

**BEFORE THE TEACHER STANDARD AND PRACTICES COMMISSION  
OF THE STATE OF OREGON**

IN THE MATTER OF THE TEACHING )	FINAL ORDER
LICENSE OF )	
LEMONT POURET QUIRING )	OAH Case No.: 114535
	DOJ File No.: 584001-GE0038-04

**HISTORY OF THE CASE**

On July 12, 2004, the Teacher Standards and Practices Commission (TSPC) issued an Amended Notice of Hearing proposing to impose discipline. Lemont Pouret Quiring (Respondent) timely appealed. On March 29, 2004, TSPC referred the matter to the Office of Administrative Hearings (OAH). On August 10, 11 and 17, 2004, Administrative Law Judge Catherine P. Coburn, of the OAH, conducted a contested case hearing. Pursuant to ORS 342.177(1), the hearing was confidential. Assistant Attorney General Joe Gordon McKeever represented TSPC. Attorney at Law Thomas E. Doyle represented Respondent. TSPC called Henley Middle School Principal Polly Beam, Henley Middle School paraprofessional, Susan Tinniswood, Henley Middle School retired teacher and substitute paraprofessional, Judith Smith-Clifton, TSPC Investigator Susan Nisbet, students AW, JP, AB and AW's stepfather, Randy Eddinn, as witnesses. Respondent testified on his own behalf. The record closed on August 17, 2004.

The findings, conclusions, reasoning and proposed sanction in proposed order are adopted by the Commission except as identified and explained below. Changes in the proposed order are highlighted in italics.

**ISSUES**

- (1) Whether, between late April and early May 2002, Respondent made sexually inappropriate comments to a student via electronic communication.
- (2) Whether Respondent's conduct constitutes gross neglect of duty in violation of OAR 584-020-0040(4)(f).
- (3) Whether Respondent's conduct constitutes gross neglect of duty in violation of OAR 584-020-0040 (4)(n) as it incorporates OAR 584-020-0010(5).
- (4) Whether Respondent's conduct constitutes gross neglect of duty in violation of OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(c).

## EVIDENTIARY RULINGS

TSPC Exhibits 1, 2, 3, 4, 9, 10, 11, and 13 were admitted into the record without objection. TSPC Exhibit 5 was admitted into the record over respondent's relevance, hearsay and lack of foundation objections. TSPC Exhibit 6 was admitted into the record over Respondent's relevance and reliability objection. TSPC Exhibit 7 was admitted into the record over Respondent's hearsay objection. TSPC Exhibit 8<sup>1</sup> was admitted into the record over respondent's relevance, hearsay and not best evidence objections. TSPC withdrew Exhibit 12.

Respondent's Exhibits A1 through A9 and A13 through A15 were admitted into the record without objection. I sustained TSPC's relevance objections to certain portions of Respondent's Exhibits A10<sup>2</sup> and A12<sup>3</sup> and Respondent withdrew those exhibits. The following portions of Respondent's Exhibit A11 were admitted into the record without objection: page 53 line 1 through page 59 line 5, page 79 line 1 through page 87 line 21 and page 91 line 1 through page 95 line 2. I sustained TSPC's relevance objection to the remaining portions of Respondent's Exhibit A11. I allowed the testimony of Randy Eddinn over Respondent's relevance objection.

Following an *in camera* review, I ruled that certain documents<sup>4</sup> were discoverable and TSPC provided copies to Respondent. Additionally, I ruled that certain other documents<sup>5</sup> were privileged attorney-client communications and were not discoverable. See OED 40.225 Rule 503.

The parties stipulated that in June 2002, Respondent voluntarily terminated his employment with Klamath County School District effective at the end of the 2001-2002 school year.

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<sup>1</sup> Ex. 8 is Principal Beam's typed investigation notes that are based on her handwritten interview notes which are contained in Ex. A13. She typed Ex. 8 on the same days she conducted the interviews. (Testimony of Beam.)

<sup>2</sup> The ALJ sustained TSPC's relevance objection to the following portions of Respondent's Exhibit A10: page 4 line 19 through page 45 line 45, page 54 line 1 through page 57 line 5, page 63 line 1 through page 66 line 22.

<sup>3</sup> The ALJ sustained TSPC's relevance objection to the following portions of Respondent's Exhibit A12: page 9 through page 16 and page 18 line 22 through page 26 line 6.

<sup>4</sup> A letter dated April 22, 2004 from McKeever to AW, a student and an e-mail message dated January 28, 2004 from McKeever to Henley Middle School Principal Beam.

<sup>5</sup> A May 4, 2004 fax from McKeever to TSPC Executive Director Victoria Chamberlain and TSPC Investigator Susan Nisbet, a May 5, 2004 fax from McKeever to Chamberlain and Nisbet, and e-mail messages from McKeever to Nisbet dated January 21, January 27, May 10, and May 11, 2004.

## FINDINGS OF FACT

(1) From 1986 through 1993, Respondent worked as a Deputy Probation Counselor in a California juvenile residential facility. From 1987 through 2001, Respondent worked as a substitute, Special Education and resource room teacher in three school districts in the Los Angeles area. (Exs. A3, A4, A5, A6, A7; testimony of Respondent.)

(2) On August 28, 2001, Klamath County School District hired Respondent as a Special Education teacher, serving at Henley Middle School. (Ex. A2; testimony of Respondent.)

(3) On August 29, 2001, TSPC issued to Respondent an Oregon Transitional teacher's license with endorsements in Special Education and Health Education. (Exs. 1, 2 and 3.)

(4) During the 2001-2002 school year, Respondent taught Special Education in the Resource Room at Henley Middle School. Respondent also coached the girls' volleyball team, 8<sup>th</sup> grade boys' basketball team and a competitive academic team called "Brain Bowl." (Exs. 13-8, 13-10, A8 and A15-2; testimony of Respondent and Beam.)

(5) On September 24, 2001, Beam conducted a classroom observation and rated Respondent's performance satisfactory. (Ex. A8.)

(6) MM was a male Henley Middle School student who played on the 8<sup>th</sup> grade boys' basketball team. On Respondent's invitation, MM became a teacher's aide in the Resource Room. (Testimony of Respondent.) Following basketball practice at the YMCA, Respondent drove MM and other students home. (Ex. A15.) On one occasion, MM spent three or four days and nights at Respondent's apartment with his mother's permission. (Exs. A14 and A15; testimony of Respondent.) On another occasion, Respondent took MM on a trip to a private boarding school near Medford, Oregon and they stayed overnight in a dormitory room. (Ex. A15-3.) Respondent and MM planned a trip to Southern California together but never went on that trip. Respondent indicated to MM that the school district disapproved of his contact with students outside of school activities. Respondent did not give MM any gifts<sup>6</sup> and MM did not feel uncomfortable with Respondent's behavior. (Ex. A15.)

(7) On January 18, 2002, Beam met with Respondent and advised him to establish appropriate boundaries and to avoid personal relationships with students. Respondent indicated that he understood the ramifications of his actions and that he would heed Beam's suggestions in the future. (Ex. 4.)

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<sup>6</sup> Respondent donated a skateboard to a school contest which MM won. (Testimony of Respondent.) Respondent bought a tie for MM to wear when they visited the boarding school and MM's mother repaid Respondent. (Ex. A15.)

(8) Respondent exchanged instant messaging (IM) electronic mail (e-mail) screen names with several male students who were members of the 8<sup>th</sup> grade basketball team and two or three Special Education students. (Exs. 13-9, A8, A13; testimony of JP, AB and Respondent.) These students' IM screen names appeared on Respondent's buddy list. (Testimony of Respondent.)

(9) In May 2002, Respondent invited AB, a male student and member of the 8<sup>th</sup> grade boys' basketball team, into a sexually explicit chat room. AB participated in the chat room on one occasion for about half an hour and heard a discussion to identify a "hot mamma" and a "hot daddy" and lots of cussing. AB was aware that Respondent participated in this discussion but the other chat room participants were unknown to AB. (Exs. 8 and A13; testimony of AB.)

(10) During class, Respondent suggested to a male student aide that he go into an internet chat room. When the boy said that his parents did not allow him to participate in chat rooms, Respondent suggested that the boy use his older brother's screen name. (Testimony of Tinniswood.)

(11) During class, Respondent discussed a sexually explicit radio show with JP, a male student and member of the 8<sup>th</sup> grade basketball team. Respondent discussed the use of sex toys and a fake reproductive member that was found on a railroad track as reported on the radio. (Exs. 8 and 13; testimony of JP.)

(12) AC, a member of the 8<sup>th</sup> grade boys' basketball team, gave Respondent's instant messaging screen name to AW, a female Henley Middle School student who was not enrolled in the Resource Room. (Exs. 8 and A13; testimony of AW.) Respondent's IM screen name was "Kfallslemont". (Ex. 6.) AC told AW that the screen name represented a teacher and AW contacted the screen name because she was curious whether it really was a teacher. (Testimony of AW.) AW's screen name was "Smilesalot987". (Ex. 6.)

(13) *Between April 2, 2002 and May 2, 2002,*<sup>7</sup> AW contacted Respondent by IM e-mail on Respondent's home computer. (Exs. 6<sup>8</sup> and 13-14; testimony of AW and Respondent.) The IM conversation lasted approximately eight minutes,<sup>9</sup> from 7:08 p.m. to 7:16 p.m.. (Ex. 6.) At the outset of the conversation, Respondent thought he was corresponding with an 8<sup>th</sup> grade basketball player. (Exs. 8-2, 8-3, A13-2a and A13-3a; testimony of Beam.) Respondent and AW each made inquiries to identify the other and Respondent replied, "I a faggot who is horny". (Ex. 6.) AW responded "Lol" which typically means "Laugh out loud". AW did not think Respondent's comment was funny, but responded with "Lol" because she was at a loss for words. (Testimony of AW.) AW

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<sup>7</sup> Exhibit 6 is undated. A preponderance of the evidence in the record establishes that the e-mail communication occurred sometime between April 2 and May 2; the exact date is uncertain.

<sup>8</sup> Exhibit 6 is attached to the Proposed Order as Appendix A.

<sup>9</sup> The first few comments of the conversation are not included in the printout. (Ex. 13-17.)

asked Respondent whether he was a teacher and Respondent replied, "I'm a butt fucking ass licking..." At 7:11 p.m., AW confirmed that she was a student at Henley Middle School. (Exs. 6 and 13-24.) Respondent commented, "I think I know... You're that one girl that is always looking and smiling at me... I've seen you peering around the corners with your eyes sneaking a peek at me. Ya, I figured you out now. You're pretty hot for a little baby girl." (Ex. 6.) At 7:14 p.m., AC sent Respondent a simultaneous IM e-mail indicating that he had given Respondent's screen name to a girl at school and Respondent stated "I just looked at the other message." (Exs. 6, 13-26 and 13-37; testimony of Respondent.) Respondent continued the conversation because he was curious to identify the person with whom he was communicating. (Exs. 13-38 and 13-39.) The IM conversation ended at 7:16 p.m. (Ex. 6.)

(14) Immediately after the IM conversation ended, AW printed it. She showed the printout to her best girlfriend and took it to school. (Exs. 8 and A13; testimony of AW.)

(15) In May 2002, a Resource Room student aide said in class that Respondent had done something inappropriate on IM and that a female student had a copy of the message. A teacher's aide advised the student not to repeat unsubstantiated rumors. (Testimony of Tinniswood and Smith-Clifton.) On May 10, 2002, Tinniswood reported the IM incident to Principal Beam. (Exs. 8 and A13; testimony of Tinniswood, Smith-Clifton and Beam.) In relating to students, Respondent focused most of his attention on student aides whom he treated as peers and neglected the Special Ed students. (Testimony of Tinniswood.)

(16) On May 10, 2002, Beam interviewed several students, including AC, AW, JP and AB. AW provided Beam with a copy of Exhibit 6. (Testimony of AW and Beam.) Beam discussed the matter with the district superintendent. (Exs. 8 and A13; testimony of Beam.)

(17) On May 14, 2002, Respondent held a whispered conversation in class with two female students, AH and RC, concerning the computer incident. (Exs. 8-2, 8-3, 9, A13-2a and A13-3a; testimony of Tinniswood.) Respondent said to them, "I have a story to tell you." Respondent told the girls that at the time of the IM (Exhibit 6), he initially thought he was communicating with one of the 8<sup>th</sup> grade basketball boys and during the course of the conversation, he realized that it was a female student. (Exs. 8-2, 8-3, A13-3 and A13-3a.) Respondent recounted the content of the IM and RC remarked, "Oh it's gross!" One of the students asked Respondent why he did that and he attempted to justify his conduct. Respondent told the girls not to tell anyone about the IM incident. At the close of the whispered conversation, Respondent said "Good job" to the girls even though they had done no schoolwork during the period. (Exs. 8-2, 8-3, 9, A13-2a and A13-3a; testimony of Tinniswood.)

(18) Respondent approached AB, a member of the 8th grade boys' basketball team and asked if his mother had seen any of the instant messages they had exchanged. Respondent told AB to "get rid" of any remaining messages. (Testimony of AB.)

(19) Respondent conducted his own "mini-investigation" of the IM incident. (Ex. 13-42; testimony of Respondent.) Respondent discussed the incident with another teacher and with several students. (Ex.13-43; testimony of Respondent.) Respondent asked the school vice principal whether he could get into trouble for communicating to a student that "he was horny." (Exs. 8 and A13-44; testimony of Beam.)

(20) On May 14, 2002, Respondent approached Principal Beam and began to discuss instant messaging. Beam refused to discuss the matter with him and stated that when they did discuss it, Respondent would need representation. (Exs. 8 and 13-44).

(21) On May 14, 2002, Beam interviewed several more students concerning the IM incident. Respondent stood in the school office to see who Beam was interviewing. Beam informed Respondent of a scheduled meeting and advised him to bring a representative. Beam told Respondent to stay away from the office and not to discuss the matter with students or staff. (Exs. 8 and A13-3; testimony of Beam.)

(22) On May 15, 2002, Respondent was placed on administrative leave. (Ex. 7.) On May 21, 2002, Klamath County School District lodged a complaint against Respondent with the TSPC. (Ex. 11.) In June 2002, Respondent voluntarily terminated his employment with Klamath County School District. (Stipulation of the parties.)

(23) The Commission's investigator and executive director recommended against pursuing a sanction against Respondent's teaching license. (Exs. A2, A10, A11, and A12.) The Preliminary Investigation Report stated, "Based upon the printout of the Instant Messaging communication, it does not appear that [Respondent] was initially aware that he was communicating with a student." (Ex. A2.) On January 15, 2004, the Commission moved to charge Respondent with misconduct. (Ex. A1.)

(24) When AW's mother and step-father read Exhibit 6, they strongly disapproved and were very angry. (Testimony of Eddinn.)

(25) In deposition, Respondent testified that during the IM conversation, he thought he was communicating with either an adult friend or a member of the 8<sup>th</sup> grade boys' basketball team. (Ex. 13-24.)

(26) At hearing, Respondent testified that during the IM conversation, he thought he was communicating with an adult friend. (Testimony of Respondent.)

### **CONCLUSIONS OF LAW**

(1) Between late April and early May 2002, Respondent made sexually inappropriate comments to a student via electronic communication.

(2) Respondent's conduct constitutes gross neglect of duty in violation of OAR 584-020-0040(4)(f).

(3) Respondent's conduct constitutes gross neglect of duty in violation of OAR 584-020-0040 (4)(n) as it incorporates OAR 584-020-0010(5).

(4) Respondent's conduct constitutes gross neglect of duty in violation of OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(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).

#### Gross Neglect of Duty and Gross Unfitness

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>10</sup> based on the following:

- (b) Gross neglect of duty;

Additionally, OAR 584-020-0040(4) 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:

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<sup>10</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.

(f) Any sexual conduct with children.

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

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

Also, 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:

(d) Commission of an act listed in OAR 584-020-0040(1).

The primary issue is whether the instant message (IM) electronic mail (e-mail) contained in Exhibit 6 constitutes sexual conduct with a child. Respondent does not question that the definition of "conduct" includes written communication over the internet such as IM e-mail. Furthermore, it is beyond doubt that the content of Exhibit 6 is sexual in nature. However, Respondent contends that he lacked the requisite mental state because he did not know he was communicating with a child. In support of his position, Respondent argues that AW's screen name was unfamiliar and not on his IM buddy list. Respondent further cites the recommendations of the agency investigator and executive director not to pursue disciplinary action. The Commission finds Respondent's *mens rea* argument unpersuasive for several reasons.

A credibility determination may be based on several factors, including demeanor, inherent probability of the evidence, internal inconsistencies, whether the evidence is logically credible. *Lewis and Clark College v. Bureau of Labor*, 43 Or App 245 (1977); *rev den* 288 Or 667 (1980); *Tew v. DMV*, 179 Or App 443 (2002). To begin, Respondent's accounts of his mental state during the IM conversation are inconsistent. On May 14, 2002, Respondent told two female students that at the outset of the IM conversation, he thought he was corresponding with one of the 8<sup>th</sup> grade basketball players and as the conversation progressed, he realized he was corresponding with a female student, rather than a male student. In deposition, Respondent testified that during the IM conversation, he thought he was communicating with either an adult friend or a member of the 8<sup>th</sup> grade boys' basketball



team. At hearing, Respondent testified that during the IM conversation, he thought he was communicating with an adult friend. Based on these inconsistencies, The Commission finds Respondent's testimony concerning his mental state during the IM not credible. Rather, the Commission finds Respondent's May 14, 2002 statement to two female students to be reliable because he made that statement closer in time to the incident and before preparation for litigation. In that statement, Respondent admitted that from the outset of the IM conversation and throughout the conversation, he believed he was communicating with a student, either male or female. Despite Respondent's awareness that he was communicating with a student, he stated, "I a faggot who is horny", "I'm a butt fucking ass licking...", and "You're pretty hot for a little baby girl."

Next, Respondent points to the recommendations of the Commission's investigator and executive director not to pursue a sanction. However, the recommendations were based on a reading of Exhibit 6 which seems to indicate that Respondent was initially unaware that he was communicating with a student. On the contrary, on May 14, 2002, Respondent admitted to two female students that he knew he was communicating with a student, albeit either a male basketball player or a female student.

Moreover, on his own initiative, Respondent provided his IM screen name to several students before the incident in question. Consequently, Respondent knew or should have known that any IM he received was likely to be sent by a student *or that there was a distinct possibility that the IM had been sent by a student.*<sup>11</sup> This would include basketball team boys who were on Respondent's buddy list as well as other students, such as AW, who had learned Respondent's screen name through the middle school grapevine and whose screen name was not on Respondent's buddy list. *If a teacher chooses to use a personally owned computer during non-school hours to engage in conversations of a sexual nature on the internet, the teacher must, at a minimum, take all reasonable measures to ensure that students will not become aware of the teacher's conversations and are not exposed to them.*<sup>12</sup>

Finally, the text of Exhibit 6 undeniably establishes that three minutes into the conversation, AW specifically identified herself as a student at Henley Middle School. Despite this knowledge, Respondent failed to apologize or recant his previous obscene language, and also failed to terminate the conversation immediately. Instead, he continued the conversation for another five minutes in order to satisfy his own curiosity. He proceeded to make sexual, provocative comments to a person he knew was a child. For these reasons, the Commission finds that Exhibit 6 reflects Respondent's knowing sexual contact with a child. The Commission further finds that this conduct is a serious and material breach of professional responsibilities and constitutes gross of neglect of duty in violation of OAR 584-020-0040(4)(f). Finally, the Commission finds that this conduct bears a demonstrable relationship to the educator's ability to fulfill professional

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<sup>11</sup> This language was added to the proposed order in order to fully state the Commission's reasoning based on the evidence in the record.

<sup>12</sup> The Commission added this language to the proposed order in order to explain the Commission's reasoning as to why the teacher's otherwise private activity can be relevant to his professional responsibilities.

responsibilities effectively and constitutes gross unfitness in violation of OAR 584-020-0040(5). Therefore, a sanction against Respondent's Oregon teaching license is warranted.

Ethical Educator and Competent Educator

OAR 584-020-0035(1)(c)(A) appears under the heading "The Ethical Educator" and provides:

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.

(1) The ethical educator, in fulfilling obligations to the student, will:

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(c) Maintain an appropriate professional student-teacher relationship by:

(A) Not demonstrating or expressing professionally inappropriate interest in a student's personal life;

Additionally, OAR 584-020-0010(5) appears under the heading "The Competent Educator" and provides:

The teacher or administrator demonstrates a commitment to:

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(5) Use professional judgment.

The record establishes that Respondent failed to maintain appropriate professional student-teacher relationships and failed to exercise professional judgment on numerous occasions. For example, a middle school student spent three or four days and nights at Respondent's apartment. This is inappropriate even though the student's mother gave her permission. On another occasion, Respondent and the same student traveled out of town and spent the night in a school dormitory room. At hearing, Respondent testified that he dropped MM off at the boarding school and that Respondent did not spend the night and MM's mother picked MM up the following day. The Commission finds Respondent's testimony on this point not credible. Rather, the Commission finds MM's statement in an investigational interview reliable. MM stated that he and Respondent spent the night in a dormitory room at the boarding school.

*Even if there had been no findings concerning Respondent's activities with MM, the Commission concludes that the sanction in this case would still be warranted.*<sup>13</sup>

In January 2002, Principal Beam met with Respondent and advised him to establish appropriate boundaries and to avoid personal relationships with students. Despite this warning, Respondent continued inappropriate and unprofessional student-teacher relationships. For example, in class, he discussed a sexually explicit radio program with a student. He invited another student into a sexually explicit chat room and later advised the student to destroy instant messages that they had exchanged. In class, he invited another student into a chat room and suggested that the student use his older brother's screen name, contrary to the parents' rules. He exchanged screen names with numerous students and, as reflected in Exhibit 6, he engaged in sexual communication with a middle school student. Respondent displayed inappropriate interest in AW's personal life by stating, "You're that one girl that is always looking and smiling at me... I've seen you peering around the corners with your eyes sneaking a peek at me... Ya, I've figured you out now... You're pretty hot for a little baby girl." Similarly, during the investigation, he discussed the IM incident with students in class and attempted to justify his behavior. Finally, Respondent transported basketball players home after practice which is inappropriate in light of the other facts. Based on the record, the Commission concludes that Respondent failed to act as an ethical educator in violation of OAR 584-020-0035(1)(c)(A) and failed to use professional judgment in violation of OAR 584-020-0010(5).

#### Sanction

TSPC seeks a six-month suspension of Respondent's Oregon teaching license. Additionally, upon application for recertification, TSPC seeks to require Respondent to submit to a psychiatric evaluation and three-year probation with the Commission.

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;

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<sup>13</sup> The Commission added this language in order to explain its reasoning based on the evidence in the record.

- (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. The Commission disagrees. First, the record establishes that Respondent engaged in a pattern of inappropriate conduct with students. Second, the likelihood of recurrence is high since Respondent failed to heed Beam's earlier warning concerning maintaining appropriate boundaries in his relationships with students. On the other hand, the record contains no evidence of past performance problems in Respondent's California teaching experience. Fourth, Respondent's conduct and attitude pose an ominous threat to the safety of students. Fifth, Respondent openly engaged in inappropriate conduct with students in class. Despite the school district's discretion in protecting confidentiality, the IM became notorious among the student body and when AW's parents read it, they strongly disapproved and were very angry.

Sixth, Respondent's conduct at Henley Middle School and his demeanor at hearing reflected a casual attitude and lack of appreciation for the serious effect of his conduct on his students. During the school investigation, he asked the school vice principal whether he was in trouble as a result of the IM, but he did not express any concern for AW. Seventh, there is a high level of danger that students will emulate Respondent's behavior, for example, by participating in sexually explicit chat rooms and repeating obscene language. Eighth, Respondent served middle school students who are maturing into puberty and forming their early social patterns.

Ninth, a troubling aspect of Respondent's conduct is that on several occasions, he encouraged students to maintain secrecy. For example, Respondent invited one student to participate in an internet chat room and when the student said that his parents did not allow it, Respondent advised him to use his older brother's screen name in order to avoid

his parents' scrutiny. Additionally, following the IM incident, Respondent asked another student whether his mother had seen any of the instant messages they had exchanged and advised the student to destroy any remaining messages. Similarly, in Respondent's May 14<sup>th</sup> whispered conversation in class with two female students, he told them not to tell anyone about the IM incident. Based on the record, the Commission finds that the aggravating factors weigh in favor of imposing the sanction proposed by the Commission.

In conclusion, the Commission finds that Respondent's conduct constituted gross neglect of duty and gross unfitness. Furthermore, the Commission finds that Respondent failed to act as an ethical educator or a competent educator. Finally, the Commission concludes that a six-month license suspension, followed by a required psychiatric examination and three-year probationary period are warranted.


### ORDER

*The Oregon Teaching License of Lamont Pouret Quiring is suspended for a period of six months. Upon expiration of the period of suspension, Mr. Quiring may apply for reinstatement of his license as provided under OAR 584-050-0015. The license shall be reinstated under the condition that Mr. Quiring shall, at his own expense, undergo an evaluation by a mental health professional who is acceptable to the Commission. Mr. Quiring shall provide a copy of this order to the evaluator and shall also provide the evaluator with any other materials the evaluator deems appropriate. The evaluator shall submit a report directly to the Commission. The report shall contain the following: (a) a statement that in the professional opinion of the evaluator Mr. Quiring is fit to work with students, and that there is a high probability Mr. Quiring will not make sexually inappropriate statements to students or engage in other unprofessional behavior; (b) a description of the processes, testing, and techniques used in the evaluation; (c) an explanation of the basis for the evaluator's findings; (d) whether there is any underlying mental or physical condition that would prevent Mr. Quiring from meeting his professional responsibilities; (e) whether Mr. Quiring should participate in continuing treatment or counseling.*

*Upon reinstatement of Mr. Quiring's license, he shall be placed on probation for a period of three years subject to the conditions that he continue with treatment or counseling as recommended by his mental health evaluator and that he comply with all Standards for Competent and Ethical Performance under OAR 584 Division 020.<sup>14</sup>*

Dated this 13 day of January 2005.

TEACHER STANDARDS AND PRACTICES COMMISSION

  
Victoria Chamberlain, Executive Director

<sup>14</sup> The Commission substituted this language for the proposed sanction in the ALJ's proposed order in order to provide added detail to the sanction that the Commission considers appropriate based on the record.

NOTICE: You are entitled to judicial review of this order. As a condition for seeking judicial review, you must first file a petition for reconsideration or rehearing with the Commission within 60 days from the day this Order is served on you. *See* OAR 584-019-0045 and 137-003-0675. Judicial review of this Order may be obtained by filing a petition for review to the Oregon Court of Appeals within 60 days after service on you of the Commission's order denying the petition for reconsideration or rehearing. (If the Commission does not act on the petition for reconsideration or rehearing, the petition shall be deemed denied on the 60<sup>th</sup> day after it is filed.) Judicial review is pursuant to the Oregon Court of Appeals is pursuant to ORS 183.480 and ORS 183.482.