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2 BEFORE THE  
3 TEACHER STANDARDS AND PRACTICES COMMISSION  
4 STATE OF OREGON  
5


6 In the Matter of the ) FINDINGS OF FACT,  
7 Teaching License of ) CONCLUSIONS OF LAW,  
8 James Richard Richardi ) OPINION AND ORDER  
9 ) OF SUSPENSION  
10

11  
12 FINAL ORDER  
13

14 By resolution dated July 10, 1998, the Teacher Standards and Practices  
15 Commission adopts the attached proposed order to suspend the Oregon  
16 Teaching License for one year from the date of this Order.  
17

18 DATED THIS 15<sup>th</sup> day of July, 1998.  
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20 TEACHER STANDARDS AND PRACTICES COMMISSION  
21

22  
23 By   
24 \_\_\_\_\_  
25 David V. Myton, Executive Director  
26

27 NOTICE: YOU ARE ENTITLED TO A JUDICIAL REVIEW OF THIS ORDER.  
28 JUDICIAL REVIEW MAY BE OBTAINED BY FILING A PETITION FOR REVIEW  
29 WITHIN 60 DAYS FROM THE SERVICE OF THIS ORDER. JUDICIAL REVIEW  
30 IS PURSUANT TO THE PROVISIONS OF ORS 183.482 TO THE OREGON  
31 COURT OF APPEALS.  
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1 STATE OF OREGON

2 TEACHER STANDARDS AND PRACTICES COMMISSION

3 In the Matter of the ) PROPOSED FINDINGS OF FACT,  
4 Teaching License of ) CONCLUSIONS OF LAW, OPINION AND  
5 James Richard Richardi ) ORDER  
6 )

7 On January 28, 1998 the Teacher Standards and Practices  
8 Commission (the "Commission") issued a Notice of Opportunity to  
9 James Richard Richardi (Richardi) proposing to suspend, revoke or  
10 impose other discipline under ORS 342.177. On January 30, 1998,  
11 Richardi requested a hearing, and a hearing was held on April 28  
12 and 29, 1998, in Salem, Oregon before a panel of three  
13 commissioners; Susan Wilcoxon, Chair, Martin Morris and Patrick  
14 Pullam. Richardi was represented by Sean A. Lyell, Attorney and  
15 the Commission was represented by Assistant Attorney General Gary  
16 Cordy.

17 Prior to the commencement of the hearing Assistant Attorney  
18 General Cordy amended the Notice of Opportunity for Hearing to  
19 delete the word "ownership" and to substitute the words  
20 "possession/use/control" in the first paragraph of the  
21 allegations. In addition reference to OAR 584-20-034(3)(a) was  
22 corrected to OAR 584-20-035(3)(a). Counsel for Richardi did not  
23 object to these amendments.

24 The hearing was conducted as a contested case hearing and  
25 was tape recorded.

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1 The panel heard testimony from Richardi and Douglas County  
2 Deputy District Attorney William Marshall (Marshall). The  
3 following exhibits were received into evidence:

4 Commission Exhibits:

5 S1 Indictment for Tampering With a Witness and Perjury  
6 dated May 21, 1996.

7 S2 District Attorney Information for Obstructing  
8 Governmental Judicial Administration dated November 18,  
9 1997.

10 S3 Incident Report, Douglas County Sheriff's Office by  
11 Officer Ben Kempke Dated June 12, 1996.

12 S4 Transcript of Tape Recording of Phone Call Between Bret  
13 Wilson and James Richardi, May 3, 1996 ~ 10:45 p.m.

14 S5 Transcript of Tape Recording of Phone Call Between Bret  
15 Wilson and James Richardi, May 3, 1996 ~ 9:15 p.m.

16 S6 Investigation Report of Susan Nisbet.

17 S7 Transcript of Tape Recording of Phone Call Between Bret  
18 Wilson and Michelle Ellis, May 3, 1996.

19 Licensee Exhibits:

20 L1 Not receive due to objection.

21 L2 Plea Statement and Order of James R. Richardi.

22 L3 Judgment dated November 19, 1997.

23 L4 Douglas County Community Corrections Adult & Probation  
24 Courtesy Referral dated 3-17-98 (reflecting that James  
25 R. Richardi completed his Community Service).

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- 1 L5 Lane County Division of Adult Corrections - - Community  
2 Service Program Agency Certification Form dated 3-17-98  
3 (reflecting completion of Community Service and  
4 excellent performance evaluation).
- 5 L6 Incident Report - Douglas County Sheriff's Office, by  
6 Officer Ben Kempke, dated 5-13-96 (6 pages).
- 7 L7 Receipt from S-M Enterprises, 1375 River Road, Eugene  
8 OR 97404, (503) 688-8700 (reflecting purchase of four  
9 guns, serial numbers 243088, AB 3844, 078610, and  
10 D082933, from James Richardi for \$650 on April 4,  
11 1998).

12 RULINGS

13 Counsel for Teacher Standards and Practices Commission  
14 (TSPC) made a motion in limine to restrict Richardi from  
15 introducing any evidence to dispute the factual allegations  
16 contained in the criminal complaint to which he was convicted.  
17 TSPC argued that as a matter of law Richardi could not dispute  
18 the charges contained in the criminal complaint for which he was  
19 convicted on November 19, 1997.

20 Richardi argued that he should not be precluded from  
21 disputing the facts contained in the criminal complaint because  
22 he entered a plea of no contest and did not plead guilty.

23 The panel ruled that Richardi could not offer evidence  
24 disputing the factual allegations contained in the criminal  
25 complaint. The panel reasoned that a plea of no contest is a  
26 conviction under ORS 135.345 and a certified record of the

1 conviction, which was provided to the panel \* \* \* "shall be  
2 conclusive evidence of a conviction \* \* \*" ORS 342.175(6).  
3 Furthermore, TSPC counsel noted that the Commission had  
4 previously decided in the *Boltak* case, issued March 18, 1998,  
5 that an educator could not attempt to impeach a criminal  
6 conviction.

7 Lastly, TSPC asserted, and Richardi did not dispute, that  
8 issue preclusion should apply under Oregon appellate analysis  
9 including *State Farm Fire and Casualty Co. v. Sallak*, 140 Or App  
10 89 (1996) and *State v. Woodard*, 121 Or App 483 (1993).

11 Numerous rulings on objections during the hearing were based  
12 on this ruling on the motion in limine. These evidentiary  
13 rulings included exclusion of an exhibit offered by Richardi  
14 prepared by a private investigator and exclusion of testimony by  
15 that investigator because the evidence sought to be offered fell  
16 within the panel's ruling on the motion in limine.

17 Richardi objected to exhibits S4 and S5 on the basis of  
18 relevance. The panel determined the exhibits were relevant and  
19 they were admitted.

20 During closing argument counsel for Richardi made reference  
21 to a transcript not in evidence. Counsel for TSPC asked the  
22 panel to permit receipt of the transcript and the document was  
23 admitted as exhibit S-7.

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FINDINGS OF FACT

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1. Richardi was employed in the Eugene School District 4-J from 1972 until 1997 and held a valid teaching license during that time.

2. On May 3, 1996, Douglas County deputies served a search warrant at the residence of Bretley Wilson (Wilson) in Roseburg, Oregon. Deputies discovered six firearms and ammunition in Wilson's residence and seized those items pursuant to the warrant.

3. Wilson was a convicted felon and by law was prohibited from possessing firearms. Richardi and Wilson were friends.

4. Wilson was arrested and incarcerated in Douglas County Jail on May 3, 1996, and charged with felony possession of firearms.

5. Wilson told officer Kempke (Kempke) that some of the firearms were owned by Richardi. Richardi later confirmed to Kempke ownership of four of the firearms.

6. At approximately 9:00 p.m., on May 3, Wilson spoke to Richardi by phone from the jail. The conversation was secretly recorded by jail staff. (Ex S5) In that conversation Richardi and Wilson agree to make false statements regarding possession/use/control of the firearms. The false statements were to be used for the purpose of providing a defense to the felony charges against Wilson. Wilson asked and Richardi agreed to talk to Michelle Ellis (Ellis) to tell her of the plan to make false statements and to have her participate in the falsehoods.

1           7.    At approximately 10:30 p.m. Wilson and Richardi spoke  
2 again by phone and this conversation was also secretly recorded.  
3 (Ex S4) In this conversation Richardi tells Wilson he had talked  
4 to Ellis.

5           8.    On May 9, Kempke interviewed Richardi and Richardi made  
6 false statements to Kempke. Richardi falsely stated that Ellis  
7 brought the four guns to Wilson's residence and that the four  
8 guns were delivered to Wilson's residence shortly before the  
9 police searched Wilson's residence. Richardi also falsely stated  
10 to Kempke that he didn't know anything about two pistols that  
11 were seized during the search. In fact Richardi had previously  
12 seen those pistols at Wilson's residence.

13           9.    On May 14, 1996, Richardi and Ellis appeared before a  
14 Douglas County grand jury. Ellis testified before Richardi and  
15 said that she had transported the four firearms owned by Richardi  
16 from Eugene to Wilson's Roseburg residence on the morning of  
17 May 3, 1996.

18           10. After testifying before the grand jury, Ellis was told  
19 by police and Marshall that there was reason to believe that she  
20 had given false testimony. Ellis was given an opportunity to  
21 return to the grand jury and recant her false statements. Ellis  
22 then testified that she had not transported the firearms to  
23 Wilson on May 3rd and that she had agreed with Richardi and  
24 Wilson to make the false statements regarding transporting the  
25 firearms to Wilson on the morning of May 3.

26    ///

1 11. Richardi testified before the grand jury and was  
2 unaware of what Ellis had said. Richardi falsely testified that  
3 Ellis had brought the four guns to Roseburg in her car on May 3;  
4 that he had not talked to Wilson or Ellis about what to tell  
5 police about the guns; and that he did not speak to Wilson about  
6 the guns while Wilson was in custody.

7 12. A two count indictment was filed against Richardi on  
8 May 22, 1996. Count one was Tampering with a witness, (ORS  
9 162.285) and Count two was Perjury (ORS 162.065).

10 13. On May 28, 1996, Richardi was arrested at school on a  
11 felony arrest warrant. Richardi's arrest was known by students  
12 and co-workers and was reported in the press.

13 14. Wilson was convicted of Felon in Possession of  
14 Firearms.

15 15. As a result of a plea bargain, Richardi agreed to plead  
16 to Obstructing Governmental or Judicial Administration (ORS  
17 162.235), a misdemeanor, on the condition the two felony charges  
18 be dismissed.

19 16. The misdemeanor contained the allegation that Richardi  
20 unlawfully and intentionally obstructed and hindered  
21 administration of law by means of obstacles, to-wit: "\* \* \* by  
22 attempting to induce Michelle Ellis, to offer false testimony in  
23 an official proceeding and by making a false sworn statement  
24 regarding a material issue in a grand jury proceeding while  
25 knowing the statement to be false, \* \* \*." The panel concludes  
26 Richardi engaged in the conduct described in the complaint.



1 17. On November 19, 1997, Richardi entered a no contest  
2 plea and was found guilty. A judgment was entered on the same  
3 date and Richardi was sentenced to perform 100 hours of community  
4 service and to pay a fine of \$500. Richardi performed both  
5 conditions of the sentence.

6 CONCLUSIONS OF LAW

7 Richardi's misconduct bears a demonstrable relationship to  
8 his fitness to serve as an educator:

9 1. Richardi violated OAR 584-20-035(3)(a) and engaged in  
10 gross neglect of duty when he lied to a police officer on May 9,  
11 1996, with reference to the possession/use/control of firearms.

12 2. Richardi violated OAR 584-20-035(3)(a) and engaged in  
13 gross neglect of duty when he gave false sworn testimony on May  
14 14, 1996, to a Douglas County grand jury regarding  
15 possession/use/control of firearms.

16 3. Richardi violated OAR 584-20-040(5)(c) and OAR 584-20-  
17 040(5)(e) and engaged in gross unfitness when he criminally  
18 attempted to induce Ellis to offer false testimony in an official  
19 proceeding and when he made a false sworn statement to a grand  
20 jury and when he was found guilty by plea to a charge of  
21 obstructing Governmental or Judicial Administration (ORS 162.235)  
22 on November 19, 1997.

23 OPINION

24 Richardi would have the panel conclude that he merely  
25 "fudged" a little bit when making a single false statement  
26 regarding

1 Wilson's possession of firearms. The commission concludes  
2 Richardi's misconduct is much greater than the telling of a  
3 "white" lie.

4 First, Richardi agreed with a convicted felon to provide  
5 false statements for the purpose of giving Wilson a defense to  
6 felony charges.

7 Second, the scheme to make false statements also involved  
8 another individual, whereby Richardi attempted to induce Ellis to  
9 participate in the deceptive scheme.

10 Third, the false statements were not spontaneous. Rather  
11 they were premeditated and deliberate. Richardi agreed on May 3  
12 to offer false statements and carried it out on May 9 in his  
13 conversation with Office Kempke, and again on May 14 when he  
14 testified at the grand jury.

15 Fourth, Richardi lied to a police officer which the panel  
16 considers significant.

17 Fifth, and most importantly, Richardi lied under oath in a  
18 grand jury proceeding.

19 Richardi argued that he is being punished twice for the same  
20 offense. In effect he argues that TSPC has charged him with  
21 gross unfitness and gross neglect of duty for the same acts.  
22 Such is not the case. Richardi engaged in criminal conduct and  
23 thereby violated OAR 584-20-040(5) when he lied to the grand jury  
24 and attempted to induce Ellis to offer false testimony in an  
25 official proceeding and was convicted of a crime. Richardi

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1 engaged in unethical conduct when he lied to the police and grand  
2 jury even if he had not been criminally prosecuted. Thus, for  
3 example, if Richardi had testified falsely before the grand jury,  
4 but had utilized the opportunity under ORS 162.105 to retract his  
5 false statement, his conduct would not constitute a violation of  
6 OAR 584-20-040(5) but would remain a violation of OAR 584-20-  
7 035(3)(a).

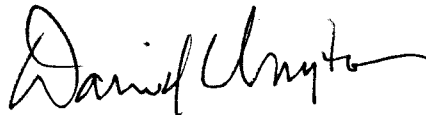
8 Equally important, even if the commission dismissed the  
9 OAR 584-20-035 charge that is based upon the misconduct that  
10 resulted in the criminal conviction, the sanction imposed would  
11 be the same. The commission concludes that lies to a police  
12 officer and engaging in criminal acts demonstrates serious gross  
13 neglect and unfitness and warrants a substantial sanction.

14 ORDER

15 After considering the factors under OAR 584-20-045 the  
16 commission concludes James Richard Richardi shall be suspended  
17 for one year commencing on the date the final order is effective.  
18 Richardi will thereafter be eligible for reinstatement upon valid  
19 application and upon submitting evidence satisfactory to the  
20 Commission of good moral character pursuant to ORS 342.175(3).

21 DATED this 15<sup>th</sup> day of ~~May~~ <sup>July</sup> 1998. *DM*

22 Teacher Standards and Practices Commission

23  
24 

25 By: David V. Myton, Executive Director

26  
GMC:ras/JGG11D8B.W51