

STATE OF OREGON

TEACHER STANDARDS AND PRACTICES COMMISSION

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In the Matter of the)	
Teaching and Administrative)	
Licenses of)	STIPULATION, SURRENDER OF
)	LICENSE, FINDINGS OF FACT
MARK L. SHERMAN)	AND ORDER

On December 3, 1997, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing to Mark L. Sherman. Thereafter, Mr. Sherman requested a hearing through his attorney, William F. Hoelscher. The Commission and Mr. Sherman have now reviewed the issues connected with this proceeding and have determined that their respective interests and the public interest are best served by a stipulation to certain facts and a surrender of Mr. Sherman's teaching license. Mr. Sherman understands in entering in to this stipulation that the Commission will accept his surrender of license and will suspend the license through March 20, 1999.

STIPULATED FACTS

Mr. Sherman and the Commission stipulate as follows:

1. Mr. Sherman holds a standard Oregon teaching license that expires on March 20, 1999. He previously held a Standard Oregon administrative license that expired on March 20, 1996.
2. Mr. Sherman was employed as a teacher and administrator by the Multnomah Education Service District (ESD) for approximately sixteen years until June 1995 when he was dismissed by the district.

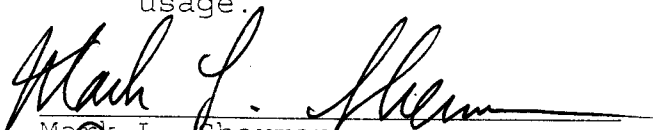
- 1 3. Mr. Sherman has applied for and is receiving early
2 retirement allowances from the Public Employee Retirement
3 System (PERS), and as a PERS retiree, he is unable to accept
4 full-time employment as a teacher in Oregon. Mr. Sherman
5 has no plans to apply for a teaching or administrative
6 license in Oregon and agrees to waive his right to seek
7 reinstatement of his Oregon teaching or administrative
8 license.
- 9 4. Mr. Sherman asserts that he is financially unable to
10 participate with legal counsel in a lengthy hearing before
11 the Commission at this time.
- 12 5. During the time he was employed as a principal of the
13 Alternative Education Alpha High School of the Multnomah
14 ESD, Mark L. Sherman voluntarily entered the Serenity Lane
15 Alcohol/Drug Rehabilitation Treatment program as an in-
16 patient, and successfully completed that program.
- 17 6. On or about June 20, 1995, Multnomah ESD terminated
18 Sherman's employment as a principal on a number of charges;
19 a hearing was held before the Oregon Fair Dismissal Appeals
20 Board (FDAB), which concluded that Sherman's termination
21 from his Multnomah ESD principal's position was justified
22 under the FDAB statute, despite Sherman's claims that he
23 was subjected to employment discrimination in violation of
24 Title VII and the Americans with Disabilities Act. While
25 Sherman did not appeal that FDAB decision and he does not
26 agree with it, he acknowledges that he is bound by the
findings contained in the order, and he further acknowledges

1 that the Commission will adopt the findings of fact
2 contained in that order.

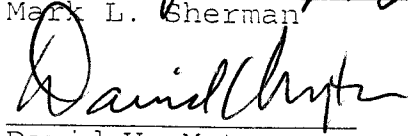
3 7. Mr. Sherman maintains that he was subject to employment
4 discrimination by the ESD; he filed a Title VII/ADA Civil
5 Rights claim with the Civil Rights Division of the Oregon
6 Bureau of Labor & Industries, which found substantial
7 evidence of such discrimination; and Sherman's Title VII/ADA
8 claim is pending trial in the United States District Court
9 for the District of Oregon at the time of this stipulation.

10 8. On or about January, 1997, Sherman moved his place of
11 residence to California, where he applied for and received a
12 "One Year Nonrenewable Specialist Instructions Credential in
13 Special Education" from the California Commission on Teacher
14 Credentialing. Mr. Sherman states that this credential is
15 renewable based on successful completion of the C-Best
16 Examination.

17 9. Mr. Sherman states he is an active regular attending member
18 of Alcoholics Anonymous, and he has been subjected to
19 numerous drug screening tests over the past 4.5 years. He
20 further states that all screening tests have determined that
21 he is continuing to be sober and free from recreational drug
22 usage.

23 
24 Mark L. Sherman

1/4/99
Date

25 
26 David V. Myton
Executive Director
Teacher Standards and Practices Commission

4/27/99
Date

1 FINDINGS OF FACT

2 The Commission makes the following additional findings of
3 fact:

- 4 1. Following his dismissal from the Multnomah ESD, Mr. Sherman
5 filed an appeal with the Oregon Fair Dismissal Appeals
6 Board.
- 7 2. On September 16, 1996, the Fair Dismissal Appeals Board
8 upheld the dismissal and issued an order containing certain
9 findings of fact. A copy of these findings of fact are
10 attached to this order as Exhibit "A". The Commission
11 adopts and incorporates by reference and adopts the findings
12 of fact set forth in Exhibit "A".

13 ORDER

14 The Commission concludes that Sherman's conduct, as set
15 forth above, constitutes a violation of Commission standards
16 under OAR 584-020-0040. Based on the above, the Commission
17 accepts the voluntary surrender of Mr. Sherman's teaching
18 license, and the Commission suspends the license through March
19 20, 1999. If Mr. Sherman applies for reinstatement of either
20 his teaching or administrative license the Commission staff will
21 consider the above Findings of Fact and this Order in the
22 determination of whether to approve or deny the application at
23 the staff level, subject to Mr. Sherman's hearing rights under
24 ORS 342.177.

25 DATED this 27th day of January, 1999.

26 TEACHER STANDARDS AND PRACTICES COMMISSION

BY: 

David V. Myton, Executive Director

1 APPROVED AS TO FORM:

2 *William F. Hoelscher*

3 William F. Hoelscher,
4 Attorney for Mark L. Sherman

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3 **FAIR DISMISSAL APPEALS BOARD**
4 **OF THE STATE OF OREGON**

5 MARK L. SHERMAN,

6 Appellant,

7 v.

8 **MULTNOMAH EDUCATION SERVICE**
9 **DISTRICT,**

10 Respondent.

)
) FDA No. 95-4
)

) **RULINGS, FINDINGS OF FACT**
) **CONCLUSIONS OF LAW AND ORDER**

11 Respondent employed appellant as a principal at its alternative high schools.
12 Respondent dismissed appellant on June 20, 1995, for the statutory dismissal grounds of
13 inadequate performance, insubordination, and neglect of duty.

14 Appellant appealed his dismissal to this board. The hearing on the appeal was held
15 on April 30, May 1, June 12 and June 13, 1996, at the offices of the Multnomah Education
16 Service District in Portland, Oregon. William F. Hoelscher represented appellant and
17 Bruce A. Zagar represented respondent.

18 The hearing was before a panel appointed from the board; the panel members were
19 Duane Johnson, Alfred McDaniel, and Robert Eddy. The panel herewith issues its Rulings,
20 Findings of Fact, Conclusions of Law and Order.

21 **RULINGS**

22 The rulings of the panel have been reviewed and the panel determines the rulings
23 were correct. The panel also agrees with the preliminary rulings and determinations of the
24 board's executive secretary, C. Gregory McMurdo, prior to the commencement of the
25 hearing and hereby identifies those rulings and determinations.

26 **FINDINGS OF FACT**

1. Respondent is a school district of the State of Oregon and has a student population
that exceeds 4,500.

1 2. Respondent operates alternative high schools for at-risk youth. One of these
2 schools, Donald E. Long School (DELS), is located in the Multnomah County facilities for
3 juvenile offenders and provides education to incarcerated youths. Respondent also operates
4 Alpha High School for students with problems relating to substance abuse and Helensview
5 High School for adolescent parents.

6 3. In July 1994 respondent appointed Susan Ritchey as Director of Alternative
7 Education. As director she supervised the principals of the alternative high schools. During
8 the 1994-1995 school year, Dr. James Jacobsen was respondent's Superintendent.

9 4. Respondent had employed appellant as a teacher in its schools since 1979.
10 Respondent appointed appellant acting principal of Alpha High School to complete the 1991-
11 1992 school years and selected him to be principal for the following school years. In June
12 1994 respondent learned that appellant had been abusing alcohol and illegal drugs for many
13 years. Appellant admitted his substance abuse. Respondent placed appellant on leave and he
14 entered an in-patient treatment program. Respondent and appellant agreed that it not be
15 appropriate to return him as principal of Alpha High School and so transferred appellant to
16 be principal of DELS.

17 5. Respondent would only permit appellant to return to work after he signed an
18 agreement specifying the conditions under which he returned to work. (Exhibit D-103.)
19 Appellant agreed to the following expectations set out in the agreement:

20 **I understand and agree that my continued employment at MESD is**
21 **contingent upon my meeting satisfactorily all of the above terms and that**
22 **my failure to do so relinquishes any defenses on my part and subjects me**
23 **to immediate termination of employment with MESD.**

24 In addition, I understand that upon return to the workplace I must meet
25 all established standards of conduct and job performance as well as the
26 following performance expectations which apply to all principals of MESD
Alternative Schools:

- (a) To demonstrate appropriate judgment and decision-making skills.

- 1 (b) To demonstrate personal and professional integrity.
- 2 (c) To demonstrate the ability to resolve conflict.
- 3 (d) To demonstrate the stamina necessary to complete tasks.
- 4 (e) To effectively communicate with teaching and support staff. *
- 5 (f) To represent the program in a professional and appropriate manner within the community. *
- 6 (g) To work cooperatively with other agencies and departments.
- 7 (h) To promote staff unity and teamwork.
- 8 (i) To channel the independent and creative energies of staff toward
- 9 common goals.
- 10 (j) To demonstrate appropriate supervisory skills.
- 11 (k) To implement and follow the policies, procedures, rules and
- 12 regulations required of this agency.

13 I further understand that I shall be subject to MESD's disciplinary procedures,
14 including dismissal, for failure to meet the above expectations.

15 6. Before appellant returned to work in August 15, 1994, Ms. Ritchey met with the
16 members of the Alpha staff. The Alpha staff discussed with her the concerns that staff had
17 with appellant's performance as principal. In August 1994, Ms. Ritchey discussed with
18 appellant the concerns of the Alpha staff.

19 7. On August 11, appellant attempted to return to work in respondent's
20 Administration Building before he signed the mutually-negotiated last chance agreement on
21 August 15. On August 11 appellant told Ms. Ritchey that he had signed the last chance
22 agreement although the agreement that he had signed was not an agreement to which
23 respondent had agreed. On August 11, appellant criticized the contents of the agreement in a
24 conversation with Gail Anderson, administration secretary, and said to her about respondent's
25 administration that "they're crazy." Appellant remained in the Administration Building
26 engaged in activities he described as work and did not leave the Administration Building until
directed to do so. Appellant signed the completed agreement on August 15, 1994, and

1 reported to work shortly thereafter. Appellant was at DELS as principal until September 21,
2 1994. During that time appellant did not teach, however, as directed by respondent, and
3 instead had his teaching duties covered by a substitute teacher.

4 8. On or about September 21, 1994, a student accused appellant of conduct which
5 caused respondent to relieve him from duties requiring student contact and assign him to
6 work in its Administration Building. Due to the length of the investigation, which after eight
7 weeks exonerated him, appellant did not return to his duties at DELS until on or about
8 November 16, 1994.

9 9. While appellant was assigned to duties in the Administration Building,
10 Ms. Ritchey on November 1, 1994, gave appellant two memorandum dated October 31
11 addressing issues that had developed regarding his performance up to September 21, 1994.
12 (Exhibits D-108 and D-109.) One set of issues involved the concerns of the teaching staff at
13 DELS about appellant's performance as principal. Ms. Ritchey notified appellant that the
14 teaching staff at DELS had concluded that appellant:

- 15 A. Had poor organizational and group skills, as exemplified by his staff
16 meetings;
- 17 B. Had poor communication skills, a poor memory, and difficulty in
18 remaining focused;
- 19 C. Loudly and unnecessarily interrupted and disrupted their classes and
20 distracted their students;
- 21 D. Should have taught more and relied on substitute teachers less and did
22 not provide the substitute with adequate materials;
- 23 E. Did not interact well with DELS students, whom he agitated and whom
24 he did not appear to understand; and

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26 ///

1 F. Would not be able to evaluate and supervise their teaching because he
2 himself had not yet taught at DELS and had not demonstrated an
3 understanding of students at DELS.

4 Appellant did not agree with his staff's assessment of his performance as principal.
5 (See Exhibit P-47.)

6 On November 8, 1994, Ms. Ritchey also gave appellant a memorandum in which she
7 informed appellant that his lesson plans for his substitute were inadequate. Appellant had
8 compiled lesson plans from his predecessor and other miscellaneous materials and made hand
9 written modifications to these documents. (Exhibit D-119.)

10 10. On November 1, 1994, Ms. Ritchey also gave appellant a second memorandum
11 dated October 31 which was entitled "Feedback and Expectations." (Exhibit D-109.) In her
12 memorandum Ms. Ritchey directed appellant, upon his return to DELS, to schedule his
13 administrative tasks so that he could fulfill his teaching duties. In the October 31
14 memorandum Ms. Ritchey advised appellant that the lesson plans that he had prepared for his
15 substitute teacher were inadequate and that she was "dismayed" that appellant had not
16 provided the lesson plans for his substitute until she had directed him to do so. Appellant in
17 his memorandum dated November 8, 1994, disagreed with Ms. Ritchey's assessment of his
18 lesson plans. (Exhibit P-46.) She also directed appellant to "exercise appropriate judgment
19 and organizational and management skills in meeting both your administrative and teaching
20 responsibilities."

21 11. On November 17, 1994, Dr. Jacobson reprimanded appellant in writing for
22 insubordination for appellant's conduct on August 11, 1994, his statements on that date about
23 management, his failure to teach, and his preparation of a draft letter without Ms. Ritchey's
24 approval. Dr. Jacobsen noted that appellant had admitted in his memorandum of
25 November 8, 1994, that he had not assumed his teaching duties, as Ms. Ritchey directed in
26 August, in part because appellant had hoped to convince Dr. Jacobson to allocate more

1 administrative time to the principal's position. Dr. Jacobson informed appellant that future
2 behavior similar to that described in the reprimand could be considered as a basis for his
3 recommendation for appellant's dismissal.

4 12. Appellant returned from administrative leave on or about November 16, 1994.
5 On the morning of November 17 appellant was in his classroom working on nonteaching
6 tasks. Cyndi Moody, secretary for DELS staff, was also in appellant's classroom. Also in
7 appellant's classroom was Marie Schjeldahl, a substance abuse specialist not employed by
8 respondent. Ms. Schjeldahl was conducting a drug and alcohol counseling session with
9 DELS students. A student raised an issue about the ability of persons using drugs and
10 alcohol to function as compared to when they were not using drugs and alcohol. The group
11 and Ms. Schjeldahl began discussing this issue. Appellant overheard the discussion and,
12 interrupting Ms. Schjeldahl's session, told the students that persons using drugs and alcohol
13 functioned better while using these substances than they did when they stopped using.
14 Ms. Schjeldahl did not agree with the accuracy of appellant's statements. Appellant's
15 statement caused uncontrolled discussion in the group as the students argued with him,
16 Ms. Schjeldahl and each other about appellant's statement. Appellant reaffirmed his
17 statement as true and went on to explain it by drawing a chart on the blackboard and
18 discussing it. Appellant's interruption and discussion caused Ms. Schjeldahl to lose control
19 of the group. Appellant concluded his statements and left Ms. Schjeldahl to regain control of
20 the group by herself. In mid-December 1994 Ms. Schjeldahl reported this incident to
21 Ms. Ritchey. Ms. Schjeldahl avoided conducting sessions in appellant's classroom after this
22 incident because she did not want appellant to interrupt her sessions.

23 13. In mid-December 1994 Rodolfo Ortega, a teacher at DELS, reported to
24 Ms. Ritchey by written memorandum that in mid-November on two occasions appellant had
25 entered his classroom while Mr. Ortega was tutoring the student who had made the
26 accusation against appellant that resulted in the eight-week investigation. Mr. Ortega was

1 tutoring the students in appellant's classroom where appellant also kept an office.
2 Ms. Ritchey had orally instructed appellant in early November when he returned from
3 administrative leave that he was not to have contact with this student. Appellant remained in
4 the classroom during the tutoring session and organized his desk, performed miscellaneous
5 tasks about the room, and made telephone calls. Mr. Ortega observed the student become
6 increasingly agitated as appellant remained in the room. **Dexter Fuller**, another teacher
7 present in the room, also observed appellant's behavior in the room during part of the
8 episode. During the second incident Mr. Ortega interrupted his lesson and advised appellant
9 that under the circumstances appellant's presence was inappropriate and that he was being
10 disruptive and asked him to leave. Mr. Ortega was concerned that appellant seemed unaware
11 that his presence was agitating the student, who was incarcerated for a violent offense. (See
12 Exhibit D-115 and Ortega and Fuller testimony.) Appellant testified that he needed to do
13 work in his office in the classroom at the time Mr. Ortega and the student were also present
14 in his classroom.

15 14. On December 12, 1994, Cyndi Moody, DELS secretary, and appellant had a
16 discussion in the hallway at DELS about whether appellant would need a substitute teacher
17 on December 19 and 20, two days that were not covered by his contract. Appellant and
18 respondent disagreed over appellant's work schedule on those two days. During the
19 discussion appellant became upset about his disagreement with respondent and Ms. Ritchey
20 over this issue. Appellant's voice became louder and he sounded angry. Debbie Spicer, the
21 nurse at DELS, overheard in her office appellant's raised voice and, after the conversation
22 had concluded, came out of her office to see what was happening. She asked Ms. Moody if
23 the male voice she had overheard was that of appellant. Ms. Moody confirmed that it was
24 appellant.

25 On December 16, 1994, appellant asked Cyndi Moody, DELS secretary, to speak
26 with him. Appellant asked Ms. Moody about her providing to Ms. Ritchey a memorandum

1 that appellant had prepared about scheduling teacher evaluations. Appellant and respondent
2 disagreed about the days he was contracted to work in December 1994. Ms. Moody and
3 appellant began to discuss the disagreement. Appellant became agitated, raised his voice,
4 and said to Ms. Moody words to the effect that he was tired of the administration messing
5 with him and twice said in an angry way "fuck them" (referring to the administration) or
6 "fuck the administration." Ms. Moody also became angry, told appellant not to do this to
7 her again, and left the area.

8 15. On January 5, 1995, Ms. Ritchey gave appellant a memorandum entitled "Your
9 behavior during November and December 1994." (See Exhibit D-118.) In it Ms. Ritchey
10 addressed, among other issues, the November 17, 1994, incident with Marie Schjeldahl and
11 her group, the incidents when Mr. Ortega was tutoring a student in appellant's classroom,
12 and appellant's encounters with Ms. Moody on December 12 and 16. Ms. Ritchey advised
13 appellant that before deciding on an "appropriate response" to his behavior, she was giving
14 him an opportunity to respond to her memorandum. Appellant did so on January 19, 1995.
15 (Exhibit P-52.)

16 16. On January 5, 1995, appellant gave Ms. Ritchey a memorandum, with a copy to
17 Ms. Moody, in which he informed Ms. Ritchey that he had asked Ms. Moody to "please
18 keep me informed whenever formal intraprogram communications are released from the
19 DELS office to any outside entity. This request of course would include any formal
20 communications to the MESD and any of its officials." (Exhibit D-122.) Ms. Ritchey and
21 Ms. Moody both interpreted appellant's memorandum to be an attempt to monitor
22 Ms. Moody's interactions with Ms. Ritchey about appellant. By memorandum dated January
23 11, Ms. Ritchey directed appellant to withdraw the January 5 memorandum, informed him
24 that the memorandum was unacceptable, and advised him that he "had no authority to impose
25 any conditions on communications between * * * the secretary at (DELS) and the MESD
26 administration and me." (Exhibit D-123.) Ms. Ritchey notified appellant that any attempt

1 by him "to interfere with such communications also will not be tolerated." Appellant
2 withdrew the January 5 memorandum as Ms. Ritchey directed.

3 17. On January 26, 1995, appellant was in a classroom where Dexter Fuller, a
4 teacher at DELS, was conducting a discussion with two students about illegal drugs. Other
5 students present in the classroom were engaged in completing school work. Appellant
6 interrupted Mr. Fuller's discussion with the two students and began discussing drug use. A
7 third student nearby stated that he was familiar with the drug under discussion because he
8 had used that drug for a year. Appellant focused his attention on this student and began to
9 examine him about his drug use. Appellant asked the student if he was addicted and if he
10 could accept his addiction. The student responded that he did not want to discuss his drug
11 usage further with appellant. Appellant persisted in questioning the student about his drug
12 use, addiction, denial and participation in Alcoholics Anonymous. The student resisted
13 responding to appellant's inquires. Appellant got very close to the student and was pointing
14 his finger in the student's face. Mr. Fuller testified that he became concerned for appellant's
15 safety because actions such as the ones appellant was displaying toward the student "could
16 get you hurt." Mr. Fuller took appellant by the shoulders and removed appellant from the
17 classroom.

18 18. On January 27, 1995, appellant questioned Ms. Moody about some information
19 about appellant that she provided to Ms. Ritchey, who used the information in preparation
20 for a memorandum dated January 26, 1995. Ms. Moody was upset by the appellant's
21 questioning of her from the door of her office and by appellant's manner of questioning her,
22 which was angry and demanding. In appellant's presence Ms. Moody telephoned
23 Ms. Ritchey to inform her about appellant's questioning of her and the discomfort it was
24 causing her.

25 19. After the incident with Ms. Moody on January 27, 1995, appellant gave
26 Ms. Moody a memorandum about her performance evaluation which stated:

1 This memorandum is to inform you that I have decided to postpone your final
2 evaluation for this year until I have had more opportunity to observe your
performance and office demeanor.

3 While I value highly most aspects of your performance, I am concerned about
4 your occasional display of anger, e.g., raised voice, in the school office and
nearby surroundings.

5 In order to avoid a noted deficiency in your upcoming evaluation pertaining to
6 the above, I strongly advise you to work towards a goal of greater self-control
in the area of emotional temperament.

7 Ms. Moody interpreted appellant's memorandum as retaliation for her cooperation with
8 Ms. Ritchey.

9 20. On January 31, 1995, appellant gave Ms. Moody a memorandum entitled "your
10 duty station." In it appellant requested that Ms. Moody, **whom respondent had assigned to a**
11 **different work location** due to the incidents with appellant, keep him advised of her work
12 station and telephone number and that she continue performing duties relating to typing and
13 the pony cart. In the memorandum appellant also wrote: "*Today neither was the Pony cart*
14 *handled nor the agenda prepared satisfactorily.*" (Exhibit D-130.) (Emphasis in original.)

15 Ms. Moody believed this memorandum was also in retaliation for her cooperation with
16 Ms. Ritchey.

17 21. Appellant invited Ms. Ritchey to attend a staff meeting with DELS staff
18 scheduled for January 31, 1995. Appellant conducted the meeting. During the meeting
19 appellant raised an issue about reimbursing the teaching staff \$100 for their purchase of
20 school supplies. Appellant invited Ms. Ritchey to respond to his proposal about the \$100
21 expenditure. Ms. Ritchey and appellant disagreed about the budgeting of the \$100
22 expenditure. After the meeting concluded, appellant approached Ms. Ritchey and said,
23 "Don't play games with me. I can play the same game. And we'll just see who wins."
24 (Exhibits D-134 and D-135; testimony of appellant and Ritchey.) On February 2, 1995,
25 appellant admitted making this statement to Ms. Ritchey, told her he had lost control, and
26 apologized.

1 22. On February 2, 1995, Ms. Ritchey gave appellant a memorandum entitled "Your
2 Behavior on January 31, 1995." In it she described appellant's statements to her and his
3 hostile tone. Ms. Ritchey informed appellant that she felt threatened by his behavior, that
4 she considered it to be hostile and threatening, and that "such behavior" must not occur
5 again. (Exhibit D-134.)

6 23. On February 2, 1995, appellant prepared a memorandum entitled "Clarification
7 of Budget Allotment [sic] of \$100 Per Teacher." In the memorandum appellant argued on
8 behalf of his position about the \$100 reimbursement and whether he was "confused" about
9 the budget. (Exhibit P-61.) Appellant wrote in the memorandum that "*any 'confusion' or*
10 *'memory lapse' is indeed elsewhere.*" (Emphasis in original.) In support of his position,
11 appellant attached materials to the memorandum. Appellant called attention to what he called
12 Ms. Ritchey's "*handwritten acknowledgement,*" of his position. Appellant wrote in the
13 memorandum, "I offer the above information with reservation, as I do not normally wish to
14 advertise any personnel issues unless absolutely necessary in order to set the record straight.
15 I believe this incident was one of those times when such is indeed absolutely necessary."

16 24. On February 7, 1995, appellant gave a memorandum to Rody Ortega in which he
17 criticized the condition of Mr. Ortega's classroom and the adequacy of his substitute lesson
18 plans on file in the DELS office and questioned his use of sick leave. (Exhibit D-136.)
19 Appellant gave Mr. Ortega until February 17 to respond to his memorandum and wrote that
20 he would "wait until this date to make any determination of any administrative action
21 possibly to be taken." Mr. Ortega believed appellant's memorandum of February 7 to be in
22 retaliation for his providing information to Ms. Ritchey. (See Exhibit D-137 and Testimony
23 of Ortega.)

24 25. Ms. Moody and Mr. Ortega filed grievances of appellant's memoranda to them.
25 (Exhibits D-131 and D-139.) Respondent investigated both grievances and withdrew
26 appellant's memoranda to Ms. Moody and Mr. Ortega. (Exhibits D-133 and D-141.)

1 Ms. Ritchey agreed with Ms. Moody and Mr. Ortega that appellant issued the memoranda to
2 retaliate against Mr. Ortega and Ms. Moody for their reports to Ms. Ritchey about
3 appellant's statements and behavior. (Exhibits 142 and 143 and Testimony of Ritchey.)

4 26. On March 13, 1995, Ms. Ritchey gave appellant two memoranda in which she
5 summarized respondent's concerns about his performance since the events on August 11,
6 1994. (Exhibits D-142 and D-143.) In the March 13th memorandum entitled "Your
7 Unacceptable Behavior and Inadequate Performance" Ms. Ritchey identified the following
8 incidents as insubordination and neglect of duty:

- 9 • Appellant's statements to her on January 31, 1995;
- 10 • Appellant's memorandum of February 2, 1995, to the DELS staff;
- 11 • Appellant's statement of August 11, 1994, to Gail Anderson about
12 respondent's administration;
- 13 • Appellant's statements to Ms. Moody on December 12 and 16, 1994;
- 14 • Appellant's statements critical of Ms. Ritchey in memorandum to her on
15 January 19, and February 6, 1995;
- 16 • Appellant's attempt to work on August 11, 1994;
- 17 • Appellant's written responses made for the "purpose of making a record" and
18 in which appellant avoided responsibility for his actions;
- 19 • Appellant's misrepresentations in his written responses to Ms. Ritchey's
20 memoranda;
- 21 • Appellant's refusal to teach in September 1994;
- 22 • Appellant's argument with Ms. Moody on January 27, 1995;
- 23 • Appellant's retaliatory memoranda to Ms. Moody and Mr. Ortega.

24 In the March 13 memorandum Ms. Moody identified the following incidents as
25 inadequate performance:

- 26 • Appellant's insensitivity toward the needs of students and staff at
DELS;
- Appellant's actions on January 26, 1995, in Mr. Fuller's classroom;

- 1 • Appellant's interruption of a class conducted by a substitute on December 14, 1994;
- 2 • Appellant's interaction on November 17, 1994, with Ms. Schjeldahl's group;
- 3 • Appellant's touching of a student whom he knew did not want to be touched
- 4 and which caused the eight-week investigation;
- 5 • DELS' staff concerns with appellant's communication skills and poor memory
- 6 and with his loud and disruptive behavior at DELS;
- 7 • Appellant's inadequate lesson plans and delegation to his substitute of his
- 7 teaching responsibilities.

8 In this March 13 memorandum Ms. Ritchey notified appellant that she no longer had
9 confidence that he would "truthfully provide me with information when you feel the need to
10 protect your own self-interest." She also advised appellant that his behavior towards her had
11 "adversely affected our working relationship. You have shown a lack of respect for my
12 authority. I do not have confidence you will work cooperatively with me."

13 27. On March 13, 1995, Ms. Ritchey also gave appellant a memorandum entitled
14 "Supporting Memorandum." (Exhibit D-143.) In this memorandum Ms. Ritchey described
15 in greater detail the incidents in the memorandum entitled "Your Unacceptable Behavior and
16 Inadequate Performance." Ms. Ritchey described appellant's statements to her on
17 January 31, 1995, and again told appellant in reference to that incident: "I felt very
18 threatened by your behavior. I want you to know that I consider your behavior hostile and
19 threatening. Such behavior must not occur again." (Exhibit D-143, p. 1.) Ms. Ritchey also
20 described at length in this March 1993 memorandum appellant's encounters with Ms. Moody
21 in which he spoke to her in a raised voice and an angry, argumentative manner.
22 Ms. Ritchey informed appellant that encounters such as these were unacceptable behavior.

23 28. Respondent decided that due to appellant's performance at DELS it could not
24 retain appellant as principal at that school. Respondent decided to transfer appellant to the
25 administration building to work on grants and special projects. By April 19, 1995,
26 respondent decided to reassign appellant to Helensview High School effective May 1, 1995.

1 (Exhibit D-144.) Helensview is an alternative high school for pregnant and parenting
2 adolescents. It was also the only remaining alternative high school in respondent's program
3 at which appellant had not been principal.

4 29. Also in a memorandum dated April 19, 1995, Ms. Ritchey notified appellant that
5 he would be placed on a plan of assistance. (Exhibit D-145.) In that memorandum
6 Ms. Ritchey informed appellant that:

7 "A number of the behaviors previously noted in our written and verbal
8 communications will not be tolerated and must not occur in the future: * * *

- 9 ● Your threatening behavior towards me.
- 10 ● Your acts of retaliation against me or anyone else.
- 11 ● Your refusal to follow direction.

12 The April 19 memorandum scheduled a meeting between Ms. Ritchey and appellant to share
13 ideas on the plan of assistance.

14 30. Appellant submitted to Ms. Ritchey written suggestions for his Plan of
15 Assistance. (Exhibit D-147.) Ms. Ritchey developed a Plan of Assistance for appellant and
16 attached it to his evaluation. (Exhibit D-146.) In the performance evaluation Ms. Ritchey
17 reported that appellant had failed to meet numerous performance standards. She noted
18 deficiencies in interpersonal skills and decision-making and judgment. She also evaluated
19 him as insubordinate and uncooperative. In the Plan of Assistance Ms. Ritchey divided
20 appellant's deficient performance into three categories. Under the category entitled
21 "Inadequate Decision-Making and Judgment" she cited as evidence of appellant's deficient
22 performance "threatening behavior toward supervisor." (Exhibit D-146, p. 3.) In the Plan
23 of Assistance, Ms. Ritchey informed appellant "Failure or unwillingness to improve and
24 correct the previously stated deficiencies will result in my recommending that you be
25 dismissed from employment."

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1 31. On April 25, 1995, appellant provided Ms. Ritchey with a letter from Dr.
2 J. Hancey regarding appellant's obsessive-compulsive disorder (OCD) and requested that the
3 letter be placed in his personnel file. (Exhibits D-148 and 150.) By memorandum dated
4 May 1, 1996, Ms. Ritchey enquired of appellant regarding reasonable accommodation.
5 (Exhibit D-150.) Appellant did not respond to her inquiry.

6 32. Ms. Ritchey on April 30 directed appellant to report to Helensview on April 24
7 through April 28, 1994, to ease the transition between his arrival and the transfer of Hugo
8 Hendrickson, the principal at Helensville, who was assigned to DELS. Appellant failed to
9 report to Helensview on April 24 as directed. (Exhibit D-151 and testimony of
10 Ms. Ritchey.)

11 33. On May 15, 1995, Ms. Ritchey gave appellant a memorandum with feedback on
12 his progress on the Plan of Assistance. (Exhibit D-158.) Ms. Ritchey criticized appellant's
13 performance in a staff meeting on May 10 and a management team meeting on May 11, the
14 manner in which appellant handled a student's discipline, which resulted in a complaint from
15 her parent, and an incident on May 12 when appellant interrupted Ms. Ritchey during a
16 conversation.

17 34. Prior to appellant's reassignment to Helensview High School a President's
18 Visitation Luncheon had been planned for May 16 and arrangements made for speakers and
19 presentations. The luncheon was to be for the presidents of the local community colleges
20 and had been arranged by a member of respondent's school board. Because the arrangement
21 for the luncheon had already been made by another staff member before appellant's
22 reassignment, appellant did not have a role in the luncheon. Ms. Ritchey discussed the
23 luncheon with appellant and the arrangements that had been made, which, she told him, did
24 not include a role for appellant. Appellant telephoned the board member the evening of May
25 15 to inquire about what the board member wanted appellant to do during the visit and
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1 luncheon. Appellant did not inform either Ms. Ritchey or Dr. Jacobson before he telephoned
2 the board member. (Testimony of Ms. Ritchey and Exhibit D-154.)

3 35. When he arrived at Helensview, appellant learned that the school had not been
4 displaying the national and state flags. Appellant decided to fly the flags as directed by
5 respondent's policy. Appellant left the flags up over night and over the weekend because
6 there was no custodial staff on duty in the morning to raise the flags. A citizen complained
7 that the school was inappropriately displaying the flag at night. Appellant suggested to the
8 complainant that she provide him some written material about how to display the flag. On
9 May 16, 1995, Ms. Ritchey gave appellant a memorandum regarding his decision to display
10 the flags and the citizen's complaint. In the memorandum she called his attention to board
11 policy and took no further action. (Exhibit D-156.)

12 36. On May 17, 1995, the gas company was working on its lines near Helensview
13 High School. While working on its gas lines, the gas company purged the gas line, causing
14 gas to be released, the odor of which was smelled at the school. Staff at the school thought
15 there might be a gas leak endangering the students and their infants and toddlers, who stayed
16 in nurseries at the school while their parents attended classes. Ms. Ritchey was also present
17 at Helensview school that day to attend a meeting with appellant. (Some students were
18 absent to attend a luncheon for the senior students.) The staff in the nurseries called the
19 principal's office to inform administration about the odor of gas. After a few minutes, the
20 nursery staff decided to bring the infants and toddlers to the school cafeteria in the main
21 school building. Office staff telephoned the gas company and the 9-1-1 emergency number
22 while nursery staff, and their charges, students and other personnel gathered in the cafeteria.
23 Appellant came into the office and represented to persons there that he had made telephone
24 calls and the situation was under control. Ms. Ritchey disagreed with appellant that he had
25 made telephone calls and that he had taken control of the situation. Ms. Ritchey and
26 appellant argued briefly about this issue. At about this time Ms. Ritchey and the school

1 administrative staff learned from the gas company that the gas came from its purging of the
2 gas line and that there was no leak.

3 Ms. Ritchey went to classrooms to inform the students there that things were under
4 control. She next went to the cafeteria where the nursery staff, the infants and children, and
5 other students had gathered. Ms. Ritchey heard appellant tell the nursery staff that they
6 could return with their charges to the nurseries. The nursery staff asked appellant if he
7 himself had checked for gas. Appellant assured the staff that they could return. The nursery
8 staff pointed out that they would be returning infants to the nurseries and asked again if that
9 area was safe for very young children. Ms. Ritchey also asked appellant if he himself had
10 checked if the nursery area was safe. Appellant responded that the nursery area was safe.
11 Ms. Ritchey directed appellant to check the nursery area himself. Ms. Ritchey and appellant
12 had several more exchanges in this vein until Ms. Ritchey, exasperated, said to appellant,
13 "God damn it, Mark, go and check the nursery." This statement angered appellant, who said
14 words to the effect, "God damn, you said God damn to me. I've got witnesses."
15 Ms. Ritchey reminded appellant that students and children were present and directed him
16 again to go check the nursery area for gas. Appellant left to go check the nursery area.
17 Ms. Ritchey went to make a record of these events.

18 As she was in the hallway, Ms. Ritchey noticed that students were also in the halls,
19 had their hats and coats, and looked as if they were leaving. When Ms. Ritchey enquired
20 about this, a teacher told her appellant had dismissed them. (The school had planned an
21 early dismissal that day due to the Senior Luncheon.) Ms. Ritchey thought that appellant's
22 dismissal was premature because she wanted to ensure that the gas had dissipated before
23 releasing the students. She asked appellant if he had dismissed the students. Appellant told
24 her that he had not dismissed school but had told the students they could leave early.
25 Ms. Ritchey responded that telling students that they could leave early is the same as
26 dismissing them and told appellant he should have checked with her first. Appellant asked

1 Ms. Ritchey if she was questioning his decision-making. Ms. Ritchey answered that she
2 questioned a number of appellant's decisions and that she would discuss them with him later.
3 Appellant said he wanted to talk about it right now. Ms. Ritchey indicated that she did not
4 want to discuss these issues with appellant at that time and started to go to another location.
5 Appellant followed her and continued to state that he wanted the discussion to occur "right
6 now."

7 Ms. Ritchey went into a classroom and tried to shut the door to keep appellant
8 outside. Ms. Ritchey tried to hold the door shut. Appellant used his weight to force the
9 door open and came into the classroom toward Ms. Ritchey. Appellant said twice to
10 Ms. Ritchey, "you fucking bitch." Appellant positioned himself so that Ms. Ritchey could
11 not get around him and out of the classroom. Appellant told Ms. Ritchey that he would "sue
12 your ass off." Appellant moved toward Ms. Ritchey, who backed up against a desk.
13 Appellant shook his finger in Ms. Ritchey's face and said to her, "do you know what I'm
14 going to do to you?" Then he poked her several times in the upper sternum with his finger
15 while saying, "I'm going to cut your fucking tits off." Ms. Ritchey screamed and ran
16 around appellant and left the classroom. Ms. Ritchey stated to persons in the hall, "he said
17 he would cut my tits off." She went into the office and telephoned Dr. Jacobson.

