrate a commitment to recognize the worth and dignity of all persons and respect for each individual.

Respondent did not interview CP or CP's parents regarding the incident. Respondent accepted Storn's and Brown's assertion that Brown did not hit CP, and left the matter up to the coaches to resolve.

When confronted by SP on October 21, 2014, Respondent told SP that he had spoken to all the parties involved, when in fact Respondent had not interviewed SP, CP, or MP. When SP insisted that Brown punched CP, Respondent directed Swift and Brown, the perpetrator, to locate additional witnesses to the incident instead of doing that himself.

On November 17, 2014, when SP asked Respondent to be placed on the agenda of the upcoming School Board meeting, Respondent did not arrange to interview SP, CP, or MP at that time.

On November 21, 2014, when Respondent issued Brown a reprimand and concluded that Brown had not punched or struck CP during the football game, Respondent formulated his conclusions without interviewing CP and CP's parents.

Respondent failed to conduct a full and fair inquiry and investigation into the incident that took place on October 10, 2014. Respondent's actions failed to recognize the worth and dignity of CP and CP's parents.

I find that Respondent violated OAR 584-020-0010(1). I further find that Respondent's actions were a substantial deviation from professional standards of competency.

Respondent contends that he spoke with CP and confirmed the matter was resolved. However, I am not persuaded by Respondent's contention. CP testified that Respondent did not talk to him regarding the incident. CP's testimony is corroborated by Respondent's own actions in this matter of not interviewing CP or CP's parents regarding the incident. As such, Respondent's argument is unpersuasive.

Respondent also contends that he made three attempts to meet with CP's parents. However, Respondent did not make those attempts until early December 2014, after he had issued the reprimand to Brown and concluded that Brown had not punched or struck CP during the football game. Therefore, Respondent's argument is unpersuasive.

Professional judgment

Pursuant to OAR 584-020-0010(5), the competent educator is required to demonstrate a commitment to use professional judgment.

Respondent did not interview CP or CP's parents regarding the incident. Respondent accepted Storn's and Brown's assertion that Brown did not hit CP, and left the matter up to the coaches to resolve.

Respondent also ignored other staff member's concerns regarding the incident, telling McGinnis and Stephens that the incident had been handled, that it was just the culture of football, that Brown had just smacked CP's face mask, and that it would just be best to ignore the situation.

And, when confronted by SP on October 21, 2014, Respondent directed Swift and

Brown, the perpetrator, to find more witnesses to the incident instead of finding the witnesses himself. It was unreasonable for Respondent to believe that a perpetrator would actively seek out witnesses that may provide statements against him.

Moreover, on November 21, 2014, when Respondent issued Brown a reprimand and concluded that Brown had not punched or struck CP during the football game, Respondent formulated his conclusions without interviewing CP and CP's parents. In addition, in the reprimand that he issued, Respondent did not address whether Brown's physical contact with CP violated district policy.

Furthermore, Respondent did not actually interview witnesses and document their statements until early December 2014, two months after the event, and after he had concluded that Brown had not punched or struck CP.

Respondent failed to conduct a full and fair inquiry and investigation into the incident that took place on October 10, 2014. Respondent also failed to determine whether Brown violated district policy. Respondent's actions clearly demonstrate a lack of professional judgment.

I find that Respondent violated OAR 584-020-0010(5). I further find that Respondent's actions were a substantial deviation from professional standards of competency.

Respondent contends that he spoke with OSBA Attorney Marks who determined his investigation was appropriately done. However, I am not persuaded by Respondent's contention. Respondent's own notes establish that he contacted Marks to determine whether or not he had a duty to report Brown to the Commission. Moreover, it is highly unlikely that an OSBA attorney would find an investigation complete when step one in the OSBA template (interview the victim) was not done. Thus, Respondent's argument is unpersuasive.

Skill in assisting staff members

Pursuant to OAR 584-020-0015(3)(a), the competent administrator demonstrates skill in assisting individual staff members to become more competent educators by complying with federal, state and local laws, rules, and lawful and reasonable district policy and contracts.

Respondent was the Superintendent of CCSD and the Principal of GBHS. Respondent was Brown's supervisor. Respondent was required to assist Brown to become a more competent educator by complying with district policies, rules, and laws.

Respondent did not interview CP or CP's parents regarding the incident. Respondent accepted Storn's and Brown's assertion that Brown did not hit CP, and left the matter up to the coaches to resolve.

Respondent also directed Brown, the perpetrator, to find more witnesses to the incident when it was unreasonable for Respondent to believe that a perpetrator would actively seek out witnesses that may provide statements against him.

Moreover, on November 21, 2014, when Respondent issued Brown a reprimand and concluded that Brown had not punched or struck CP during the football game, Respondent formulated his conclusions without interviewing CP and CP's parents. In addition, in the reprimand that he issued, Respondent did not address whether Brown's physical contact with CP violated district policy.

As stated previously, Respondent failed to conduct a full and fair inquiry and investigation into the incident that took place on October 10, 2014, and failed to determine whether Brown violated district policy. By doing so, Respondent failed to assist Brown in becoming a more competent educator by complying with district policies, rules, and laws.

I find that Respondent violated OAR 584-020-0015(3)(a). I further find that Respondent's actions were a substantial deviation from professional standards of competency.

Skill in the use of employee and leadership techniques

Pursuant to OAR 584-020-0020(3)(d), the competent administrator demonstrates skill in the use of employee and leadership techniques appropriate to the assignment and according to well established standards which ensure due process for the staff for which the administrator is responsible for evaluating.

Respondent was the Superintendent of CCSD and the Principal of GBHS. Respondent was Brown's supervisor. It was Respondent's duty to investigate the complaint against Brown. Instead, Respondent left it up to Storns, an unlicensed individual, Brown, the perpetrator, and Swift, who was not an administrator, to resolve the matter.

In addition, when confronted by SP on October 21, 2014, Respondent directed Swift and Brown to locate additional witnesses to the incident instead of finding the witnesses himself. As stated previously, it was unreasonable for Respondent to believe that a perpetrator would actively seek out witnesses that may provide statements against him.

Respondent failed to conduct a full and fair inquiry and investigation into the incident that took place on October 10, 2014. Respondent's actions demonstrate a lack of skill in choosing employees appropriate for the assignment. Respondent's actions also demonstrate a lack of leadership techniques appropriate for the assignment.

I find that Respondent violated OAR 584-020-0020(3)(d). I further find that Respondent's actions were a substantial deviation from professional standards of competency.

Flexibility and cooperatively working with others

Pursuant to OAR 584-020-0030(3)(c), the competent administrator demonstrates willingness to be flexible in cooperatively working with others.

CP's parents wanted the incident involving Brown handled appropriately by Respondent.

CP's parents put their faith and trust in Respondent to determine the truth and discipline Brown accordingly.

However, Respondent failed CP's parents. Respondent did not interview CP or CP's parents regarding the incident. Instead, Respondent accepted Storn's and Brown's assertion that Brown did not hit CP, and left the matter up to the coaches to resolve.

Moreover, when confronted by SP on October 21, 2014, Respondent did not take the opportunity to work with SP by interviewing him, his wife and his son regarding the incident.

Furthermore, when SP told Respondent on November 17, 2014, that he wanted to address the School Board, Respondent again did not take the opportunity to work with SP by interviewing him, his wife, and his son regarding the incident.

Respondent did not even attempt to interview CP or CP's parents until early December 2014, after he had already issued a reprimand to Brown and concluded that Brown had not punched or struck CP during the football game.

Respondent failed to conduct a full and fair inquiry and investigation into the incident that took place on October 10, 2014. Respondent's actions demonstrate an unwillingness to be flexible in working cooperatively with others.

I find that Respondent violated OAR 584-020-0030(3)(c). I further find that Respondent's actions were a substantial deviation from professional standards of competency.

Skill in reconciling conflict

Pursuant to OAR 584-020-0030(3)(d), the competent administrator demonstrates skill in reconciling conflict.

As set forth previously, CP's parents put their faith and trust in Respondent to determine the truth and discipline Brown accordingly.

However, Respondent failed CP's parents. Respondent did not interview CP or CP's parents regarding the incident. Instead, Respondent accepted Storn's and Brown's assertion that Brown did not hit CP, and left the matter up to the coaches to resolve.

Moreover, when confronted by SP on October 21, 2014, Respondent did not try to reconcile the conflict by interviewing SP, his wife and his son regarding the incident.

Furthermore, when SP told Respondent on November 17, 2014, that he wanted to address the School Board, Respondent again did not try to reconcile the conflict by interviewing SP, his wife, and his son regarding the incident.

Respondent did not even attempt to interview CP or CP's parents until early December 2014, after he had already issued a reprimand to Brown and concluded that Brown had not

punched or struck CP during the football game.

Respondent failed to conduct a full and fair inquiry and investigation into the incident that took place on October 10, 2014. Respondent's actions fail to demonstrate skill in reconciling conflict.

I find that Respondent violated OAR 584-020-0030(3)(d). I further find that Respondent's actions were a substantial deviation from professional standards of competency.

Conducting professional business

Pursuant to OAR 584-020-0035(2)(b), the ethical educator, in fulfilling obligations to the district, will conduct professional business, including grievances, through established lawful and reasonable procedures.

Respondent was the Superintendent of CCSD and the Principal of GBHS. Respondent was Brown's supervisor. It was Respondent's duty to investigate the complaint against Brown, including determining whether Brown violated district policy by interviewing the complainant (victim) and witnesses to the incident.

Respondent did not interview CP (victim) or CP's parents (witnesses) regarding the incident. Respondent accepted Storn's and Brown's assertion that Brown did not hit CP, and left the matter up to the coaches to resolve.

Respondent also directed Brown, the perpetrator, to find more witnesses to the incident when it was unreasonable for Respondent to believe that a perpetrator would actively seek out witnesses that may provide statements against him.

Moreover, on November 21, 2014, when Respondent issued Brown a reprimand and concluded that Brown had not punched or struck CP during the football game, Respondent formulated his conclusions without interviewing CP and CP's parents. In addition, in the reprimand that he issued, Respondent did not address whether Brown's physical contact with CP violated district policy.

Furthermore, Respondent did not actually interview witnesses and document their statements until early December 2014, two months after the event, and after he had concluded that Brown had not punched or struck CP.

Respondent failed to conduct a full and fair inquiry and investigation into the incident that took place on October 10, 2014. Respondent failed to determine whether Brown violated district policy. Respondent failed to conduct professional business through established lawful and reasonable procedures.

I find that Respondent violated OAR 584-020-0035(2)(b). I further find that Respondent's actions were a substantial deviation from professional standards of ethics.

Therefore, the evidence in the record establishes that in October 2014, Respondent engaged in gross neglect of duty, in violation of OAR 584-020-0040(4)(n) and (o), and ORS 342.175(1)(b).

Respondent contends that he conducted the investigation in proportion to what he heard and/or was told. However, Respondent was responsible for investigating the incident, including interviewing the complainant (victim) and witnesses to the incident. Respondent did not interview CP (victim) or CP's parents (witnesses) regarding the incident. By failing to interview CP and CP's parents, Respondent failed to conduct a full and fair investigation into the incident and failed to conduct professional business through established lawful and reasonable procedures. Consequently, Respondent's argument is unpersuasive.

Respondent also contends his actions did not amount to a serious inattention or breach of professional duty. However, I have found to the contrary. Thus, Respondent's argument is unpersuasive.

Respondent further contends that he is being held to a higher standard than other staff, including Officer Smart. However, there is simply no credible evidence in the record to support Respondent's assertion. Accordingly, Respondent's argument is without merit.

Sanction

The Commission contends that Respondent's license should be suspended for 90 days. Respondent contends to the contrary. I agree with the Commission.

ORS 342.175 further 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 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[.]

OAR 584-020-0045 is titled "Factors for Imposing Disciplinary Sanctions" and provides:

The Commission may consider one or more of the following factors, as it deems appropriate, in its determination of what sanction or sanctions, if any, should be imposed upon a finding that an educator has violated any standard set forth in OAR 584-020-0040:

- (1) If the misconduct or violation is an isolated occurrence, part of a continuing pattern, or one of a series of incidents;
- (2) The likelihood of a recurrence of the misconduct or violation;
- (3) The educator's past performance;
- (4) The extent, severity, and imminence of any danger to students, other educators, or the public;
- (5) If the misconduct was open and notorious or had negative effects on the public image of the school;
- (6) The educator's state of mind at the time of the misconduct and afterwards;
- (7) The danger that students will imitate the educator's behaviors or use it as a model;
- (8) The age and level of maturity of the students served by the educator;
- (9) Any extenuating circumstances or other factors bearing on the appropriate nature of a disciplinary sanction; or
- (10) To deter similar misconduct by the educator or other educators.

Pursuant to ORS 342.175(1)(b), the Commission may discipline a teacher for gross neglect of duty at any time within five years prior to issuance of the notice of charges. In addition, in imposing disciplinary sanctions upon an educator that violated any standard in OAR 584-020-0040, the Commission may consider the factors in OAR 584-020-0045.

As determined previously, Respondent engaged in gross neglect of duty in October 2014. The Commission seeks to impose a 90 day suspension.

A review of the record establishes that the proposed sanction is appropriate and within the Commission's discretionary authority. I find that Respondent's actions warrant the proposed sanction in this matter.

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ORDER

I propose the Teacher Standards and Practices Commission issue the following order:

The Notice of Opportunity for Hearing issued on April 25, 2016, is AFFIRMED.

Dove L. Gutman

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 (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 NE
Salem, OR 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 April 13, 2017 I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 2016-ABC-00013.

By: First Class and Certified Mail

Rebekah R Jacobson
Garrett Hemann Robertson PC
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Salem OR 97301

By: First Class

Dennis E. Johnson
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Lucila G Marquez
Hearing Coordinator