

filed exceptions) address Mr. Bellairs' assertions regarding the length of the contested case proceeding. This exception is not well taken. Mr. Bellairs' fifth exception (listed as number "4" on the filed exceptions) argues that none of the allegations rise to the level of discipline. The Commission disagrees, as explained in the Amended Proposed Order.

After considering the record and the exceptions filed, the Commission now adopts in its entirety the Amended Proposed Order as the Final Order, and incorporates it into this Final Order by this reference.

It is so ordered this 6th day of August 2007.

TEACHER STANDARD AND PRACTICES COMMISSION

By: *Victoria Chamberlain*
Victoria Chamberlain, Executive Director

NOTICE: You are entitled to judicial review of this Final Order pursuant to the provisions of ORS 183.480. Judicial review may be obtained by filing a petition in the Oregon Court of Appeals. The petition must be filed within 60 days from the date of service of this Final Order.

BEFORE
the
TEACHER STANDARDS AND PRACTICES COMMISSION

IN THE MATTER OF THE) AMENDED PROPOSED ORDER
TEACHING LICENSE OF:)
)
DONALD E. BELLAIRS) OAH Case No.: 121747
)

This matter came before the Commission during its regularly scheduled public meeting of March 16, 2007, to consider the Proposed Order issued on January 26, 2007, by Administrative Law Judge (ALJ) John Mann. Mr. Bellairs appeared and was allowed to present oral argument in support of the exceptions he filed to the Proposed Order. After considering the record herein, TSPC issues this Amended Proposed Order. The Amended Proposed Order adopts all of the ALJ's Findings of Fact and Conclusions of Law, but rejects the ALJ's rationale in recommending the sanction. Any substantial changes to the Proposed Order are identified below.

HISTORY OF THE CASE

On March 22, 2005, TSPC issued a Notice of Opportunity for Hearing to Donald E. Bellairs. The Notice listed 12 separate allegations of gross neglect of duty. On March 24, 2005, Mr. Bellairs requested a hearing.

On May 17, 2005, the Teacher Standards and Practices Commission referred the hearing request to the Office of Administrative Hearings (OAH). ALJ Andrea Sloan was assigned to preside at hearing. A prehearing conference was held with ALJ Sloan on July 8, 2005. TSPC participated and was represented by Joe McKeever, Assistant Attorney General. Mr. Bellairs participated and was represented by his then-attorney, Thomas Doyle. Subsequent prehearing conferences were held by ALJ Sloan on October 12, 2005, and April 24, 2005. TSPC participated in those conferences and was represented by Elizabeth Denecke, Assistant Attorney General. Mr. Bellairs also participated in those conferences and was again represented by Mr. Doyle.

The case was later reassigned to ALJ John Mann of the OAH. A prehearing conference was held with ALJ Mann on July 20, 2006. TSPC participated in the conference and was represented by David Allen, Assistant Attorney General. Assistant Attorney General Raul Ramirez was also present. Mr. Bellairs participated and was represented by Mr. Doyle. A final prehearing conference was held with ALJ Mann on November 16, 2006. TSPC participated and was represented by Mr. Ramirez. Mr. Bellairs participated without counsel. Mr. Bellairs advised the ALJ that Mr. Doyle was no longer representing him and that he no longer had an attorney.

A hearing was held on November 28 and 29, 2006, in Beaverton, Oregon. Donald Bellairs appeared without counsel and testified. TSPC participated and was represented by Raul Ramirez, Assistant Attorney General. Elena Hillier, Daniel Jamsa, and Patsy Stobie also testified on Mr. Bellairs' behalf. Susan Nisbet testified on behalf of TSPC. At the hearing, TSPC withdrew allegations 5 and 6 set forth in the Notice of Opportunity for Hearing.

The record was held open to allow TSPC to review Exhibits offered by Mr. Bellairs and to consider filing written objections. TSPC did not file such objections. The record closed on December 12, 2006.

ISSUE

Whether Donald E. Bellairs committed gross neglect of duty in violation of OAR 584-020-0040.

EVIDENTIARY RULING

Exhibits A1 through A20, offered by TSPC, were admitted into the record without objection.

Donald Bellairs offered Exhibits R1 through R22. However, he did not provide copies of his Exhibits prior to the hearing. Therefore the record was held open until December 12, 2006, to allow TSPC additional time to file written objections to certain Exhibits. At the time of the hearing, Exhibits R1 through R4 were admitted into the record without objection. TSPC reserved the right to object to Exhibits R5 through R12 and Exhibit R14. Exhibit R13 was not admitted into the record because it contained information regarding settlement negotiations. Exhibit R15 was admitted over a relevance objection by TSPC. Exhibits R16 through R22 were admitted without objection.

Exhibit R12 consists of a copy of a transcript of a hearing held regarding Mr. Bellairs' unemployment insurance claim, a subsequent hearing decision, and a decision by the Employment Appeals Board (EAB) related to the claim. The hearing decision and the EAB decision were not admitted because they are inadmissible under ORS 657.273. Therefore Exhibit R12 was modified to include only the hearing transcript.

TSPC did not file any objections to Exhibits R5 through R12 (as modified) and Exhibit R14. Those Exhibits are therefore admitted into the record.

ISSUE PRECLUSION

On December 14, 2005, TSPC filed a Motion for Summary Determination. Mr. Bellairs, acting through his then-attorney, Thomas K. Doyle, filed a response to that Motion on December 30, 2005. TSPC filed a Reply on January 5, 2006. On January 24, 2006, ALJ Andrea Sloan, of the Office of Administrative Hearings, issued a Ruling on Motion for Summary Determination. In that Ruling, ALJ Sloan held that Donald Bellairs was barred from litigating certain factual findings made by the Fair Dismissal Appeals Board (FDAB) in Case Number FDA 04-01 as a

result of Mr. Bellairs' unsuccessful appeal to that body. Consequently, many of the Findings of Fact in this Proposed Order are taken primarily from the findings of the FDAB order with minor non-substantive changes made for purposes of clarity and stylistic consistency. The FDAB order was entered into the record as Exhibit A17.

When TSPC filed its Motion for Summary Determination, it requested that Mr. Bellairs be precluded from re-litigating the matters addressed in FDAB Findings of Fact numbers 4 through 8, 11 through 13, 18 through 21, and 24 through 28. ALJ Sloan found in favor of TSPC and thus ruled that Mr. Bellairs could not re-litigate matters raised in those particular findings. Through an apparent oversight, TSPC failed to request a ruling with regard to Finding of Fact number 17 in the FDAB order. At the hearing, TSPC requested that Mr. Bellairs be precluded from litigating the finding contained in FDAB Finding of Fact number 17.

FDAB Findings of Fact 17 through 21 address an incident that occurred in May of 2003 when a student returned a video camera late to Mr. Bellairs' class. Finding number 17 is the first paragraph to discuss the incident. Without Finding number 17, the information contained in Findings number 18 through 21 are incomplete and devoid of context. All of those findings relate to allegation number 9 contained in the Notice that is the subject of the current appeal. The reasoning of ALJ Sloan's order applies with equal force to Finding number 17. It appears that the only reason it was not specifically included in the order was due to TSPC's oversight. Mr. Bellairs provided testimony about the incident that gave rise to Finding number 17 and was not prejudiced by the failure of the earlier Ruling to address the issue. TSPC agrees with the ALJ and finds that Finding number 17 is subject to issue preclusion for the same reasons discussed in ALJ Sloan's Ruling.

FINDINGS OF FACT

1. The Teacher Standards and Practices Commission (TSPC) issued a license to Donald Bellairs in 1997 allowing him to teach in the state of Oregon. In the fall of that year, Mr. Bellairs was hired by the Beaverton School District and was assigned to work at Meadow Park Middle School where he taught until the end of the 1998-1999 school year. (Test. of Bellairs.)

2. In June 1999, while teaching his class, Mr. Bellairs believed that one of his students, A, was being disruptive. He asked A to step outside of the classroom as a form of discipline. Mr. Bellairs was teaching in a portable classroom and not the main school building. When it began raining, Mr. Bellairs told A to stand inside the main building. Mr. Bellairs then realized that he had left some things in his truck that could get wet. Mr. Bellairs left the students in his classroom and asked A to come with him to his truck in the school parking lot. Mr. Bellairs spoke to A about her behavior on the way out to the truck and used the opportunity as a "teaching moment." When he was speaking to A, whom he considered a "street-smart kid," he used the word "crap." Mr. Bellairs believed that it was appropriate to use street vernacular to communicate with the student. (Test. of Bellairs; Ex. A1 at 1.)

3. Shortly after his encounter with A, three female students (including A) told a substitute counselor at Meadow Park Middle School that Mr. Bellairs had taken A out to his truck in the school parking lot. They also reported that Mr. Bellairs used inappropriate language

and belittled A. The substitute counselor reported this incident to the school's regular counselor, Pam Lass. Ms. Lass set up a meeting with A's mother and Mr. Bellairs. Mr. Bellairs did not handle the situation well. He was upset that the students had accused him of unprofessional conduct. He was upset that another student, R, had supported A's complaint. Mr. Bellairs accused Ms. Lass of unprofessional conduct, apparently for following up on the complaint, and threatened to tell future teachers his opinion of the student's behavior. (FDAB Order – Finding of Fact No. 4.)

4. Mr. Bellairs met with Mr. W, the father of R (one of the students who spoke with the substitute counselor), on August 2, 1999. Mr. Bellairs thought that Mr. W would not approve of R's behavior. At the meeting, Mr. Bellairs gave Mr. W a letter in the form of talking points that Mr. Bellairs had prepared in advance of the meeting. The letter described Mr. Bellairs' version of events, including a description of one of the students involved in the incident as a "female student who has numerous in-school suspensions on her record and who is a certified 'behavioral disorder' special education student." Mr. Bellairs' notes also listed a number of questions, including:

"Did you know that she [Mr. W's daughter] was telling lies that had the potential to cause me and my family great personal distress, as well as create damage to my professional reputation?"

and

"Since I have discovered that Ms. Lass (in an unfortunate breach of professional conduct) had encouraged students to come to her office with criticism of me – although tellingly, I was never brought into any of these meetings – how many times did [Mr. W's daughter] go to the counselor's office, and were there any more incidents to discredit me?"

Mr. W shared the letter with A's parent, Ms. S, who called Ms. Smith to complain about Mr. Bellairs. Ms. S was upset, among other reasons, because Mr. Bellairs had communicated information about A's special education status to another parent. After receiving Mr. W's call, Ms. Smith contacted Linda Borquist, the Associate Superintendent of the School District. (FDAB Order - Finding of Fact No. 8; Ex. A1.)

5. In August of 1999, the School District transferred Mr. Bellairs to teach at Westview High School. The District wanted to give Mr. Bellairs a "fresh start." (Test. of Bellairs.)

6. On August 9, 1999, Ms. Borquist met with Mr. Bellairs and with Ms. Smith, the Principal of Meadow Park Middle School, to discuss his meeting with Mr. W, the problems he had at Meadow Park Middle School, and his transfer to Westview High School. Ms. Borquist advised him that if a problem reached her level, it was severe. Although Mr. Bellairs was still a

probationary teacher at this time, the Beaverton School District chose to give him a new start at the high school rather than terminate him. Ms. Borquist also referred Mr. Bellairs to the District's Employee Assistance Program. Mr. Bellairs did not take advantage of this program. (FDAB Order Finding of Fact No. 9.)

7. Ms. Smith wrote a letter to Mr. Bellairs dated September 9, 1999, directing him not to have further contact with families or staff concerning the problems at Meadow Park Middle School. The letter also directed Mr. Bellairs to let his concerns about Meadow Park parents, students, or any other unfinished business from Meadow Park "stop at this time." The letter also directed Mr. Bellairs to review the Professional Code of Conduct, and to stop the accusation that Ms. Lass had displayed unprofessional conduct. Mr. Bellairs signed for the letter on September 15, 1999. He did not submit any rebuttal or response to the letter. (FDAB Order Finding of Fact No. 10; Ex. A6.)

8. Mr. Bellairs began working at Westview High School in September 1999. He taught media studies, keyboarding, and English classes. In his first year at Westview High School, a student from his keyboarding class complained to Gail VanGorder, the Vice-Principal at Westview High School, that Mr. Bellairs was letting a student run the class. When Ms. VanGorder spoke to Mr. Bellairs about this, he said he was busy and keyboarding was rote. He felt it was better to spend his time on other things. She told him attendance and grades were confidential and that it was not acceptable to allow students to enter attendance, grade papers, or run the class. Sometime later, Ms. VanGorder walked by his class and saw that Mr. Bellairs was still allowing a student to engage in these activities. She told him not to allow this to happen again. Mr. Bellairs repeated that he had more important things to do, but said he would do what the school said even if he did not agree with it. (FDAB Order Finding of Fact No. 11.)

9. In the summer of 2002, Mr. Bellairs volunteered to be on a committee (the "CAT Crew") to revise the advisory program, an un-graded program similar to a home room, which teaches students team-building and problem-solving. In September 2002, the committee held a planning session for the program. Mr. Bellairs wanted to show a video he had made of a mentoring program. The committee members decided there was not enough time for the video and it did not relate to the issues the committee needed to resolve. Mr. Bellairs was frustrated that his colleagues did not want to watch his video. He became upset, angry, and loud. He expressed his displeasure, took the video equipment and left the room. The teachers were startled and intimidated by his outburst. Ms. VanGorder met with him and later told him his response was inappropriate and out of proportion. She told him not to act that way again. Malcolm Dennis, the new Principal of Westview High School, also met with Mr. Bellairs and told him he had overreacted. (FDAB Order Finding of Fact No. 13.)

10. The previous Principal of Westview High School, Mr. Case, had appointed Mr. Bellairs to be the activities director for the 2002-2003 school year. The activities director manages several activities including student government, dances, spirit week, and blood drives. With this appointment, Mr. Bellairs had greater contact and interaction with students. On one occasion during this appointment, Mr. Dennis saw Mr. Bellairs angrily yelling at a student who was taking down a campaign poster. The student said he was not taking it down, but moving it to another location. Mr. Dennis explained why signs needed to be posted in one place. Mr.

Bellairs lost control, shouting at the student "Don't you know how hard I work?" Because of repeated incidents of this nature, Mr. Dennis did not believe that Mr. Bellairs should continue in the position of Activities Director. He told Mr. Bellairs that he would not reappoint him to that position in the following year and asked the former Activities Director to help with the school prom. (FDAB Order Finding of Fact No. 14.) Mr. Bellairs acknowledges that it was inappropriate to yell at the student. (Test. of Bellairs.)

11. Over time, Westview High School's media program grew and Mr. Bellairs' assignments included more media responsibilities. Mr. Bellairs developed an ongoing conflict with Mike Ali, the school's computer "guru." Mr. Ali provided technology assistance to the entire school. Mr. Bellairs thought Mr. Ali should assist him full-time with the media studies class that Mr. Bellairs taught. Mr. Bellairs asked Mr. Ali to do a number of things and was impatient if Mr. Ali did not take care of his requests immediately. Mr. Bellairs considered Mr. Ali to be the "pet" of administration. (FDAB Order Finding of Fact No. 15.)

12. In February 2003, Mr. Ali changed Mr. Bellairs passwords on school computers without telling Mr. Bellairs in advance. Mr. Bellairs experienced a high level of frustration and described himself as distraught. He walked to Ms. VanGorder's office and angrily confronted Mr. Ali and Ms. VanGorder, who was responsible for building technology. This angry confrontation occurred in the hallway outside of Ms. VanGorder's office in view of other staff members. Mr. Bellairs yelled at Mr. Ali, saying words to the effect that he couldn't believe this happened, that no one appreciated his work, that he had been sabotaged, that Mr. Ali was a classified employee without a college education, a peon, and that Mr. Bellairs had a master's degree. Some staff members were frightened by the nature of the outburst and angered by the content of Mr. Bellairs' remarks. Mr. Dennis conferred with Mr. Bellairs about this outburst on February 21, 2003, and placed a memorandum summarizing the conference in the working file. In the memorandum, Mr. Dennis reinforced the "expectation this kind of outburst not happen again." Mr. Dennis also wrote "As I stated in our conference, I need to be confident that staff members are able to control their anger in difficult situations and that they treat one another with respect at all times." (FDAB Order Finding of Fact No. 16.)

13. On May 9, 2003, Mr. Bellairs reprimanded a student in front of his class because the student had returned a video camera a day late. He told the student he would not be allowed to use the classroom equipment for the remainder of the year. The student's father wrote a note to Mr. Bellairs asking for his son to be reinstated in the class with an apology from Mr. Bellairs and full use of the equipment or he wanted his son removed from the class and awarded the grade (a "B") shown on his last progress report. Mr. Bellairs gave the note to Ms. VanGorder on May 13, 2003, and told her that he would not allow a parent to tell him what to do. Ms. VanGorder told Mr. Bellairs that the goal would be to reintegrate the student into the classroom with full use of the equipment. She spoke to both the student and the father and believed that the student had returned to class. (FDAB Order Finding of Fact No. 17.)

14. On May 27, 2003, Mr. Bellairs told Ms. VanGorder that he was flunking the student for not returning to class. Ms. VanGorder checked and saw that the student had only missed two or three classes. She told him he could not fail the student for skipping a couple of classes, especially if the student had been in good academic standing. Mr. Bellairs said the

student had been barely passing before this incident, accused Ms. VanGorder of capitulating to parent pressure, and told her if she didn't like the grade he gave, she could "bubble in the grade" herself. Mr. Bellairs said he was very angry about the administration's lack of respect for his professional judgment and that he would not apologize. Ms. VanGorder told him to calm down. On May 28, 2003, Ms. VanGorder and Mr. Bellairs met with Mr. Dennis. She told Mr. Bellairs that his comments about the administration's lack of professionalism were inappropriate, as was his refusal to reinstate the student in good academic standing. (FDAB Order Finding of Fact No. 18.)

15. On June 3, 2003, Mr. Bellairs met with the student, Ms. VanGorder and Mr. Dennis. The purpose was to reintegrate the student into the class and give him the opportunity to return to the same level of functioning as before the incident. The student apologized to Mr. Bellairs and said he would not return equipment late again. Mr. Bellairs did not apologize to the student at the meeting because he believed his apology would not be sincere. Instead, he became agitated. He wanted to "teach this kid how to behave." He told the student that the "B" on his progress report had been a "gift" and that if he completed the required work, he would earn a "C". He told the student that he had a hard time allowing the student to use media equipment because his family could afford its own camera. Eventually, Mr. Bellairs walked out of the meeting. The student was in tears by the time Mr. Bellairs left. Mr. Dennis and Ms. VanGorder had never seen this kind of behavior by a teacher before. (FDAB Order Finding of Fact No. 19.)

16. On June 4, 2003, Mr. Bellairs entered Ms. VanGorder's office and told her he had received a voicemail message from the student's father. Mr. Bellairs was angry and loud. He said to Ms. VanGorder that he regretted asking her to help him with this situation more than anything since coming to Westview High School. Lynn Blair-Thomas, a Vice-Principal in an adjoining area, directed Mr. Bellairs to "stop talking to people like that." Mr. Bellairs turned and left the room. (FDAB Order Finding of Fact No. 20.)

17. As a result of the incidents taking place from February 21 through June 4, 2003, Ms. VanGorder prepared a memorandum to Mr. Bellairs dated June 10, 2003, describing the events and directing him "to comply with school district and school expectations that require employees to treat one another and students with respect. Your behavior must come into immediate compliance with these expectations. Consider this directive to be very serious. Any future failure to meet these expectations will carry consequences that will lead to disciplinary action that may lead to dismissal." (FDAB Order Finding of Fact No. 21.)

18. On September 24, 2003, Mr. Bellairs' new supervisor, Mr. Chamberlain, passed Mr. Bellairs' third period English class as he walked down the hallway. He saw a student at the front of the room working on a computer next to the teacher desk. She was not actively participating in the lesson or discussion. Mr. Chamberlain went back at the end of class to speak with Mr. Bellairs. He asked Mr. Bellairs about the student working on the computer. Mr. Bellairs admitted the girl was inputting attendance data on the Teacher Assistance program and said he would not allow her to do it again. Mr. Chamberlain reminded Mr. Bellairs that students were never allowed to be on the Teacher Assistance program of eSIS and only staff are allowed to use that program. The eSIS contains confidential student information and is password protected. (FDAB Order Finding of Fact No. 24.)

19. In the evening of September 24, 2003, Mr. Bellairs sent Mr. Chamberlain an e-mail saying that he was "sorry that our school has a bureaucratic method imposing on sound educational theory" and asking "is the little gossip fairy spreading dust?" The e-mail stated "I have not been pleased with much administrative guidance in the past. It has often seemed uninformed." After receiving this e-mail, Mr. Chamberlain spoke with Mr. Bellairs on September 26, 2003. He explained to Mr. Bellairs that no staff person had "turned him in" but that Mr. Chamberlain had seen the student working on the computer when he walked down the hallway. He told Mr. Bellairs that he did not want to receive e-mails where Mr. Bellairs was disrespectful or negative toward District staff members. He told Mr. Bellairs these messages were inappropriate and needed to stop. (FDAB Order Finding of Fact No. 25.)

20. In the fall of 2003, Mr. Bellairs volunteered to supervise the Westview Women's Football Team (WWF). On October 8, 2003, Mr. Chamberlain received information from Ms. VanGorder and Monica Gorman, the Athletics Director, indicating that Mr. Bellairs was having problems with the WWF team. A parent, Ms. H, had reported to Ms. VanGorder that Mr. Bellairs used inappropriate language and had told the students not to go running to their mommies to complain like they did in middle school. Some of the girls on the team had complained about Mr. Bellairs when they were at Meadow Park Middle School, and Ms. H had removed her daughter, C, from his class at Meadow Park Middle School. Mr. Chamberlain asked Mr. Bellairs about the complaint that same afternoon. Mr. Bellairs confirmed there had been problems at a Saturday practice a few days earlier. He thought he probably had said "crap." He said he was frustrated because the students did not follow his plans for practices and did not listen to him. He said some students did not attend practice. Mr. Chamberlain talked with Ms. Gorman and two members of the team. The students said Mr. Bellairs was angry with them because they wanted to have fun and he wanted the practice to be more serious than they intended. Mr. Chamberlain concluded that there had been a misunderstanding. The team was not a competitive team. The faculty role is only for organization and safety purposes. He conveyed that information to Mr. Bellairs at 2:15 p.m. Mr. Bellairs came back to Mr. Chamberlain's office at 3:00 p.m. stating that he was thinking of writing a letter to all of the girls' parents to let them know what really happened at Saturday's practice. He said he was sure that many of their parents would not let them play in the game once they knew how the girls had acted toward a staff member. Mr. Chamberlain told him "no," that he did not want Mr. Bellairs to write a letter and that things had settled down. (FDAB Finding of Fact No. 26.)

21. On October 9, 2003, Mr. Bellairs sent an e-mail to Mr. Chamberlain, copied to Mr. Dennis, Ms. Gorman, and Athletic Director Mike Sanderson, entitled "WWFractious." In this e-mail he wrote:

As I review the rules for WWF (which I worked very hard to establish last year while I was doing two jobs for the price of one for an unappreciative administration), I discover that we have 21 eligible players who attended a sanctioned practice. Those are who will play Friday night. I will post the list today so you can handle all the complaints about my fictitious outbursts.

I realize this will create for you some issues, but I know that you will do what's right and not cave in to self-interested parents who believe the system should serve a few kids well and give the vast majority what is left.

I will arrange to have several parents there to support our group and my effort to keep the *public* in Beaverton education.

After receiving this e-mail, Mr. Chamberlain immediately asked to meet with Mr. Bellairs. He expressed his displeasure with negative and disrespectful e-mails. He reminded Mr. Bellairs that he had directed him to stop this type of communication. Mr. Bellairs said this was going to be a problem for him because he decided the night before to "speak out" and "say things as they are." Mr. Chamberlain instructed him not to use e-mail as a negative communication tool. Mr. Bellairs said he could not agree to do that. (FDAB Order Finding of Fact No. 27.)

22. As a result of the incidents in September and October, Mr. Chamberlain wrote a conference summary dated October 16, 2003, in which he summarized the various events and directed Mr. Bellairs to comply with District and school expectations requiring employees to treat one another with respect and to comply with the Contracted Appraisal Form for Contracted Teacher Standards 2.2c, 2.3a and e, and 3.2e and f. He also instructed Mr. Bellairs to first communicate with him any concerns Mr. Bellairs has with staff and/or parents so that letters or e-mails sent by Mr. Bellairs would be appropriate. He also instructed Mr. Bellairs to first see his immediate supervisor when he has a potential conflict with a staff member or parent. The letter further stated "Your behavior and actions must come into immediate compliance with these expectations. This directive is very serious. Any future failure to meet these expectations will carry consequences that will lead to disciplinary action that may lead to dismissal." The letter initially was placed in Mr. Bellairs' working file and later was moved to the personnel file on January 29, 2004. Mr. Bellairs did not submit any rebuttal or response to the letter. (FDAB Order Finding of Fact No. 28.)

23. Mr. Bellairs believes that the allegations against him are exaggerated and overblown. He believes that most of the allegations raised were due to concerns of a few well-connected people at the Beaverton School District. Mr. Bellairs was dismissed by the Beaverton School District in 2004 and has not worked as a teacher since that time. (Test. of Bellairs.)

CONCLUSION OF LAW

Mr. Bellairs engaged in acts that constituted gross neglect of duty under OAR 584-020-0040.

OPINION

TSPC has alleged that Mr. Bellairs engaged in several acts constituting gross neglect of duty over a period from the spring of 1999 through October of 2003. The common element shown by each of the allegations is a concern that Mr. Bellairs over-reacted to relatively minor events and thus displayed a lack of professionalism to superiors, staff, and students.

OAR 584-020-0040 provides, in relevant part, as follows:

* * * * *

(2) An applicant fails to meet the requirement of ORS 342.143 "good moral character" if the applicant engages in gross neglect of duty, gross unfitness, or other acts which are in violation of sections (1) or (3) of this rule.

(3) The Commission may initiate proceedings to suspend or revoke the license or registration of an educator under ORS 342.175 or deny a license or registration to an applicant under ORS 342.143 who:

* * * * *

* * * * *

(c) Is charged with gross neglect of duty; or

* * * * *

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

* * * * *

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

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

* * * * *

TSPC has alleged several specific acts that it contends constitute gross neglect of duty as defined by the above rule. The acts will be considered separately below.

1. Spring 1999 – School Parking Lot Incident

In the spring of 1999, while teaching at a middle school, Mr. Bellairs asked a disruptive student to stand outside of his classroom as a form of discipline. When it began to rain, Mr. Bellairs asked the student to accompany him to his truck in the school parking lot. During that time, Mr. Bellairs spoke to the student about her behavior and used the word "crap."

After three students reported A's concerns to a school counselor, Mr. Bellairs contacted the father of one of the students, R, to discuss his concern. Mr. Bellairs thought that the father, Mr. W, would disapprove of R's behavior. In a meeting with Mr. W, Mr. Bellairs disclosed confidential information about A and told Mr. W that his daughter had lied to the school counselor. He also made comments disparaging the professional conduct of the counselor. TSPC alleged that these incidents constituted gross neglect of duty in violation of OAR 584-020-0040(n).

As set forth above, OAR 584-020-0040(n) incorporates the standards set forth in OAR 584-020-0010 through 584-020-0030. TSPC alleged that Mr. Bellairs' conduct in dealing with A violated OAR 584-020-0010(5) which requires teachers to "use professional judgment." It also asserts that this conduct violated OAR 584-020-0030(1) and (2)(b) which provides as follows:

(1) The competent educator works effectively with others -- Students, staff, parents, and patrons. The competent educator is aware of the ways the community identifies with the school, as well as community needs and ways the school program is designed to meet these needs. The competent educator can communicate with knowledge, clarity, and judgment about educational matters, the school, and the needs of students.

(2) The competent teacher demonstrates:

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

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

Although Mr. Bellairs believed that the student involved was "street-smart," he failed to exercise professional judgment in his interaction with her. He asked a female student whom he had just disciplined to walk with him, alone, to the school parking lot. While walking, he spoke with her about her behavior and used the word "crap." Even if the student was used to such language, Mr. Bellairs did not demonstrate skill in speaking with her by his own use of what he considered to be street language. Nor did he demonstrate skill by choosing a student who was being disciplined to accompany him to his truck. Based on her own reports, the student felt belittled by Mr. Bellairs. Even if Mr. Bellairs did not mean to belittle the student, he should have been aware that his comments could be perceived as such in this context. In addition, by walking unaccompanied with a female student to his truck, he put himself in a situation that could have exposed himself to false allegations that may have been difficult to disprove.

Mr. Bellairs' conduct in speaking with Mr. W also demonstrated a failure to use professional judgment and a lack of skill in communication. He made statements to Mr. W which disparaged his daughter and the professionalism of the school counselor. In addition, by reaching out to R's father, Mr. Bellairs' conduct could have been perceived as an attempt to retaliate against R for reporting the incident. Mr. Bellairs admitted that his conduct was a mistake. The evidence thus supports that in these instances Mr. Bellairs engaged in conduct defined as gross neglect of duty under the applicable rules.

TSPC also alleged that Mr. Bellairs' conduct in meeting with Mr. W violated OAR 584-020-0040(4)(o) which prohibits a "Substantial deviation from professional standards of ethics set forth in OAR 584-020-0035." OAR 584-020-0035(1)(a) provides as follows:

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

(a) Keep the confidence entrusted in the profession as it relates to confidential information concerning a student and family; * * *.

In his meeting with Mr. W, Mr. Bellairs disclosed that A was a special education student with behavioral disorders and numerous in-school suspensions. Mr. Bellairs should have known that R's father had no reason to be told about A's educational and disciplinary history. A's mother was justifiably concerned about the disclosure. To the extent that Mr. Bellairs believed he needed to discuss his concerns about R with Mr. W, he could have done so without disclosing A's history and special education status. The evidence established that such disclosure constituted gross neglect of duty under the applicable rules.

2. Fall 1999 - Student Entering Attendance/Grades

In the fall of 1999, while teaching at a high school, Vice Principal Gail VanGorder spoke to Mr. Bellairs about a concern that a student was entering attendance information into the school computer. Mr. Bellairs told Ms. VanGorder that he was busy and keyboarding was rote. Ms. VanGorder told him attendance and grades were confidential and that it was not acceptable to allow students to enter attendance, grade papers, or run the class. Sometime later, Ms. VanGorder walked by his class and saw that Mr. Bellairs was still allowing a student to engage in these activities. She told him not to allow this to happen again. Mr. Bellairs repeated that he had more important things to do, but said he would do what the school said even if he did not agree with it.

TSPC alleges that Mr. Bellairs' responses to Ms. VanGorder were disrespectful and inappropriate and constituted gross neglect of duty under OAR 584-020-0030(1) and (2)(b) (quoted above) which requires educators to be flexible and to work cooperatively and effectively with others. The rule also requires educators to demonstrate skill in communicating with staff. Mr. Bellairs' responses to Ms. VanGorder's legitimate concerns did not demonstrate such skill. Ms. VanGorder told Mr. Bellairs that his conduct violated the school's confidentiality concerns. Rather than acknowledging the problem, Mr. Bellairs first demonstrated indifference by asserting that he was too busy to comply. He then continued to engage in the prohibited conduct, and finally agreed to stop while still expressing his disagreement with the policy. The evidence supports TSPC's contention that his conduct constituted gross neglect of duty under the applicable rules.

3. Summer 2002 - CAT Crew Meeting

In September 2002, Mr. Bellairs prepared a video that he wanted to show during a meeting of an advisory committee. When he learned that other committee members did not want to watch the video, he became upset, angry, and loud. He expressed his displeasure, took the video equipment and left the room. His behavior startled the teachers in the room, some of whom felt intimidated. TSPC asserts that this behavior also violated OAR 584-020-0030(1) and (2)(b) (quoted above) and OAR 584-020-0010(5) which requires teachers to use good professional judgment.

Mr. Bellairs' reaction over a fairly minor event demonstrated a lack of flexibility and skill in working and communicating with others. While Mr. Bellairs may have been disappointed that the committee members did not wish to view his video, he expressed his disappointment in an unprofessional manner. His reaction was out of proportion to what should have been a fairly minor event. The evidence supports TSPC's contention that his conduct constituted gross neglect of duty under the applicable rules.

4. February 2003 – Mike Ali

In February of 2003, Mr. Bellairs became upset when Mike Ali, the school's "computer guru" changed Mr. Bellairs' computer passwords without first telling him. Mr. Bellairs responded to this by yelling at Mr. Ali in front of others and belittled Mr. Ali as a "peon" and someone without a college degree. TSPC asserts that this behavior also violated OAR 584-020-0030(1) and (2)(b) (quoted above) and OAR 584-020-0010(5) which requires teachers to use good professional judgment.

Mr. Bellairs' actions in dealing with Mr. Ali were unprofessional and demonstrated a lack of skill and flexibility in working with others. Although Mr. Bellairs may have been frustrated by a change in his computer passwords, that disappointment did not justify a belittling tirade against a school employee. The evidence supports TSPC's contention that this conduct constituted gross neglect of duty under the applicable rules.

5. April 2003 – Poster Incident

In April 2003, Mr. Bellairs yelled at a student who was moving a student-government campaign poster. Mr. Bellairs was angry and yelled "Don't you know how hard I work?" to the student. TSPC asserts that this behavior also violated OAR 584-020-0030(1) and (2)(b) (quoted above) and OAR 584-020-0010(5) which requires teachers to use good professional judgment.

Mr. Bellairs acknowledged that it was inappropriate to yell at the student. By doing so, Mr. Bellairs failed to use professional judgment and failed to demonstrate skill in working cooperatively and communicating effectively with others. The evidence supports TSPC's contention that this conduct constituted gross neglect of duty under the applicable rules.

6. May 2003 – Video Camera Incident

In May 2003, Mr. Bellairs chastised a student in front of the class for failing to return a video camera on time. He told the student that he would not be allowed to use class equipment for the remainder of the year and that his family could afford a camera. Following this incident, the student's father sent Mr. Bellairs a letter demanding that his son be allowed to use school equipment or that he be excused from class with a B grade. In subsequent meetings with administrators, the student, and the father, Mr. Bellairs was angry, confrontational and belligerent. His conduct escalated the tension caused by the event and demonstrated a lack of courtesy toward the student, the father, and administrators. He left the student in tears as a result of his comments during a meeting.

TSPC asserts that this behavior also violated OAR 584-020-0030(1) and (2)(b) (quoted above) and OAR 584-020-0010(5) which requires teachers to use good professional judgment. It also alleges that the behavior violated OAR 584-020-0010(1) and (2) which require educators to:

- (1) Recognize the worth and dignity of all persons;
- (2) Encourage scholarship;

Mr. Bellairs acted out of proportion to the circumstances. His comments to the individuals involved were discourteous and did not encourage scholarship. They demonstrated a lack of professional judgment and a failure to work and communicate effectively. The evidence supports TSPC's contention that this conduct constituted gross neglect of duty under the applicable rules.

7. September 2003 – Student Entering Attendance Data

In September 2003, Mr. Bellairs' supervisor, Mr. Chamberlain, saw a student at the front of the room working on a computer next to Mr. Bellairs' desk. Mr. Bellairs told Mr. Chamberlain that the student was inputting attendance data and said he would not allow her to do it again. Mr. Chamberlain reminded Mr. Bellairs that students were not allowed to perform such duties due to confidentiality concerns. Mr. Bellairs followed up this conversation with an e-mail that criticized the school's administration and referred to a "gossip fairy."

TSPC asserts that this behavior also violated OAR 584-020-0030(1) and (2)(b) (quoted above) and OAR 584-020-0010(5) which requires teachers to use good professional judgment. The evidence supports that assertion. Mr. Bellairs was engaged in conduct which he had been specifically told not to do. When confronted about the violation, he responded in an unprofessional and inappropriate way. His conduct demonstrated a lack of professional judgment and a failure to work and communicate effectively. The evidence supports TSPC's contention that this conduct constituted gross neglect of duty under the applicable rules.

8. Fall 2003 – Women's Football Team

In the fall of 2003, Mr. Bellairs was serving as the coach of the school's women's football team. During a practice, Mr. Bellairs became angry that some of the students were not taking the practice seriously. He made comments that the students found upsetting. The students reported that Mr. Bellairs told them "not to go running to their mommies." Mr. Bellairs denied making that statement, but acknowledged he was frustrated and probably used the word "crap" when speaking to the students. The school Principal concluded that the incident was likely the result of a misunderstanding.

Mr. Bellairs told the Principal that he was considering writing a letter to the parents of the students on the team and was convinced that many of the parents would not allow the students to play in an upcoming football game if they knew about the girls' behavior. The Principal told Mr. Bellairs that things had settled down and that he should not write the letter. However, on October 9, 2003, Mr. Bellairs sent an e-mail to staff members advising them that he would not allow some students to participate in the game. He asked other staff members not to "cave in to self-interested parents who believe the system should serve a few kids well."

TSPC alleged that Mr. Bellairs behavior at the practice constituted gross neglect of duty under OAR 584-020-0030(1) and (2)(b) (quoted above) and OAR 584-020-0010(5) which requires teachers to use good professional judgment. The evidence did not support that allegation. Although several students complained about Mr. Bellairs' conduct, the Principal that investigated the matter concluded that it resulted from a misunderstanding. Mr. Bellairs denied telling students that they should "not go running to their mommies." No evidence in the record

demonstrates that Mr. Bellairs made such a statement. His use of the word "crap" during the course of a football practice, while perhaps not ideal, was not so egregious as to constitute a failure to use professional judgment or the skill to work and communicate with others. Thus, the allegation set forth in item number 11 of the Notice is not supported by the record.

However, Mr. Bellairs reaction after the complaint was made does demonstrate a lack of professional judgment. He first threatened to contact parents to criticize the behavior of their children at the practice. He later sent an e-mail notifying staff members that he would not allow some of the students to participate in the upcoming football game. The content of that letter suggested that some parents would object and seek special treatment and that some staff and administrators would "cave-in" to that pressure. The tone and content of the e-mail was unprofessional and negative. The evidence supports TSPC's contention that this conduct constituted gross neglect of duty under the applicable rules.

Sanction

At the hearing, TSPC asserted that it would be seeking to impose a six month suspension based on Mr. Bellairs' conduct. In considering disciplinary action against a teacher, the TSPC may consider any of the following factors set out in OAR 584-020-0045 in its determination:

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

Considering the factors above in light of the circumstances in this case, TSPC rejects the ALJ's recommendation that the appropriate sanction is a reprimand. The ALJ reasoned as follows (*in italics*):

"I find that a six month suspension is not warranted. Rather, a public reprimand and probation of one year is appropriate. The evidence demonstrated a pattern of unprofessional behavior in 2003, and a few incidents in 1999. The evidence did not disclose an ongoing pattern of behavior stretching over Mr. Bellairs' career in Oregon. While staff and students were obviously troubled by some of Mr. Bellairs' conduct, it did not pose any real danger to others. The majority of incidents occurred while Mr. Bellairs was teaching high school students. Mr. Bellairs' did not exhibit model behavior. The behavior was perceived by others, including students, as inappropriate. Thus it is unlikely that students would use that behavior as a model.

Other extenuating circumstances also bear on the appropriateness of the sanction. Mr. Bellairs lost his job as a result of these incidents and has not served as a teacher for some time. He has also been through several hearings as well as a challenge before the Oregon Court of Appeals. In many ways, Mr. Bellairs has already served a sanction for his acts of unprofessional conduct; one that has exceeded one year. A six months suspension, for a teacher who is not working, would not be much in the way of additional sanction and would not address the underlying problems that led to Mr. Bellairs' outbursts.

ORS 342.177(3)(b) allows TSPC to impose a period of probation of up to four years based on Mr. Bellairs' conduct. The evidence established that over the course of his teaching career in Oregon, Mr. Bellairs has had several instances where he acted unprofessionally and out of proportion to fairly minor events. Taken individually, these events can be explained as human reactions to work-place stress. However, the continuing nature of the events demonstrates that Mr. Bellairs has often been unable to keep his emotions in check. A public reprimand and probation for a period of one year with the conditions set out below, to begin if or when he returns to teaching, is an appropriate sanction under the facts of this case. Conditions should include a requirement that Mr. Bellairs comply with the Standards for Competent and Ethical Performance of Oregon Educators pursuant to OAR Chapter 584, Division 020 and that he provides documentation that he has completed (at his own expense) an anger management program to be approved in advance by the Commission. The Commission should be provided with a copy of the course outline and a report of Mr. Bellairs' successful completion of the program."

TSPC considers the following factors in determining that a six month suspension is appropriate:

1. Mr. Bellairs conduct demonstrates a continuing pattern of behavior in which he failed to use professional judgment in the way he related to students and other school personnel, including school administrators. Mr. Bellairs' unprofessional behavior continued even though he had been transferred to a different school in 1999 to have a fresh start. Once there, he was given opportunities to participate in different activities, but each time demonstrated the same traits in being able to cope with the school environment.

2. The record also established that Mr. Bellairs failed to learn from past experiences, but instead continued to act in the same unprofessional manner over the course of several years, and at different schools. When he was referred to the employee assistance program by Ms. Borquist, Mr. Bellairs did not take advantage of it. Even at the time of the hearing, Mr. Bellairs did not acknowledge responsibility for his conduct, but rather blamed his predicament on the actions of a few people within the school district.

3. Mr. Bellairs' lack of insight into his unprofessional conduct makes it more likely that he will engage in similar behavior in the future.

4. Several of the incidents described above were open and notorious, occurring in front of students and staff in common areas.

5. Because some of Mr. Bellairs' conduct occurred in front of students, there is a higher likelihood that students will imitate the type of unprofessional conduct exhibited by Mr. Bellairs.

6. Mr. Bellairs used belittling conduct toward at least one middle school student. TSPC finds that educators must be particularly vigilant in the way that they related to younger, impressionable students.

Based on the foregoing, TSPC finds that a six month suspension is appropriate in this case. TSPC finds that each violation is sufficient to warrant a six month suspension. Before becoming licensed again, Mr. Bellairs must demonstrate that he has taken appropriate steps to address his outbursts against students and staff in order to establish his fitness to teach pursuant to ORS 342.175(3).

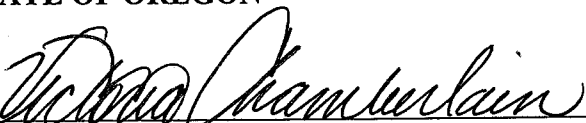
ORDER

TSPC therefore orders as follows:

1. Mr. Bellairs' teaching license is suspended for six months.
2. Prior to reinstatement of his license, Mr. Bellairs shall provide documentation that he has completed (at his own expense) an anger management program to be approved in advance by TSPC. TSPC shall be provided with a copy of the course outline and a report of Mr. Bellairs' successful completion of the program.
3. Prior to reinstatement of his license, Mr. Bellairs must satisfy TSPC that he is fit to teach in accordance with ORS 342.175(3).

IT IS SO ORDERED this 9th day of JULY 2007.

TEACHER STANDARDS AND PRACTICES COMMISSION
STATE OF OREGON

By 
Victoria Chamberlain, Executive Director

EXCEPTIONS

The amended proposed order is TSPC's modification of the Administrative Law Judge's recommendation to the TSPC. If you disagree with any part of this amended proposed order, you may file written objections, called "exceptions," to the amended proposed order and present written argument in support of your exceptions. Written argument and exceptions must be filed **within fourteen (14) days after mailing of the amended proposed order** with the:

Teacher Standards and Practices Commission
465 Commercial Street, NE
Salem, Oregon 97301

If you file exceptions to the amended proposed order, they will be considered along with any prior exceptions you have filed. The Commission need not allow oral argument. The Executive Director may permit oral argument in those cases in which the Director believes oral argument may be appropriate or helpful to the Commissioners in making a final determination. If oral argument is allowed, the Commission will inform you of the time and place for presenting oral argument.