



**BEFORE THE HEARING OFFICER PANEL  
STATE OF OREGON  
for the  
TEACHER STANDARD AND PRACTICES COMMISSION**

IN THE MATTER OF THE TEACHING )	<b>PROPOSED ORDER</b>
LICENSE OF )	
)	Hearing Officer Panel Case No.: 99785
<b>JEFFREY PAUL MAINARD</b> )	Agency File No.: 5840001-GE0232-02

**HISTORY OF THE CASE**

On May 15, 2002, the Teacher Standards and Practices Commission (TSPC) issued a Second Amended Notice of Hearing proposing to impose discipline and Jeffrey Paul Mainard (respondent) appeals. On July 19, 2002, Administrative Law Judge Catherine P. Coburn conducted a hearing in this matter in Salem, Oregon. Assistant Attorney General Joe Gordon McKeever represented TSPC. Respondent appeared *pro se*, waived his right to a confidential hearing pursuant to ORS 342.177(1) and testified on his own behalf. TSPC called Oregon State Trooper J.L. Richardson, Oregon City Police Officer Dan Shockley and TSPC Investigator Sue Nisbet as witnesses. The record closed on the date of hearing.

After review and consideration of the entire record in this matter, including all of the exhibits and testimony, I now issue this Proposed Order.

**ISSUES**

- (1) Whether on or about October 9, 1998, Mainard drove under the influence of intoxicants in violation of OAR 584-020-0040(5)(e) and was arrested for Driving Under the Influence of Intoxicants (DUII). Whether he was granted Diversion on October 28, 1998, completed the Diversion and the DUII was dismissed on November 2, 1999 in Multnomah County Circuit Court.
- (2) Whether on or about May 28, 1999, Mainard rode a bicycle under the influence of intoxicants. Whether on August 13, 1999, he entered a guilty plea and was convicted of DUII in Clackamas County Circuit Court in violation of OAR 585-020-0040(5)(c).
- (3) Whether on or about May 9, 2001, Mainard failed to exhibit skill in communicating with students by using profanity in communicating with students. Whether this conduct violated OAR 584-020-0030(2)(b).
- (4) Whether on or about August 3, 2001, Mainard unlawfully carried two concealed weapons, one of which was loaded, in a public park and he was arrested and charged with two counts of Unlawful Possession of a Firearm. Whether at the time of his arrest, Mainard was under the influence of alcohol in violation of the terms of his court probation and in violation of OAR 584-020-0040(5)(f). Whether on October 9,

2001, he was convicted in Oregon City Municipal Court of Unlawful Possession of a Firearm in violation of OAR 584-020-0040(5)(c).

### **EVIDENTIARY RULINGS**

TSPC Exhibits A1, A2 and A5 through A13 were admitted into the record over respondent's relevance objections. TSPC Exhibits A3, A4, and A14 through A17 were received into the record without objection.

Respondent's Exhibits R101 through R106 and R108 through R113 were admitted into the record without objection. Respondent's Exhibit R107 was admitted into the record over TSPC's relevance objection.

### **FINDINGS OF FACT**

- (1) On October 9, 1998, respondent drove a motor vehicle the wrong direction on a one-way street in Portland, Oregon and was arrested for driving under the influence of intoxicants. A breath test measured respondent's blood alcohol at .22. (Exs. A5, A6 A7, A8, A9).
- (2) On October 28, 1998, respondent was granted enrollment in a diversion program. Respondent completed the diversion program and the DUII charge was dismissed on November 2, 1999 in Multnomah County Circuit Court. (Ex. A9-2 and A10). Respondent's Treatment Program Termination Notice states, "Active in AA, plans to build sober support group in community activities, with long range goal to remain abstinent." (Ex. A10).
- (3) On May 28, 1999, respondent rode a bicycle under the influence of intoxicants, into traffic on McLoughlin Boulevard and was struck by a motor vehicle. When questioned by police at the scene of the accident, respondent was belligerent and refused a breath alcohol test, stating, "I'm not going to take it, I already know I'm drunk." Respondent estimated that he had consumed 6 glasses of wine. When asked to rate the extent of his own drunkenness between one and ten, respondent replied, "I'm pretty drunk, 6". Respondent was arrested for DUII. (Exs. A11 and A12, R106; testimony of J.L. Richardson, Trooper, Oregon State Police).
- (4) On August 13, 1999, respondent pled guilty to DUII, was convicted and sentenced to 24 months probation on condition that he obey all laws, not use or possess alcoholic beverages, and not associate with any person known to use, sell, or possess illegal drugs or narcotics. (Ex. A13).
- (5) In July 1999, respondent submitted an Application for Educator License to TSPC. In response to a question whether the applicant had been convicted of any crime or had any criminal matters pending, respondent submitted four documents consisting of two documents pertaining to the diversion program arising from the 1998 DUII arrest and the citation and judgment arising from the 1999 DUII conviction. Respondent

- provided the following statement: "Please note that I have not and will not receive a citation for this because I voluntarily entered the diversion program. Thank you. Jeff Mainard". (Testimony of Sue Nisbet, TSPC Investigator).
- (6) TSPC interpreted the documents and statement provided by respondent to mean that he had been arrested in one alcohol-related incident which was resolved by successful completion of a diversion program. (Ex. A16).
  - (7) In October 1999, TSPC issued an initial Oregon teaching license to respondent. (Ex. A17).
  - (8) TSPC does not issue initial teaching licenses to applicants who have been arrested in two alcohol-related incidents within two years. (Testimony of Nisbet).
  - (9) On August 3, 2001 respondent was arrested for Unlawful Possession of a Firearm. Oregon City Police answered a call reporting a man taking a gun out of a backpack in High Rocks Park. Officer Shockley found respondent, hidden by large rocks, lying on a backpack. Respondent hid his face under a shirt. Safety inspection of respondent's backpack revealed two guns, one of them loaded. Officer Shockley noted the strong odor of alcohol coming from respondent. Respondent was uncooperative and when asked his occupation, replied, "None of your f\*\*\*\*\* business." Respondent did not have a concealed weapons permit. (Ex. A14; testimony of Oregon City Police Officer Dan Shockley).
  - (10) On August 3, 2001, when respondent was arrested for Unlawful Possession of a Firearm in a public park, respondent was under the influence of alcohol. (Ex. A14; testimony of Officer Shockley).
  - (11) High Rocks is a public park located in the community where respondent served as a substitute teacher. The park is crowded with swimmers and sunbathers in the summertime. (Testimony of Officer Shockley).
  - (12) On October 9, 2001, respondent was convicted in Oregon City Municipal Court of Unlawful Possession of a Firearm. (Ex. A15).
  - (13) In May 2001, while working as a substitute teacher at Milwaukie High School, respondent encountered a rebellious student and used profanity in the presence of several students. (Ex. A3-1).
  - (14) Another teacher and several students were aware of the incident when respondent used profanity in a high school class. (Ex. A3).
  - (15) Respondent wrote a memo memorializing the profanity incident. (Ex. A3).
  - (16) As a result of respondent's use of profanity with a student, his status as a substitute teacher at Milwaukie High School was suspended for the remainder of the 2000-2001 school year. (Ex. A3-2).

- (17) In May 2001, while working as a substitute teacher at Clackamas High School, respondent wrote a handwritten note to a teacher that states,

I am soliciting work especially in English, to separate (sic) myself from the quagmire known as Milwaukie H[igh] S[chool] where I usually am everyday. Milwaukie teachers are having terrible problems with an administration that refuses to maintain proper discipline (sic) w[ith] the students. I was reprimanded (sic) for defending myself from a verbal attack, and you may be aware of some of the other problems that have been addressed in the paper. (Ex. A2).

- (18) As a result of respondent's handwritten note, he was removed from the substitute teacher's list for Clackamas School District. (Ex. A2-1).
- (19) On August 3, 2001, respondent's former roommate filed a complaint with TSPC that states:

Jeff Mainard is an active drug addict and sells and grows marijuana. Many students have seen him drunk and stoned down on the river at "High Rocks" which he does daily. He is also in possession of several illegal firearms. (Emphasis in the original.) (Ex. A1).

- (20) Respondent's former roommate has been charged with various crimes including Assault, DUII, Menacing, Harassment, Burglary, Criminal Trespass, Theft, Theft 2, Criminal Possession of Rental Property and Recklessly Endangering Another. (Ex. R107; testimony of respondent).

#### CONCLUSIONS OF LAW

- (1) On or about October 9, 1998, respondent drove a motor vehicle under the influence of intoxicants and was arrested for Driving Under the Influence of Intoxicants (DUII). He was granted Diversion on October 28, 1998. He completed the Diversion program and the DUII charge was dismissed on November 2, 1999 in Multnomah County Circuit Court. Respondent's conduct violated OAR 584-020-0040(5)(e).
- (2) On or about May 28, 1999, respondent rode a bicycle under the influence of intoxicants. On August 13, 1999, he entered a guilty plea and was convicted of DUII in Clackamas County Circuit Court. Respondent's conduct violated OAR 585-020-0040(5)(c).

- (3) On or about May 9, 2001, respondent failed to exhibit skill in communicating with students by using profanity in communicating with students. Respondent's conduct violated OAR 584-020-0030(2)(b).
- (4) On or about August 3, 2001, respondent unlawfully carried two concealed weapons, one of which was loaded, and he was arrested and charged with two counts of Unlawful Possession of a Firearm. At the time of his arrest, respondent was under the influence of alcohol in violation of the terms of his court probation and in violation of OAR 584-020-0040(5)(f). On October 9, 2001, he was convicted in Oregon City Municipal Court of Unlawful Possession of a Firearm. Respondent's conduct violated OAR 584-020-0040(5)(c).

### OPINION

TSPC bears the burden of proving the allegations and that the proposed sanction is warranted by a preponderance of the evidence. See ORS 183.450(2) and (5); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of 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).

ORS 342.175 provides:

- (1) The Teacher Standards and Practices Commission may suspend or revoke the license of a teacher or administrator, discipline a teacher or administrator or suspend or revoke the right of any person to apply for a license if the person has held a license at any time within five years prior to issuance of the notice of charges under ORS 342.176<sup>1</sup> based on the following:
  - (a) Conviction of a crime not listed in ORS 342.143(3);
  - (b) Gross neglect of duty;
  - (c) Any gross unfitness;
  - (d) Conviction of a crime for violating any law of this or any state or of the United States involving illegal use, sale or possession of controlled substances;

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<sup>1</sup> ORS 342.176(1) provides:

Upon receipt of a complaint or information that a person has violated ORS 342.143 or 342.175, the Teacher Standards and Practices Commission shall promptly undertake an investigation.

- (e) Any false statement knowingly made in an application for issuance, renewal or reinstatement of a license; or
- (f) Failure to comply with any condition of reinstatement under subsection (3) of this section or any condition of probation under ORS 342.177(3)(b).

OAR 584-020-0040(5) provides in part:

(5) Gross unfitness is any conduct which renders an educator unqualified to perform his or her professional responsibilities. Conduct constituting gross unfitness may include conduct occurring outside of school hours and off school premises when such conduct bears a demonstrable relationship to the educator's ability to fulfill professional responsibilities effectively. The following may be admissible as evidence of gross unfitness. Consideration may include but is not limited to:

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(c) Conviction of violating any federal, state, or local law. A conviction includes any final judgment of conviction by a court whether as the result of guilty plea, no contest plea or any other means.

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(e) Admission of or engaging in acts constituting criminal conduct, even in the absence of a conviction;

(f) Violation of a term of probation imposed by a court.

#### October 1998 DUII

Respondent does not dispute that on October 9, 1998, he drove a motor vehicle under the influence of intoxicants, was arrested for DUII, was granted and completed Diversion. However, respondent disputes that this conduct constitutes gross unfitness. Pursuant to OAR 584-020-0040(5)(e), admission of or engaging in any criminal conduct, even in the absence of a conviction constitutes gross unfitness. Here, respondent drove a motor vehicle under the influence of intoxicants which is a criminal act and constitutes gross unfitness to serve as an Oregon teacher, even in the absence of a conviction. Therefore, respondent's conduct warrants an appropriate sanction imposed by TSPC.

## May 1999 DUII

Respondent does not dispute that on May 28, 1999, he rode a bicycle under the influence of intoxicants and on August 13, 1999, he pled guilty and was convicted of DUII. However, respondent disputes that this conduct constitutes gross unfitness. Pursuant to OAR 584-020-0040(5)(c), conviction by guilty plea of violating any state law constitutes gross unfitness. Here, respondent pled guilty and was convicted of a state law prohibiting driving under the influence of intoxicants. Pursuant to OAR 584-020-0040(5)(c) this conduct constitutes gross unfitness to serve as an Oregon teacher. Therefore, respondent's conduct warrants an appropriate sanction imposed by TSPC.

Respondent argues that the October 1998 and the May 1999 DUII arrests should not be considered in this disciplinary action because both incidents took place before he applied for an initial Oregon teaching license in July 1999. However, pursuant to ORS 342.175 and OAR 584-020-0040, in a disciplinary proceeding, TSPC may consider events that took place prior to application for the initial teaching license. Furthermore, documents and a statement submitted by respondent led TSPC to believe that he had been arrested in one alcohol-related incident when, as a matter of fact, he had been arrested in two separate alcohol-related incidents. If TSPC had been fully apprised of the facts, it would have denied respondent's initial teaching license. For these reasons, it is appropriate to consider the 1998 and 1999 DUII's in evaluating respondent's fitness as a teacher.

## Unlawful Possession of a Firearm

Respondent does not dispute that on August 3, 2001, he unlawfully carried two concealed weapons, one of which was loaded, in a public park, that he was arrested and later convicted of Unlawful Possession of a Firearm. However, respondent challenges two factual allegations arising from this incident.

Respondent first challenges the allegation that his conduct in the arrest for Unlawful Possession of a Firearm constituted a probation violation. On August 13, 1999, following a DUII conviction, respondent was sentenced to 24-months probation on condition that he obey all laws. On August 3, 2001, within the 24-month probationary period, respondent failed to obey a law by unlawfully possessing a firearm. Therefore, I find that respondent violated court-ordered probation which constitutes gross unfitness pursuant to OAR 584-020-0040(5)(f).

Respondent next disputes the allegation that he acted under the influence of alcohol on August 3, 2001 when he was arrested for Unlawful Possession of a Firearm in a public park. The record establishes that the arresting police officer perceived the odor of alcohol emanating from respondent at the time of the incident. The record also establishes that respondent attempted to hide from the police behind large rocks and by hiding his face under a shirt and that he attempted to hide the backpack containing two guns by lying on top of it. Finally, it is undisputed that respondent was uncooperative and when asked his occupation, replied, "None of your f\*\*\*\*\* business." Based on the record, I find that it is more likely than not that respondent was under the influence of alcohol on August 3, 2001. Accordingly, I find that TSPC has carried its burden of establishing this fact by a preponderance of evidence.



Pursuant to OAR 584-020-0040(5)(f), violation of a court-ordered condition of probation constitutes gross unfitness to serve as an Oregon teacher. On August 13, 1999, following a DUII conviction, respondent was sentenced to 24-months probation on condition that he not use or possess alcoholic beverages. On August 3, 2001, within the 24-month probationary period, respondent violated the court-ordered probation by using alcoholic beverages. Therefore, I find that respondent violated the 1999 court-ordered probation which constitutes gross unfitness pursuant to OAR 584-020-0040(5)(f).

### Profanity

OAR 584-020-0030(2)(b) provides:

(2) The competent teacher demonstrates:

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(b) Skill in communicating with students, staff, parents, and other patrons.

Respondent does not dispute that on May 9, 2001, he used profanity with students. Rather, respondent denies that such conduct reflects a lack of skill in communicating with students. In support of his position, respondent argues his use of profanity, although inappropriate, was justified under the circumstances because the student was rebellious, respondent felt under attack, and no security guard or intercom was available. However, I find that respondents' use of profanity was not excusable and reflects incompetence as a teacher.

### Sanction

OAR 584-020-0045 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 behavior 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.

Respondent contends that no sanction is warranted because not all of the allegations contained in the complaint have been proven. Respondent's argument is unpersuasive. The complaint, filed with TSPC by respondent's former roommate, carries credibility because it alleges that claimant has been drunk, possessing illegal guns at High Rocks Park and these facts were confirmed in the August 3, 2001 arrest. The complaint also alleges that respondent is a drug addict and that he grows and sells marijuana; these particular facts have not been proven and I do not rely on them in reaching a decision. However, other facts that are established by the record warrant an appropriate sanction imposed by TSPC.

TSPC proposes revocation of respondent's Oregon teaching license. Based on the record, I agree that license revocation is appropriate. The two DUI's warrant denial of an initial teaching license. In conjunction with the conviction for Unlawful Possession of a Firearm, the three alcohol-related criminal offenses warrant license revocation.

The documentary record as well as respondent's arguments at hearing reflect his failure to assume responsibility for his actions. At hearing, respondent took the position that two DUI's and a conviction for Unlawful Possession of a Firearm do not constitute gross unfitness as a teacher. Respondent's argument highlights his lack of comprehension of the responsibilities and obligations incumbent upon an Oregon teacher as a role model in the community. For example, it is unacceptable for Oregon teenagers to view a drunken man, wielding guns in a public park, uncooperative and cursing the police and later encounter the same person presiding as a teacher in a high school class. This incident was egregious because it was open and notorious, taking place in a public park, frequented by teenagers in the community where respondent served as a teacher, and wielding a loaded gun presented a significant danger to the public and the police. Furthermore, at hearing respondent denied that he was intoxicated during this incident as if to argue that this conduct would be more acceptable if he were sober.

Moreover, at hearing, respondent argued that it was appropriate to respond "None of your f\*\*\*\*\* business." when a police officer asked his occupation.

The record contains numerous instances of respondent's failure to take responsibility. For example, following the incident where respondent used profanity with students, he wrote a memo to a school administrator minimizing his role in the incident and he wrote a note to another teacher blaming school administrators for the incident. At hearing, respondent offered excuses for his incompetent behavior and only grudgingly accepted any responsibility for his part in the incident.

At hearing, respondent argued that his criminal offenses were excused by extenuating circumstances including problems with a roommate who had a criminal record. Again, respondent failed to appreciate his responsibility for choosing appropriate roommates.

Respondent also asserted that he had controlled his alcoholism but he offered no credible evidence to support this claim. Aside from his own vague assertions, respondent offered no evidence of any medical treatment or alcohol rehabilitation since 1999 when he completed a DUII diversion program. Respondent's claim of sobriety is not credible in light of his violation of the 1999 court-imposed probation which prohibited respondent from using or possessing any alcoholic beverages. During the 24-month probation period, respondent was convicted of a third alcohol-related crime. In the absence of any objective evidence of alcohol abuse rehabilitation, I find that respondent's misconduct is a pattern of behavior and is likely to recur.

Finally, respondent offered several reference letters ostensibly from other educators recommending his past performance as a teacher. However, none of the letters refer to respondent's criminal offenses or his alcohol abuse and the logical inference is that the authors were unaware of these facts. Therefore, I accord little evidentiary weight to the letters.

Respondent's pattern of conduct in three alcohol-related criminal offenses confirm a state of mind that was alcohol-impaired. Furthermore, his arguments at hearing reflect a recalcitrant denial of responsibility. Respondent's pattern of behavior in two DUII's and a conviction for Unlawful Possession of a Firearm demonstrate that he is unable to fulfill the professional responsibilities of an Oregon teacher. This course of conduct constitutes gross unfitness and warrants license revocation.

In conclusion, I find that respondent's conduct on October 9, 1998, May 28, 1999 and August 3, 2001 constitutes gross unfitness as a teacher and respondent's conduct on May 9, 2001 demonstrates incompetence as a teacher. Therefore, revocation of respondent's Oregon teaching license is warranted.

**ORDER**

I recommend that TSPC issue the following order:

Respondent's Oregon teaching license is revoked.

Dated this 14th day of August 2002.

  
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Catherine P. Coburn, Administrative Law Judge  
Hearing Officer Panel

**EXCEPTIONS**

The proposed order is the hearing officer'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  
465 Commercial Street, NE  
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.