

If, after you have filed a petition for rehearing or reconsideration, the agency issues an Order that you are dissatisfied with, you have a right to appeal that Order to the Oregon Court of Appeals pursuant to ORS 183.482.

If, 60 days after you have filed a petition for rehearing or reconsideration, the agency has not issued an Order, your petition will be considered denied and at that time you will have the right to appeal the original Order to the Oregon Court of Appeals pursuant to ORS 183.480 and ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day that your petition for rehearing or reconsideration is deemed denied. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
TEACHER STANDARDS AND PRACTICES COMMISSION**

IN THE MATTER OF) PROPOSED ORDER
)
THOMAS PHILLIP DREWEK,)
Respondent) OAH No. 122818

HISTORY OF THE CASE

The Teacher Standards and Practices Commission (TSPC or Commission) issued a Notice of Opportunity for Hearing to Thomas Phillip Drewek on May 6, 2005. Mr. Drewek requested a hearing on May 12, 2005. The Commission amended its Notice of Hearing on October 28, 2005. The Commission orally amended the Notice of Hearing at the outset of the hearing on November 17, 2005.¹ Mr. Drewek did not object to this amendment.

The Commission referred Mr. Drewek's request for hearing to the Office of Administrative Hearings (OAH) on July 20, 2005. The OAH assigned Administrative Law Judge (ALJ) Andrea H. Sloan to preside at hearing. ALJ Sloan convened a prehearing conference on October 27, 2005, to resolve discovery issues.

A hearing was held on November 17 and 18, 2005, in the OAH offices in Beaverton, Oregon. Mr. Drewek appeared without counsel and testified at the hearing. The Commission was represented by Senior Assistant Attorney General Joe Gordon McKeever. Testifying on behalf of the Commission were: Joseph Malone, principal of Ockley Green Middle School; Lucinda Peterson, teacher at Ockley Green Middle School; Dawn Jackson, program chair at Rosemont DART School; Sandra Geiacalone, para-educator at Bridger Elementary School; Barbara Stonecypher, teacher at Rosemont DART School; Eileen Weidrich, teacher at Mt. Tabor Middle School; Rachele Lizio-Katzen, teacher at Northwest Academy; Morrie Allen Sails, II, student at Benson Polytechnic High School; Tai Said-Hall, teacher at Lane Middle School; Cynthia Gilliam, principal at Mt. Tabor Middle School; Cathy Nichols, para-educator at Lewis Elementary School; Lynn Beundefeldt, principal on special assignment to the Portland Public School District; Juan Cortez, student at Focus Program/Madison High School; and Matthew Moule, teacher at Beaumont Middle School. The record closed on November 18, 2005.

¹ The Commission amended the Amended Notice of Hearing to include the following language at the end of Section 7(d): "and OAR 584-020-0040(4)(n) as that rule incorporates OAR 584-020-0030(1)(2)."

ISSUES

1. Whether Mr. Drewek committed acts which constitute gross neglect of duty. ORS 342.175 and OAR 584-020-0040(4)(d), 584-020-0040(4)(l), 584-020-0040(4)(n) and 584-020-0040(4)(o).²
2. If so, what is the appropriate sanction? ORS 342.175.

EVIDENTIARY RULING

Exhibits A1 through A20, offered by the Commission, were admitted into the record. Exhibits R1 through R12, offered by Mr. Drewek, were admitted into the record.

FINDINGS OF FACT

1. Mr. Drewek has been a licensed teacher in the State of Oregon since 1987. (Testimony of Mr. Drewek.) His most recent teaching license, number 262526, expired on November 18, 2005. (Ex. A1 at 1 and 2.) Mr. Drewek has worked as a substitute teacher for the Portland Public Schools since 1988. (Ex. A15 at 1.) By his own estimation, Mr. Drewek worked as a substitute teacher 150 to 160 days each school year. (*Id.*)
2. The Rosemont DART (Day and Residential Treatment) school is a secure, lockup treatment facility for girls age 12 to 18. The Rosemont DART school operates within the Morrison Center, a mental health treatment agency. Counselors from the Morrison Agency staff an office at the school and are available to see students who need assistance throughout the day. All of the girls who attend school at Rosemont DART are wards of the court. All of the girls have been victims of sexual and/or physical abuse, and approximately 50 percent of the girls have drug and/or alcohol issues. (Ex. A3 at 3; testimony of Dawn Jackson.)
3. Because of the special needs of the students, all teachers at Rosemont DART, including substitute teachers, are required to abide by specific rules of conduct. (Testimony of Dawn Jackson.) All substitute teachers are required to read a document entitled "Substitute Protocols" and sign a "Propriety and Privacy Agreement." (Exs. 18 and 19.) Either the program chair, or an administrative assistant, ensures that all substitute teachers receive and sign the above documents. (Testimony of Dawn Jackson.) The Propriety and Privacy Agreement prohibits "references to drugs, alcohol and violence." (Ex. A18.) Under specific, limited circumstances, a teacher may discuss sex, drugs and alcohol topics in the classroom. These discussions must be for an educational purpose and put into proper context for the students. Teachers must be extremely careful to avoid upsetting the girls. (Testimony of Dawn Jackson and Barbara Stonecypher.) The Morrison Agency requires that all teachers, including substitutes, stay at least six inches away from the students at all times. Encroaching on the personal space of the students can trigger memories of past sexual and physical trauma. (Exs. 18 and 19; testimony of Dawn Jackson.)

² See Appendix B for complete text of these authorities.

4. During the 2001-2002 school year, Mr. Drewek worked as a substitute teacher at Rosemont DART a few times. Several students complained to Morrison Agency staff and Ms. Jackson that Mr. Drewek would stand too close to them as he walked around the classroom. The students reported that Mr. Drewek "hovered" next to them, that he surprised them by standing so close, and that he made the students feel uncomfortable. (Ex. A3; testimony of Ms. Jackson.)

5. Another Rosemont DART student reported that Mr. Drewek talked to her in detail about the Jack Daniel's Distillery as she was doing research for a report on Tennessee. The student, a recovering alcoholic, felt very uncomfortable talking to Mr. Drewek about a liquor distillery. The student told Mr. Drewek that she was an alcoholic. Mr. Drewek laughed and did not apologize to her. The student reported this incident to Ms. Jackson. (Ex. A3; testimony of Ms. Jackson.)

6. On another occasion, Mr. Drewek was sitting in the teacher's lounge when Ms. Jackson walked in, dressed in her dance clothes (she was a dance instructor at the time). Mr. Drewek said, "You look better with less clothes on." This made Ms. Jackson very uncomfortable and she confronted Mr. Drewek, who apologized. (Testimony of Ms. Jackson.)

7. On another day at the Rosemont DART School, Mr. Drewek was sitting near the teacher mailboxes when Barbara Stonecypher, one of the regular teachers, entered the room. As she checked her mailbox, Mr. Drewek said, "Your husband must be really satisfied with you because you are tall and beautiful." Ms. Stonecypher was extremely uncomfortable about this comment because she did not know Mr. Drewek, and she felt that his comment was inappropriate. (Testimony of Ms. Stonecypher.) Mr. Drewek believes that "most women" would take his comment as a compliment. (Testimony of Mr. Drewek.)

8. On October 16, 2002, Ms. Jackson was in a classroom where Mr. Drewek was teaching when she overheard Mr. Drewek telling a joke about "welfare mothers" to the students. All of the students at Rosemont DART qualify for public assistance. She also heard him telling an ethnically insensitive joke to the students. Ms. Jackson asked Mr. Drewek to come to her office. Once there, Ms. Jackson told Mr. Drewek that he had to leave the building. She based her decision to send Mr. Drewek home on her observations, and on the reports she received from students, Ms. Stonecypher and the Morrison Agency staff. Mr. Drewek became angry, and flushed and clenched his fists. He walked toward Ms. Jackson, who backed into a corner of the room. Ms. Jackson felt threatened by Mr. Drewek. Mr. Drewek is much larger than Ms. Jackson. (Ex. A3 at 3; testimony of Ms. Jackson.) Ms. Stonecypher witnessed this incident. (Testimony of Ms. Stonecypher.)

9. In October 2002, Ms. Jackson filed an Administrator's Request to Restrict Substitute From Building/Program form, documenting the incidents set out above concerning Mr. Drewek. (Ex. A3 at 2 and 3.) The form was approved by Rose Bond, administrator of the Rosemont DART school. (Ex. A3 at 2.) On November 5, 2002, Larry Gant, Administrator for the Department of Human Resources of the Portland Public Schools, notified Mr. Drewek by letter that Ms. Bond had requested that Mr. Drewek not return to her school for the remainder of the school year. (Ex. A3 at 1.)

10. On November 15, 2002, Mr. Drewek worked as a substitute teacher in an eighth grade class at Ockley Green Middle School. Some sixth and seventh grade teachers at this school line their students up and walk them, in a line, to lunch. This is not the practice with eighth grade classes. (Testimony of Mr. Malone and Ms. Peterson.) Ockley Green employed a Student Management Specialist who was responsible for student discipline. (Testimony of Mr. Malone.) Most Ockley Green teachers allow eighth grade students to leave class two to three minutes before the lunch bell, so that the students can get in line first for lunch. (Testimony of Ms. Peterson.)

11. On November 15, 2002, a few minutes before the lunch bell rang, the students in Mr. Drewek's classroom started lining up at the rear of the classroom, preparing to leave for lunch. Mr. Drewek wanted to prevent students from leaving early, so he positioned himself with his back to the door, facing the students. Mr. Drewek had his hand on the door knob. (Testimony of Mr. Cortez.) Juan Cortez, a student in the class, walked up to the door and tried to leave.³ Mr. Drewek blocked Juan and at one point, hooked his arm around Juan's neck, in a headlock maneuver. (Testimony of Mr. Cortez and Mr. Sails.) Juan felt himself lifted off the ground while Mr. Drewek had his arm around Juan's neck. (Testimony of Mr. Cortez.) Juan pushed away and Mr. Drewek released his hold. (Testimony of Mr. Sails and Mr. Cortez.) Juan and the class eventually were allowed to leave for lunch. Juan immediately complained to school administrators. Mr. Malone observed red scratches on Juan's neck and upper arm and photographed the injuries.⁴ (Testimony of Mr. Malone.) Ms. Peterson saw the injuries to Juan's neck and spoke with him about the incident. (Testimony of Ms. Peterson.) Mr. Drewek admitted to Mr. Malone that he tried to physically block Mr. Cortez from leaving the classroom. (Testimony of Mr. Malone and Mr. Drewek.)

12. On November 18, 2002, Mr. Malone filed an Administrator's Request to Restrict Substitute From Building/Program form regarding Mr. Drewek and his conduct at Ockley Green Middle School. (Ex. A5 at 2 and 3; testimony of Mr. Malone.) On November 21, 2002, Mr. Gant notified Mr. Drewek by letter that Mr. Malone had requested that Mr. Drewek not return to Ockley Green Middle School for the remainder of the school year. (Ex. A4 at 1.)

13. The Commission learned that on May 16, 2001, while substitute teaching at Whitaker Middle School, Mr. Drewek tried to physically block a student from leaving the classroom by placing the student in a headlock. Ms. Beundefeldt, the principal at Whitaker, directed her staff to report the incident to the Portland Police Bureau. She considered Mr. Drewek's behavior toward this student to be "out of control." (Testimony of Ms. Beundefeldt.) Officer Winters of the Portland Police Bureau interviewed witnesses and Mr. Drewek, and filed a police report. (Ex. A2.) Mr. Drewek does not remember this event. (Testimony of Mr. Drewek.)

14. When a middle school student tries to leave a classroom, a teacher should never try to physically restrain the student. Rather, the teacher should allow the student to leave and then

³ It is unclear whether Juan tried to leave before the bell rang (testimony of Mr. Drewek) or after the bell rang (testimony of Mr. Sails).

⁴ Mr. Malone was not able to produce the photographs of Juan's injuries at the hearing.

notify the Student Management Specialist or other administrator, who will then take steps to discipline the student. A teacher should use physical restraint if it will prevent injury to the student or another person. (Testimony of Mr. Malone and Ms. Beudefeldt.) Using physical restraint with a student will cause the student to escalate his or her response and will not calm down the situation. (Testimony of Ms. Peterson and Ms. Beudefeldt.)

15. At the majority of schools where Mr. Drewek taught, he had to block doors to prevent students from "sneaking out" early. (Testimony of Mr. Drewek.)

16. On December 4, 2002, Mr. Drewek was assigned to work at Bridger Elementary School in a classroom with eight autistic children and three para-educators. (Ex. A5; testimony of Ms. Geiacalone.) One of the students, Zach, was nine or ten years old at that time. On this day, Mr. Drewek was assigned as the "licensed teacher" in the classroom. Because he was not specially trained, the para-educators did not expect Mr. Drewek to discipline the students. (Testimony of Ms. Geiacalone.) The students watched a video that afternoon. Mr. Drewek sat on a chair, watching the video. Zach approached Mr. Drewek and climbed onto his lap. Zach lay against Mr. Drewek's stomach, and placed his lips and nose on Mr. Drewek's lips and nose. Mr. Drewek put his arm around Zach and sat still while Zach kissed him. (Ex. A5; testimony of Mr. Drewek, Ms. Geiacalone and Ms. Nichols.) After 30 to 45 seconds, Ms. Geiacalone noticed that Mr. Drewek was not stopping Zach or taking steps to move Zach from his lap. She yelled, "Inappropriate! Get down, Zach!" Mr. Drewek still did nothing to remove Zach. Ms. Geiacalone picked Zach up and placed him in a nearby chair. Cathy Nichols, another para-educator in the room that day, witnessed Mr. Drewek's behavior with Zach. Both Ms. Nichols and Ms. Geiacalone were upset and felt that Mr. Drewek's conduct was inappropriate because he took no action to stop Zach from kissing him. (Ex. A5 at 2 and 3; testimony of Ms. Geiacalone and Ms. Nichols.)

17. On December 5, 2002, Marilyn Seger, administrator of Bridger Elementary School, filed an Administrator's Request to Restrict Substitute From Building/Program form regarding Mr. Drewek and his conduct with Zach. (Ex. A5 at 1.)

18. Mr. Drewek believed that his conduct with Zach was "misunderstood" because of his gender and size. (Testimony of Mr. Drewek.) Mr. Drewek is 6'7" tall and weighs approximately 280 pounds. (Ex. R12 at 4.) Mr. Drewek believes he has been "cursed" because of his size and has learned "to stay away from people." Mr. Drewek believes that his size is "a defect." Mr. Drewek feels that people "pick" on him and that he is "not allowed to show affection." (Ex. A17 at 13.) Mr. Drewek acknowledged that he did not have specific training to teach autistic children. He has taught "deaf and dumb kids" at Sunnyside School and worked with "retarded students." (Testimony of Mr. Drewek.)

19. On January 22, 2003, Mr. Drewek worked as a substitute teacher in a math class at Mt. Tabor Middle School. Ms. Weidrich was the regular teacher. It was her practice to leave detailed notes for substitutes, stating which of her students needed accommodations due to their Individualized Education Programs (IEPs). On that day, Ms. Weidrich's students were expected to take a math test. She left instructions for the class that they were not to use calculators. (Testimony of Ms. Weidrich.) Mr. Drewek saw this note, and wrote "no calculators" on the

classroom white board. (Testimony of Mr. Drewek.) Ms. Weidrich left a note attached to her grade book, stating that a particular student was allowed to use a calculator because of her IEP. (Ex. A6 at 2; testimony of Ms. Gilliam.) Mr. Drewek did not see any notes regarding IEP students. (Testimony of Mr. Drewek.) The student asked to use a calculator, and Mr. Drewek said that she could not. The student's mother complained to Ms. Gilliam, principal at Mt. Tabor, about the school's failure to accommodate her daughter's IEP. Ms. Gilliam met with Mr. Drewek that afternoon. She saw Ms. Weidrich's note about this student and her IEP clearly attached to the grade book. (Ex. A6 at 2; testimony of Ms. Gilliam.)

20. On January 24, 2003, Ms. Gilliam filed an Administrator's Request to Restrict Substitute From Building/Program form regarding Mr. Drewek and his failure to provide an IEP accommodation. (Ex. A6 at 2.) On November 21, 2003, Mr. Gant notified Mr. Drewek by letter that Ms. Gilliam had requested that Mr. Drewek not return to Mt. Tabor Middle School for the remainder of the school year. (Ex. A6 at 1.)

21. On March 13, 2003, Mr. Drewek worked as a substitute teacher at Whitaker Middle School. Whitaker has since been closed, but in 2003 it was located on NE Columbia Boulevard in an industrial, inner city neighborhood. At that time, Whitaker was the only middle school in Oregon to fail federal standards. A majority of students at Whitaker were African-American and economically poor. (Testimony of Ms. Lizio-Katzen.) Whitaker administration referred to substitutes as "guest teachers." (Testimony of Ms. Beundefeldt.)

22. On that day, Mr. Drewek substituted for Matthew Moule. Mr. Moule had a student teacher, Rachele Lizio-Katzen, at that time. Ms. Lizio-Katzen was in the classroom with Mr. Drewek on March 13, 2003. After watching Mr. Drewek teach the first period, Ms. Lizio-Katzen taught the remainder of day's classes. She did this because she felt that Mr. Drewek did not have a positive rapport with the students. Ms. Lizio-Katzen believed that Mr. Drewek's interactions with the students were unprofessional, and she was uncomfortable with him as a teacher. Specifically, Ms. Lizio-Katzen was concerned with Mr. Drewek's lack of basic class management skills. Mr. Drewek raised his voice and threatened students with referrals to the office. Mr. Drewek did not try other, more constructive techniques to relate to the students. During a break between classes, Ms. Lizio-Katzen tried to help Mr. Drewek become more comfortable by talking to him. She was upset by Mr. Drewek's negative, disrespectful comments about "these students." She pressed Mr. Drewek for an explanation, and he continued talking about the "poor, black kids." Mr. Drewek explained that it was easier for him to teach "these kids" since they were failing and expectations for the students were already low. Ms. Lizio-Katzen reported her concerns the next day to Mr. Moule. Several students complained to Ms. Lizio-Katzen about Mr. Drewek and his disrespectful attitude. (Testimony of Ms. Lizio-Katzen.)

23. On April 2, 2003, Mr. Moule filed a Teacher Request to Restrict Substitute from Classroom form regarding Mr. Drewek, whom he referred to as "Mr. Drake."⁵ He based his request on the comments from Ms. Lizio-Katzen, and on his own observations of Mr. Drewek. Mr. Drewek had been a frequent substitute at Whitaker, and Mr. Moule had seen Mr. Drewek teaching. He noted that students in Mr. Drewek's classes seemed loud and out-of-control and did

⁵ Mr. Moule's students called Mr. Drewek "Mr. Drake."

not seem to follow Mr. Drewek's lessons. In one case, he observed Mr. Drewek discussing college-level astronomy concepts in a science class. Mr. Moule thought that this was odd and wondered why Mr. Drewek would spend time on a subject that was obviously not part of the lesson plan. Mr. Drewek also substituted for Mr. Moule several times, and when he returned, Mr. Moule was generally dissatisfied with what Mr. Drewek had covered with his students. For example, Mr. Drewek would not follow the lesson plan, or would only cover a portion of the material that Mr. Moule expected him to teach. Mr. Moule believed that Mr. Drewek was racist based on the comments he made to Ms. Lizio-Katzen. Mr. Moule was supposed to contact Mr. Drewek to discuss the concerns he listed in the Request to Restrict, but Mr. Moule chose not to do so. (Ex. A7 and testimony of Mr. Moule.) Because Mr. Moule did not contact Mr. Drewek, Mr. Drewek was not restricted from teaching at Whitaker for the remainder of the 2002-2003 school year. (Testimony of Mr. Moule.)

24. Mr. Drewek did not like teaching at Whitaker. When he was called to teach there, he "shuddered" because "most of the time it was not a good experience." Nonetheless, Mr. Drewek regularly accepted teaching assignments at Whitaker. He contrasted Whitaker students with high IQ, industrious "white" students at Winterhaven School in SW Portland. (Testimony of Mr. Drewek.)

25. On September 19, 2003, Portland Public Schools reprimanded Mr. Drewek because of the incident in late 2002 at Bridger Elementary School with Zach, the student who climbed onto Mr. Drewek's lap and kissed him for an extended period of time. Mr. Gant advised Mr. Drewek that he was being reprimanded "for failure to keep the proper and professional, physical boundaries and distance between [Mr. Drewek] and a student while on assignment." (Ex. A9.)

26. Portland Public Schools and the Portland Association of Teachers agreed in November 2003 that Mr. Drewek would be evaluated by Cascade Counseling concerning his fitness to work as a substitute teacher. (Ex. R12 at 1.) Cascade Counseling referred Mr. Drewek to a forensic clinical psychologist for further evaluation. (Ex. R12 at 2.) Dr. Ronald N. Turco, M.D., performed a psychiatric evaluation of Mr. Drewek on February 5, 2004. Dr. Turco concluded that Mr. Drewek's examination was "entirely within normal limits" and that he was "fit to be a substitute teacher or a regular teacher on a regular and full times [*sic*] basis." (Ex. R12 at 4 through 7.)

27. On May 18, 2004, Mr. Drewek was a substitute for the Whitaker librarian. The librarian left instructions with Mr. Drewek that he was to keep the store room locked. (Testimony of Mr. Drewek.) On that day, Tai Said-Hall, a Whitaker teacher, got a key for the store room from the school secretary. At approximately 10:30 a.m., Ms. Said-Hall let herself into the room so that she could pump breast milk for her infant. Ms. Said-Hall used the room to pump breast milk every school day at the same time. As was her habit, she put a sign on the door that read, "Please do not come in -- Tai." She locked the door from the inside and walked about ten feet into the room so that she could set up her breast pump on a table. In order to use the pump, Ms. Said-Hall had to remove her clothing from the waist up. She attached the pump to both breasts and started the machine. It is not possible to immediately stop a breast pump. After about ten minutes, she heard the locked door open. She did not see who was coming inside, but yelled, "Please don't come in." Mr. Drewek continued walking into the room toward

her. Ms. Said-Hall bent over in an attempt to shield her breasts from view and continued to yell at Mr. Drewek to get out and leave the room. Mr. Drewek walked up to where she sat and stared at Ms. Said-Hall. She screamed, "I'm pumping my breasts! Get out!" Mr. Drewek seemed confused and eventually turned around and left. He was inside the room with Ms. Said-Hall for close to one minute. Ms. Said-Hall was "freaked out" by Mr. Drewek's behavior and did not feel safe. She was scared and shocked and reported the incident to school personnel that same day. When Ms. Said-Hall left the store room that morning, her sign was still in place on the door. (Ex. A13 at 1; testimony of Ms. Said-Hall.) Mr. Drewek did not immediately leave the room because he did not understand how Ms. Said-Hall got inside, or what she was doing inside the room. He was not sure that he saw the note on the door, but if he had, he would have assumed that it did not apply to him since he had the keys to the room. (Testimony of Mr. Drewek.)

28. Mr. Drewek has a hearing loss and chooses not to wear hearing aids in the classroom. (Ex. R12 at 5.)

29. During the week of May 26, 2004, Mr. Drewek was a substitute at Whitaker. Part of the week, he substituted for the librarian. On Tuesday of that week, he met two students who helped in the library. One of the students was a 13 year-old girl named Jessica Martz. Mr. Drewek was impressed by how hard Jessica worked, helping him organize and shelve library books. On Wednesday, while teaching in a classroom, Mr. Drewek again noticed that Jessica assisted him again. He was very appreciative that she was helpful and attentive to him. Mr. Drewek believed that Jessica waited outside the school in the mornings until he came to work, so that she could walk in with him. On Thursday, Mr. Drewek was back in the library. Jessica told him that she lived with a foster family, and that some of the girls in her foster home went to Monroe School (a school for pregnant students). Mr. Drewek told Jessica the story of Cinderella and her fairy godmother. He told Jessica that if he could ever do anything to help her, she should contact him and he would try to do what he could to help her. Mr. Drewek gave Jessica a note with his home address and phone number. On the back of the note, Mr. Drewek wrote, "When you wish upon a star, makes no difference who you are. Your dreams will come true." (Ex. A12 at 2-3; testimony of Mr. Drewek.) Mr. Drewek also told Jessica that she was too young to have a boyfriend, and asked if she wanted to end up at the Monroe School. (Ex. A17 at 29.) Mr. Drewek believed that "many girls when they're thirteen or fourteen years old with boyfriends end up at the Monroe School." (*Id.*)

30. Jessica showed the note to Ms. Beundefeldt and also reported Mr. Drewek's comments about her being too young for a boyfriend. Ms. Beundefeldt, who was the principal at Whitaker at that time, concluded that Mr. Drewek's behavior was unprofessional, inappropriate and "scary." Whitaker staff reported the incident to the Portland Police Bureau by calling the child abuse hotline. Mr. Drewek's note to Jessica crossed an important professional line and evoked fear in Ms. Beundefeldt. Teachers are trained to turn over information related to them by students to trained professionals who are in a position to help the students with emotional issues. It is not appropriate for a teacher to become personally involved with a student. (Testimony of Ms. Beundefeldt.)

31. Loretta Benjamin-Samuels, a Human Resources Administrator for the Portland Public Schools, wrote Mr. Drewek on June 23, 2004, advising him that the District terminated

him from its Substitute List. Ms. Benjamin-Samuels based her decision to terminate Mr. Drewek on the complaints made against Mr. Drewek by Tai Said-Hall, Juan Cortez and Jessica Martz. (Ex. A13.)

32. On June 30, 2004, Maureen R. Sloane, Human Resources Counsel for the Portland Public Schools, advised TSPC that the District had investigated Mr. Drewek and removed him "from the District's substitute list." (Ex. A14.)

33. Mr. Drewek has not worked as a substitute teacher since June 2004. (Testimony of Mr. Drewek.)

CONCLUSIONS OF LAW

1. Mr. Drewek committed acts which constitute gross neglect of duty.
2. Revocation of Mr. Drewek's right to apply for a teaching license is the appropriate sanction.

OPINION

The Commission presented evidence of 11 incidents which, it alleges, prove that Mr. Drewek committed acts that constitute gross neglect of duty. OAR 584-020-0040(4)(d), (f), (l), (n) and (o). Mr. Drewek acknowledged committing several of the acts, but argued that his motives were misunderstood and misinterpreted. The Commission argued that, while Mr. Drewek made good contributions in the past as a teacher, teaching is no longer the type of demanding job that is best for him. The Commission argued that it should revoke Mr. Drewek's right to apply for renewal of his teaching license.

"The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position." ORS 183.450(2). Here, the Commission has the burden of proving its allegations. *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989). For the reasons discussed below, I conclude that the Commission has met its burden of proof and I agree that revocation is the appropriate sanction.

The Commission is authorized, under ORS 342.175, to revoke a teacher's license.

The Teacher Standards and Practices Commission may suspend or revoke the license of a teacher or administrator, discipline a teacher or administrator or suspend or revoke the right of any person to apply for a license if the person has held a license at any time within five years prior to issuance of the notice of charges under ORS 342.176 based on the following:

* * *

(b) Gross neglect of duty;

* * * * *

In addition, the legislature has authorized the Commission to adopt rules "necessary for the issuance, denial, continuation, renewal, lapse, revocation, suspension or reinstatement of licenses or registrations issued under ORS 342.120 to 342.430." ORS 342.165.

The Commission has defined "gross neglect of duty" to include the following:

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:

* * *

(d) Unreasonable physical force against students, fellow employees, or visitors to the school, except as permitted under ORS 339.250;

* * *

(f) Any sexual conduct with a student;

* * *

(l) Sexual harassment;

* * *

(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; * * *.

OAR 584-020-0040(4). The Commission's 11 allegations relate to the five subsections of OAR 584-020-0040(4) set out above.

Unreasonable physical force against a student -- OAR 584-020-0040(4)(d)

The Commission alleged that Mr. Drewek committed an act that constitutes a gross neglect of duty when he placed Juan Cortez in a headlock as the student attempted to leave the classroom at Ockley Green Middle School on November 15, 2002. Mr. Drewek did not contest the fact that he used physical force against Juan Cortez, but he argued that he was defending himself and trying to prevent students from leaving the classroom early. Mr. Drewek further argued that he has stood in front of classroom doors over 2000 times, and he has only had physical altercations with two students.

According to OAR 584-020-0040(4)(d), the Commission considers "unreasonable physical force against students * * * except as permitted under ORS 339.250" to be an example of a gross neglect of duty. ORS 339.250(2) provides that a teacher may use "reasonable physical force upon a student when and to the extent the [teacher] believes it necessary to maintain order in the school or classroom" if the district school board has adopted written policies authorizing such use of force.⁶ There is no evidence before me that the Portland Public Schools have a

⁶ ORS 339.250(2) provides as follows:

policy that authorizes a teacher to use physical force against a student. Moreover, two administrators, Mr. Malone and Ms. Beudefeldt, and a teacher, Ms. Peterson, testified that Mr. Drewek's use of physical force against students was unreasonable and unprofessional. Both Whitaker and Ockley Green had Student Management Specialists who were responsible for disciplining students. It was not necessary for Mr. Drewek to physically block Juan Cortez and place him in a headlock. There were other alternatives available to Mr. Drewek, yet he chose to escalate his response and use force against a middle school student. Mr. Drewek had used a similar technique against a student at Whitaker in 2001. Mr. Drewek's use of force against Juan Cortez was not reasonable and constituted a gross neglect of duty under ORS 343.175 and OAR 584-020-0040(d).

Sexual conduct with a student -- OAR 584-020-0040(4)(f)

The Commission charged Mr. Drewek with violating OAR 584-020-0040(4)(f) because he allowed Zach, a special education student, to climb onto his lap and kiss him on the lips for 30 to 45 seconds. Mr. Drewek does not deny that he allowed Zach to kiss him, but argues that his conduct was misconstrued because he is a large man. Mr. Drewek argued that female teachers are allowed to be physical with students, but he is considered "homosexual" if he is physical with a boy, and a "pervert" if he is physical with a girl. Mr. Drewek defended his conduct with Zach by asserting that he did not want to reject Zach or make him feel bad for showing affection. He further asserted that, because there were para-educators in the room, he did not believe that it was his responsibility to discipline Zach.

I can think of no circumstances where it would be appropriate for a teacher, of either gender, to kiss a student on the lips for 30 to 45 seconds. Mr. Drewek was responsible for his behavior in the classroom, and for redirecting Zach toward more appropriate behavior. His failure to do so was unprofessional and disturbing. Mr. Drewek cannot avoid responsibility for his conduct by assigning blame to the para-educators. Mr. Drewek was ultimately responsible for behaving properly and for redirecting Zach.

I must determine, however, whether Mr. Drewek's actions amounted to sexual conduct with a student, which is cited in OAR 584-020-0040(4)(f) as an example of gross neglect of duty. Sexual conduct with a student is defined at OAR 584-020-0005(5) to include the following:

- (a) The intentional touching of the breast or sexual or other intimate parts of a student;
- (b) *Causing, encouraging, or permitting a student to touch the breast or sexual or other intimate parts of the educator;*

Pursuant to the written policies of a district school board, an individual who is a teacher, administrator, school employee or school volunteer may use reasonable physical force upon a student when and to the extent the individual reasonably believes it necessary to maintain order in the school or classroom or at a school activity or event, whether or not it is held on school property. The district school board shall adopt written policies to implement this subsection and shall inform such individuals of the existence and content of these policies.

- (c) Sexual advances or requests for sexual favors directed towards a student;
- (d) Verbal or physical conduct of a sexual nature when directed toward a student or when such conduct has the effect of unreasonably interfering with a student's educational performance or creates an intimidating, hostile or offensive educational environment; or
- (e) Verbal or physical conduct which has the effect of unreasonably interfering with a student's educational performance or creates an intimidating, hostile or offensive educational environment.

(Emphasis added). The rules do not define "other intimate parts." The Commission interprets "permitting a student to touch * * * other intimate parts of the educator" to include kissing on the lips. An agency's interpretation of its rules will be given deference by the courts if the rule is consistent with applicable statutes, and if the legislature has given the agency broad authority to establish rules in order to further its mandate. *Martin v. ODOT*, 122 Or App 271, 274 (1993); *Don't Waste Oregon Com. v. Energy Facility Siting*, 320 Or 132, 142 (1994) (an agency's construction of its own rule will be affirmed if the interpretation is plausible and not inconsistent with the rule itself, the context of the rule, or some other source of law). I am persuaded that the agency's interpretation of "sexual conduct" in this context is plausible and reasonable. Mr. Drewek committed an act that constituted a gross neglect of duty, in violation of OAR 584-020-0040(4)(f).

Sexual harassment -- OAR 584-020-0040(4)(l)

In support of this allegation, the Commission presented the testimony of Ms. Jackson and Ms. Stonecypher. Both women testified credibly that Mr. Drewek made comments about their appearance that made the women extremely uncomfortable. Specifically, Mr. Drewek told Ms. Jackson that she looked better wearing less clothing, and Ms. Stonecypher that her husband must be proud because she was tall and beautiful. Mr. Drewek defended his comments by asserting that most women would be flattered by his statements.

The Commission defines sexual harassment in OAR 584-020-0005(6):

"Sexual harassment": Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (c) Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

Mr. Drewek's comments made both women extremely uncomfortable. Under certain circumstances, causing a person feel extremely uncomfortable may create an offensive working environment. For example, Mr. Drewek's statement to Ms. Jackson, that she looked better wearing less clothing, was patently offensive to the point of creating an offensive working

environment. I am satisfied that the Commission has proven that the statement to Ms. Jackson met the definition of sexual harassment under OAR 584-020-0005(6)(c).

Mr. Drewek's comment to Ms. Stonecypher, however, is less clearly offensive. The comment was inappropriate because Mr. Drewek did not know Ms. Stonecypher, but I cannot conclude that this statement alone created an intimidating, hostile or offensive working environment.

Substantial deviation from standards of competency -- OAR 584-020-0040(4)(n)

The Commission presented evidence of several incidents which, it argues, prove that Mr. Drewek's conduct substantially deviated from the professional standards of competency for teachers. Substantial deviation from these standards is an example of gross neglect of duty. OAR 584-020-0040(4).

The Commission's professional standards of competency are set out in OAR 584-020-0010 through 0030. (See Appendix B.) The Commission defines competency as "Discharging required duties as set forth in these rules." OAR 584-020-0005(2).

Use of force against a student

The Commission contends that Mr. Drewek substantially deviated from professional standards of competency by physically blocking and placing Juan Cortez, a student, in a headlock. OAR 584-020-0010(5) provides that a competent educator "demonstrates a commitment to * * * use professional judgment." Three witnesses testified that Mr. Drewek demonstrated poor judgment by using force against a student to keep the student from leaving the classroom early. Mr. Drewek argued that he was simply following instructions and his understanding of the school's policy when he stood against the door and physically prevented students from leaving the classroom. I am persuaded that Mr. Drewek demonstrated poor professional judgment in this instance. In addition, the Commission's rules require competent teachers to demonstrate "skill in the supervision of students." OAR 584-020-0020(2)(d). Mr. Drewek's behavior toward Juan Cortez demonstrated his lack of control in the classroom. Instead of trying positive, creative ways to maintain control, Mr. Drewek resorted to physical force. Mr. Drewek did not demonstrate skill in the supervision of students. The Commission has proven that Mr. Drewek substantially deviated from the professional standards of competency.

Allowing a student to kiss him

The Commission argues that Mr. Drewek substantially deviated from professional standards of conduct by allowing Zach, an autistic child, to climb onto Mr. Drewek's lap and kiss him on the lips. Mr. Drewek does not dispute that Zach kissed him on the lips for between 30 and 45 seconds, or that he put his arms around Zach and did not take steps to move Zach from his lap. This behavior demonstrated a profound lack of professional judgment. OAR 584-020-0010(5). Mr. Drewek's conduct with Zach was a substantial deviation from professional standards of competency.

Failing to comply with an IEP

The Commission next contends that Mr. Drewek deviated from professional standards of competency by failing to follow the IEP that required him to allow the student to use a calculator during an examination. His failure to comply with, or even notice the IEP, demonstrates that Mr. Drewek lacked management skills that a competent educator is expected to possess. OAR 584-020-0025(1) provides as follows: "The competent educator is a person who understands students and is able to relate to them in constructive ways. The competent educator establishes and maintains good rapport. *The competent educator maintains and uses records as required, and as needed to assist the growth of students.*" (Emphasis added.)

Mr. Drewek argued that the student should have known where the calculators were and could have asked to use them. He further argued that he did not see the IEP and would have no way of knowing which students were supposed to use calculators, when the teacher's general instructions were that calculators were not allowed.

This is an example of Mr. Drewek's rigid adherence to one instruction, to the detriment or exclusion of other instructions or circumstances. Mr. Drewek simply did not see the IEP note. That does not relieve him of responsibility. He is required, as a competent instructor, to use "records as required, and to assist the growth of students." He did not do so. The Commission has proven that Mr. Drewek's conduct substantially deviated from the professional standards of a competent educator.

Behavior in the classroom at Whitaker Middle School

The Commission contends that Mr. Drewek's conduct in March 2003 at Whitaker Middle School demonstrated that he lacked necessary management, human relations and communication skills.

Specifically the Commission points to Mr. Drewek's attitude toward the students at Whitaker, as evidenced by his conversation with Ms. Lizio-Katzen in which he referred to the students as "these kids." When she pressed him to explain what he meant, Mr. Drewek said "these poor, black kids," and explained that it was easier to teach them because expectations for the students were already low. Ms. Lizio-Katzen and Mr. Moule believed that Mr. Drewek lacked respect for the students at Whitaker. According to Mr. Moule, Mr. Drewek's classes were loud and out-of-control, and Mr. Drewek did not follow lesson plans left for him, or only taught a portion of the lessons. Ms. Lizio-Katzen observed that Mr. Drewek lacked basic class management skills and resorted almost immediately to threatening the students with referrals to the office. And, Mr. Drewek testified that he "shuddered" when he was asked to teach at Whitaker because he did not like teaching at that school.

The Commission contends that Mr. Drewek's conduct failed to comport to the standards of competency set out at OAR 584-020-0025(1) (set out above) and 0030(1) (set out below).

OAR 584-020-0030(1) provides as follows:

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.

At the hearing, Mr. Drewek denied ever using the word "black" to describe students, yet he used this description numerous times. In addition, he referred to "deaf and dumb" and "retarded" students. He made several references to high IQ, industrious "white" students at Winterhaven School in Portland.

His comments about "retarded" and "deaf and dumb" students show insensitivity and demonstrate that his vocabulary has not kept up with socially acceptable terminology. I am persuaded that Mr. Drewek lacks essential communication and human relations skills required of competent educators. The Commission has again proven that Mr. Drewek demonstrated gross neglect of his duty as a competent educator.

Conduct with Ms. Said-Hall

The Commission presented compelling evidence from Ms. Said-Hall that Mr. Drewek lacked essential human relation and communication skills. OAR 584-020-0030(2)(a) and (b). Mr. Drewek ignored signs advising him not to enter a locked room, and despite her loud protestations, Mr. Drewek walked to within feet of Ms. Said-Hall as she was attached to a bilateral breast pump. She was exposed and vulnerable and Mr. Drewek ignored her demands that he leave the room. Mr. Drewek argued that he did not hear Ms. Said-Hall and did not understand why she was in the locked room. He did not know what she was doing and explained that as the reason he did not turn around and leave immediately. This is another example of Mr. Drewek slavishly following one instruction (to keep the room locked) while ignoring other compelling instructions (to not enter the room). I am concerned that Mr. Drewek is no longer sufficiently aware of his surroundings due to his hearing loss and decision not to wear a hearing aid.

OAR 584-020-0030(2)(a) and (b) provide as follows: "(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.

Mr. Drewek's conduct toward Ms. Said-Hall demonstrated that he was both unwilling to be flexible and that he lacked basic communication skills. He did not need to understand why Ms. Said-Hall was inside the locked room. She yelled repeatedly at him to go away, and he did not until he was standing next to her, staring as she attempted to cover her breasts. This record clearly establishes that Mr. Drewek demonstrated a gross neglect of duty.

References to the Jack Daniel's Distillery

Next, the Commission contends that Mr. Drewek showed a lack of human relation and communication skills when he made statements about the Jack Daniel's Distillery to a student at Rosemont DART, a secure-facility school. The student told Mr. Drewek that she was a recovering alcoholic. Mr. Drewek laughed and did not apologize for his comments. This shows that Mr. Drewek lacked awareness of the special needs of Rosemont DART students, fifty percent of whom have drug and/or alcohol abuse issues. Mr. Drewek also demonstrated an insensitivity toward this student after she admitted to him that she was an alcoholic. Mr. Drewek failed to demonstrate flexibility in working cooperatively, or skill in communicating, with this particular student. This is further evidence of Mr. Drewek's gross neglect of duty.

Making inappropriate jokes

The Commission presented uncontroverted evidence that Mr. Drewek made jokes about ethnic groups and people on welfare while working at Rosemont DART. All of the students at Rosemont DART qualify for government assistance programs. Mr. Drewek argued that he has a constitutional right to offend, guaranteed under the First Amendment of the US Constitution. According to Mr. Drewek, he repeated an ethnic joke he read in "The Edge" column in The Oregonian. Because he read the joke in a newspaper, he did not think that it was bad or offensive.

Mr. Drewek does not have an unqualified right to offend. Moreover, the specific standards of his chosen profession require that he "communicate with knowledge, clarity, and judgment about education matters, the school, and the needs of students." OAR 584-020-0030(1). His conduct demonstrates an unwillingness to conform his behavior to accommodate or even consider the needs and sensitivities of others. The Commission has proven that Mr. Drewek's conduct in this regard was a gross neglect of duty.

Statements to Ms. Stonecypher and Ms. Jackson

The Commission has also proven that Mr. Drewek's statements to Ms. Stonecypher and Ms. Jackson demonstrated that he was not able to work effectively with others, or skilled in communicating with staff. As discussed above, Mr. Drewek's comments regarding the appearance of Ms. Jackson and Ms. Stonecypher were inappropriate, and in the case of Ms. Jackson, patently offensive. His statements constituted gross neglect of duty because he did not meet the professional standards of competency set out in OAR 584-020-0030(1) and (2).

Menacing behavior toward Ms. Jackson

Finally, the Commission has proven that Mr. Drewek failed to "recognize the worth and dignity" of Ms. Jackson and failed to "use professional judgment" when she asked him to leave Rosemont DART. OAR 584-020-0010(1) and (5). The record establishes that Mr. Drewek became angry and flushed clenched his fists and walked toward Ms. Jackson. She backed into a corner and felt threatened by Mr. Drewek.

Substantial deviation from standards of ethics -- OAR 584-020-0040(4)(o)

The Commission presented evidence of two incidents in which Mr. Drewek allegedly deviated from the professional standards of ethics. The Commission's standards for ethical educators are set out at OAR 584-020-0035:

The ethical educator is a person who accepts the requirements of membership in the teaching profession and acts at all times in ethical ways. In so doing the ethical educator considers the needs of the students, the district, and the profession.

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

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

(b) Refrain from exploiting professional relationships with any student for personal gain, or in support of persons or issues.

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

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

(B) *Not accepting or giving or exchanging romantic or overly personal gifts or notes with a student;*

(C) *Reporting to the educator's supervisor if the educator has reason to believe a student is or may be becoming romantically attached to the educator.*

(2) *The ethical educator, in fulfilling obligations to the district, will:*

(a) *Apply for, accept, offer, or assign a position of responsibility only on the basis of professional qualifications, and will adhere to the conditions of a contract or the terms of the appointment;*

(b) *Conduct professional business, including grievances, through established lawful and reasonable procedures;*

(c) *Strive for continued improvement and professional growth;*

(d) *Accept no gratuities or gifts of significance that could influence judgment in the exercise of professional duties; and*

(e) *Not use the district's or school's name, property, or resources for noneducational benefit without approval of the educator's supervisor or the appointing authority.*

(3) The ethical educator, in fulfilling obligations to the profession, will:

(a) *Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty;*

(b) *Extend equal treatment to all members of the profession in the exercise of their professional rights and responsibilities; and*

(c) *Respond to requests for evaluation of colleagues and keep such information confidential as appropriate.*

(Emphasis added.)

Personal space

The Commission presented evidence that Mr. Drewek hovered over and invaded the personal space of students at Rosemont DART. As Ms. Jackson explained, all of the students at the school have suffered some form of physical or sexual abuse. Respecting the personal space of the students is a requirement of all teachers at Rosemont DART. Encroaching on the students' personal space can trigger memories of past trauma and all teachers are directed to avoid being too close to the girls. Ms. Jackson and Ms. Stonecypher testified that students and Morrison Center staff complained that Mr. Drewek routinely stood too close to the girls and that they thought he was hovering over them. Mr. Drewek explained that he had to be close to the students to see what they were working on as they sat at computers.

The Commission contends that Mr. Drewek's hovering and failure to respect the personal space of the students was contrary to OAR 584-020-0035(2)(b), which provides that an ethical educator will "Conduct professional business, including grievances, through established lawful and reasonable procedures." I do not see how the alleged conduct violated this provision of the rules. The Commission has not proven that violating the personal space of the students was evidence of unethical conduct that amounted to a gross neglect of duty.

Interactions with Jessica

The final contention is that Mr. Drewek acted unethically in his interactions with Jessica Martz, a 13 year-old student. The Commission proved, and Mr. Drewek did not contest, that he provided Jessica with his home phone number and address and told her that he would try to help her if he could. He also admitted writing "When you wish upon a star your dreams will come true" on the reverse side of the note. The Commission's witness, Ms. Beudefeldt, testified credibly that Mr. Drewek's conduct toward Jessica was disturbing and scary. In her opinion, Mr. Drewek crossed an important line by attempting to become personally involved in Jessica's life outside of school. Mr. Drewek also admitted that he told Jessica that she was too young to have a boyfriend, and asked her if she wanted to end up at the Monroe School.

Mr. Drewek countered that he merely wanted to help Jessica because she had been helpful to him. He likened his conduct to that of a character in the book "Anne of Green Gables," where the character chose to help Anne rather than rejecting her. Mr. Drewek also spoke of the parable of the Good Samaritan and the Golden Rule. He asserted that the Golden Rule is "superior to man-made rules." He further asserted his belief that many young girls with boyfriends become pregnant.

OAR 584-020-0035(1)(c) provides, in relevant part, as follows: "The ethical educator, in fulfilling obligations to the student, will: (c) Maintain an appropriate professional student-teacher relationship by: (A) Not demonstrating or expressing professionally inappropriate interest in a student's personal life."

The evidence adduced at hearing clearly establishes that Mr. Drewek demonstrated and expressed an inappropriate interest in Jessica's life. He was not Jessica's regular teacher, and had only seen her at school for a few hours before he offered her advice about her boyfriend. He

also gave her his home address and phone number. Mr. Drewek's behavior was unprofessional and inappropriate. The Commission has proven that this conduct constituted gross neglect of his duty because it deviated substantially from professional standards of ethics.

The Commission did not prove that Mr. Drewek followed Jessica to her home.

ORDER

I propose the Teacher Standards and Practices Commission issue the following order:

Mr. Drewek's right to apply for reinstatement of his teaching license is revoked.

Andrea H. Sloan

Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: December 23, 2005

EXCEPTIONS

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

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

The Commission need not allow oral argument. The Executive Director may permit oral argument in those cases in which the Director believes oral argument may be appropriate or helpful to the Commissioners in making a final determination. If oral argument is allowed, the Commission will inform you of the time and place for presenting oral argument.

APPENDIX A
LIST OF EXHIBITS CITED

- Ex. A1: TSPC license information for Mr. Drewek
- Ex. A2: Investigative report from Portland Police Bureau, May 15, 2001
- Ex. A3: Letter from Larry Gant and Administrator's Request to Restrict Substitute -- Rosemont DART
- Ex. A4: Letter from Larry Gant and Administrator's Request to Restrict Substitute -- Ockley Green Middle School
- Ex. A5: Administrator's Request to Restrict Substitute -- Bridger School
- Ex. A6: Letter from Larry Gant and Administrator's Request to Restrict Substitute -- Mt. Tabor Middle School
- Ex. A7: Teacher Request to Restrict Substitute -- Whitaker Middle School
- Ex. A9: Written Reprimand from Larry Gant
- Ex. A12: Memo from teacher at Whitaker Middle School and copy of note from Mr. Drewek to Jessica Martz
- Ex. A13: Letter from Loretta Benjamin-Samuels regarding termination from substitute list
- Ex. A14: Letter from Maureen Sloane, Portland Public Schools
- Ex. A15: Letter from Mr. Drewek to Ms. Chamberlin
- Ex. A17: Interview with Mr. Drewek
- Ex. A18: Propriety and Privacy Agreement -- Rosemont DART
- Ex. A19: Substitute Teacher Protocols -- Rosemont DART
- Ex. R12: Various letters regarding counseling and report of Dr. Turco

APPENDIX B
TEXT OF RELEVANT STATUTES AND ADMINISTRATIVE RULES

ORS 342.175 Grounds for discipline; reinstatement. (1) The Teacher Standards and Practices Commission may suspend or revoke the license of a teacher or administrator, discipline a teacher or administrator or suspend or revoke the right of any person to apply for a license if the person has held a license at any time within five years prior to issuance of the notice of charges under ORS 342.176 based on the following:

- (a) Conviction of a crime not listed in ORS 342.143 (3);
- (b) Gross neglect of duty;
- (c) Any gross unfitness;
- (d) Conviction of a crime for violating any law of this or any state or of the United States involving the illegal use, sale or possession of controlled substances;
- (e) Any false statement knowingly made in an application for issuance, renewal or reinstatement of a license; or
- (f) Failure to comply with any condition of reinstatement under subsection (3) of this section or any condition of probation under ORS 342.177 (3)(b).

(2) Notwithstanding ORS 670.280, the commission shall revoke any license or registration and shall revoke the right of any person to apply for a license or registration if the person has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176 when the holder or person has been convicted of any crime described in ORS 342.143 (3).

(3) Except for convictions for crimes listed in ORS 342.143 (3) and subject to subsection (4) of this section, any person whose license or registration has been suspended or revoked or whose privilege to apply for a license or registration has been revoked may apply to the commission for reinstatement of the license or registration after one year from the date of the suspension or revocation. The commission may require an applicant for reinstatement to furnish evidence satisfactory to the commission of good moral character, mental and physical health and such other evidence as the commission may consider necessary to establish the applicant's fitness. The commission may impose a probationary period and such conditions as it considers necessary upon approving an application for reinstatement.

(4) The commission shall reconsider immediately a license or registration suspension or revocation or the situation of a person whose privilege to apply for a license or registration has been revoked, upon application therefor, when the license or registration suspension or revocation or the privilege revocation is based on a criminal conviction that is reversed on appeal.

(5) Violation of rules adopted by the commission relating to competent and ethical performance of professional duties shall be admissible as evidence of gross neglect of duty or gross unfitness.

(6) A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of a conviction described in this section.

OAR 584-020-0040

(1) The Commission shall deny, revoke or deny the right to apply for a license or charter school registration to any applicant or educator who, has been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if convicted in another jurisdiction or convicted of attempt to commit such crimes as defined in ORS 161.405. Evaluation of crimes shall be based on Oregon laws in effect at the time of the conviction, regardless of the jurisdiction in which the conviction occurred. The crimes listed in ORS 342.143 are:

- (a) ORS 163.095 -- Aggravated Murder;
- (b) ORS 163.115 -- Murder;
- (c) ORS 163.185 -- Assault in the First Degree;
- (d) ORS 163.235 -- Kidnapping in the First Degree;
- (e) ORS 163.355 -- Rape in the Third Degree;
- (f) ORS 163.365 -- Rape in the Second Degree;
- (g) ORS 163.375 -- Rape in the First Degree;
- (h) ORS 163.385 -- Sodomy in the Third Degree;
- (i) ORS 163.395 -- Sodomy in the Second Degree;
- (j) ORS 163.405 -- Sodomy in the First Degree;
- (k) ORS 163.408 -- Unlawful Sexual Penetration in the Second Degree;
- (l) ORS 163.411 -- Unlawful Sexual Penetration in the First Degree;
- (m) ORS 163.415 -- Sexual Abuse in the Third Degree;
- (n) ORS 163.425 -- Sexual Abuse in the Second Degree;
- (o) ORS 163.427 -- Sexual Abuse in the First Degree;
- (p) ORS 163.435 -- Contributing to the Sexual Delinquency of a Minor;
- (q) ORS 163.445 -- Sexual Misconduct;
- (r) ORS 163.465 -- Public Indecency;
- (s) ORS 163.515 -- Bigamy;
- (t) ORS 163.525 -- Incest;
- (u) ORS 163.547 -- Child Neglect in the First Degree;

- (v) ORS 163.575 -- Endangering the Welfare of a Minor;
- (w) ORS 163.670 -- Using Child in Display of Sexually Explicit Conduct;
- (x) ORS 163.675 -- Sale or Exhibition of Visual Reproduction of Sexual Conduct by a Child;
- (y) ORS 163.680 -- Paying for Viewing Sexual Conduct Involving a Child;
- (z) ORS 163.684 -- Encouraging Child Sexual Abuse in the First Degree;
- (aa) ORS 163.686 -- Encouraging Child Sexual Abuse in the Second Degree;
- (bb) ORS 163.687 -- Encouraging Child Sexual Abuse in the Third Degree;
- (cc) ORS 163.688 -- Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;
- (dd) ORS 163.689 -- Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree;
- (ee) ORS 164.325 -- Arson in the First Degree;
- (ff) ORS 164.415 -- Robbery in the First Degree;
- (gg) ORS 166.005 -- Treason;
- (hh) ORS 166.087 -- Abuse of a Corpse in the First Degree;
- (ii) ORS 167.007 -- Prostitution;
- (jj) ORS 167.012 -- Promoting Prostitution;
- (kk) ORS 167.017 -- Compelling Prostitution;
- (ll) ORS 167.062 -- Sadomasochistic Abuse for Sexual Conduct in a Live Show;
- (mm) ORS 167.065 -- Furnishing Obscene Materials to Minors;
- (nn) ORS 167.070 -- Sending Obscene Materials to Minors;
- (oo) ORS 167.075 -- Exhibiting an Obscene Performance to a Minor;
- (pp) ORS 167.080 -- Displaying Obscene Materials to Minors;
- (qq) ORS 167.087 -- Disseminating Obscene Materials ;
- (rr) ORS 167.090 -- Publicly Displaying Nudity or Sex for Advertising Purposes;
- (ss) ORS 475.995 -- Distribution of Controlled Substances to Minors;
- (tt) ORS 475.999 -- Manufacture or Delivery of Controlled Substance to Minor or Student within 1,000 Feet of School.

(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:

(a) Has been convicted of a crime not listed in section (1) of this rule, if the Commission finds that the nature of the act or acts constituting the crime for which the educator was convicted render the educator unfit to hold a license;

(b) Is charged with knowingly making any false statement in the application for a license;

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

(d) Is charged with gross unfitness.

(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:

(a) Knowing and substantial unauthorized use of: school name or financial credit; school materials or equipment for personal purposes; or school personnel to provide personal services unrelated to school business;

(b) Knowing and substantial unauthorized use of employment time or school resources for private purposes;

(c) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

(d) Unreasonable physical force against students, fellow employees, or visitors to the school, except as permitted under ORS 339.250;

(e) Violent or destructive behavior on school premises or at a school-sponsored activity;

(f) Any sexual conduct with a student;

(g) Appearing on duty or at any district-sponsored activity while under the influence of alcohol or any controlled substance;

(h) Unauthorized disclosure of student records information received in confidence by the educator under a statutory privilege, (See, subsection 6, below);

(i) Deliberately assigning an educator in violation of licensure requirements;

(j) Resignation from a contract in violation of ORS 342.553, (See, subsection 6, below);

(k) Knowing violation of any order or rule of the Commission;

(l) Sexual harassment;

(m) Knowing and willful failure of a chief administrator to report a violation of Commission standards as required by OAR 584-020-0041;

(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;

(p) Subject to the exercise of any legal right or privilege, failure or refusal by an educator under investigation to respond to requests for information, to furnish documents or to participate in interviews with a Commission representative relating to a Commission investigation; or

(q) Knowing and unauthorized use of school computer equipment to receive, store, produce or send sexually explicit materials.

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

(a) Revocation, suspension or denial of a license by another state for reasons and through procedures that are the same as, or substantially equivalent to, those permitting similar action in Oregon;

(b) Fraud or misrepresentation;

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

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

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

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

(6) In any proceeding brought under subsection (4)(h) of this rule, the Commission may not impose a sanction more severe than a suspension of the educator's license. In any proceeding brought under subsection (4)(j) of this rule, the Commission may not impose a sanction more severe than suspension of the educator's license for the remainder of the school year.

584-020-0005

Definitions

The following definitions apply to Oregon Administrative Rules 584-020-0000 through 584-020-0045 unless otherwise indicated by context:

- (1) "Administrator": Any supervisory educator who holds a valid Oregon Administrative License or registration.
- (2) "Competent": Discharging required duties as set forth in these rules.
- (3) "Educator": Any licensed or registered person who is authorized to be engaged in the instructional program including teaching, counseling, administering, and supervising.
- (4) "Ethical": Conforming to the professional standards of conduct set forth in these rules.
- (5) "Sexual Conduct" includes:
 - (a) The intentional touching of the breast or sexual or other intimate parts of a student;
 - (b) Causing, encouraging, or permitting a student to touch the breast or sexual or other intimate parts of the educator;
 - (c) Sexual advances or requests for sexual favors directed towards a student;
 - (d) Verbal or physical conduct of a sexual nature when directed toward a student or when such conduct has the effect of unreasonably interfering with a student's educational performance or creates an intimidating, hostile or offensive educational environment; or
 - (e) Verbal or physical conduct which has the effect of unreasonably interfering with a student's educational performance or creates an intimidating, hostile or offensive educational environment.
- (6) "Sexual harassment": Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 - (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - (c) Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
- (7) "Teacher": Any person who holds a teacher's license as provided in ORS 342.125.

584-020-0010

The Competent Educator

The teacher or administrator demonstrates a commitment to:

- (1) Recognize the worth and dignity of all persons;
- (2) Encourage scholarship;
- (3) Promote democratic citizenship;
- (4) Raise educational standards; and
- (5) Use professional judgment.

584-020-0015

Curriculum and Instruction

(1) The competent educator measures success by the progress of each student toward realization of personal potential as a worthy and effective citizen. The competent educator stimulates the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of goals as they are appropriate for each individual.

(2) The competent teacher demonstrates:

- (a) Use of state and district adopted curriculum and goals;
- (b) Skill in setting instructional goals and objectives expressed as learning outcomes;
- (c) Use of current subject matter appropriate to the individual needs of students;
- (d) Use of students' growth and development patterns to adjust instruction to individual needs consistent with number of students and amount of time available; and
- (e) Skill in the selection and use of teaching techniques conducive to student learning.

(3) The competent administrator demonstrates:

- (a) Skill in assisting individual staff members to become more competent teachers by complying with state law, rules, and lawful and reasonable district policy and contracts;
- (b) Knowledge of curriculum and instruction appropriate to assignment;
- (c) Skill in implementing instructional programs through adequate communication with staff; and
- (d) Skill in identifying and initiating any needed change which helps each student toward realization of personal learning potential.

584-020-0020

Supervision and Evaluation

(1) The competent educator is a student of human behavior and uses this knowledge to provide a climate that is conducive to learning and that respects the rights of all persons without discrimination. The competent educator assumes responsibility for the activities planned and conducted through the district's program, and assists colleagues to do the same. The competent educator gathers relevant information and uses it in the planning and evaluation of instructional activities.

(2) The competent teacher demonstrates:

- (a) Ways to assess progress of individual students;
- (b) Skill in the use of assessment data to assist individual student growth;
- (c) Procedures for evaluating curriculum and instructional goals and practices; and
- (d) Skill in the supervision of students.

(3) The competent administrator demonstrates:

- (a) Skill in the use of assessment data to provide effective instructional programs;
- (b) Skill in the implementation of the district's student evaluation program;
- (c) Skill in providing equal opportunity for all students and staff; and
- (d) Skill in the use of employee techniques appropriate to the assignment and according to well established standards which insure due process for the staff being evaluated.

584-020-0025

Management Skills

(1) The competent educator is a person who understands students and is able to relate to them in constructive ways. The competent educator establishes and maintains good rapport. The competent educator maintains and uses records as required, and as needed to assist the growth of students.

(2) The competent teacher demonstrates skills in:

- (a) Establishing and maintaining classroom management that is conducive to learning;
- (b) Using and maintaining district property, equipment, and materials appropriately;
- (c) Using and maintaining student records as required by district policies and procedures;
- (d) Using district and school business and financial procedures; and

(e) Using district lawful and reasonable rules and regulations.

(3) The competent administrator demonstrates:

(a) Skills in managing the school, its students, staff, and programs as required by lawful and reasonable district policies, rules, and regulations, state and federal laws and regulations, and other programs as assigned, and assures that staff is informed of these requirements; and

(b) Skills in planning and staff utilization.

584-020-0030

Human Relations and Communications

(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.

(3) The competent administrator demonstrates:

(a) Skill in helping students, staff, parents, and other patrons to learn about the school and its program;

(b) Skills in communicating district and school goals to staff and public;

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

(d) Skill in reconciling conflict.

584-020-0035

The Ethical Educator

The ethical educator is a person who accepts the requirements of membership in the teaching profession and acts at all times in ethical ways. In so doing the ethical educator considers the needs of the students, the district, and the profession.

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

- (a) Keep the confidence entrusted in the profession as it relates to confidential information concerning a student and family; and
- (b) Refrain from exploiting professional relationships with any student for personal gain, or in support of persons or issues.
- (c) Maintain an appropriate professional student-teacher relationship by:
 - (A) Not demonstrating or expressing professionally inappropriate interest in a student's personal life;
 - (B) Not accepting or giving or exchanging romantic or overly personal gifts or notes with a student;
 - (C) Reporting to the educator's supervisor if the educator has reason to believe a student is or may be becoming romantically attached to the educator.
- (2) The ethical educator, in fulfilling obligations to the district, will:
 - (a) Apply for, accept, offer, or assign a position of responsibility only on the basis of professional qualifications, and will adhere to the conditions of a contract or the terms of the appointment;
 - (b) Conduct professional business, including grievances, through established lawful and reasonable procedures;
 - (c) Strive for continued improvement and professional growth;
 - (d) Accept no gratuities or gifts of significance that could influence judgment in the exercise of professional duties; and
 - (e) Not use the district's or school's name, property, or resources for noneducational benefit without approval of the educator's supervisor or the appointing authority.
- (3) The ethical educator, in fulfilling obligations to the profession, will:
 - (a) Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty;
 - (b) Extend equal treatment to all members of the profession in the exercise of their professional rights and responsibilities; and
 - (c) Respond to requests for evaluation of colleagues and keep such information confidential as appropriate.

CERTIFICATE OF SERVICE

I certify that on December 23, 2005, I served the attached Proposed Order by mailing certified and/or first class mail, in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

THOMAS PHILLIP DREWEK
683 N 2D ST
WOODBURN OR 97071

BY FIRST CLASS AND CERTIFIED MAIL
CERTIFIED MAIL RECEIPT # 7005 2570 0001 4246 0177

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