



1424746

Mark Zima (89769)
Discipline Order

CERTIFICATE OF MAILING

On May 21st, 2013, I mailed the foregoing Final Order and Proposed Order in OAH Case No. 1202857 to:

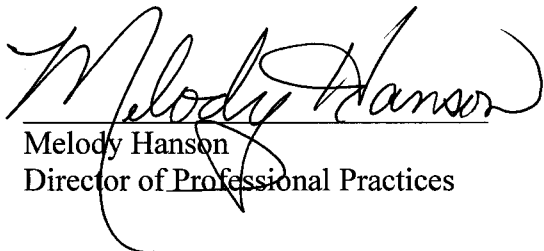
By: U.S. First Class Mail

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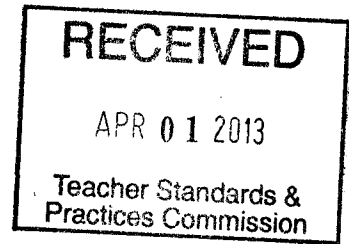
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Melody Hanson
Director of Professional Practices

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



IN THE MATTER OF:) **PROPOSED ORDER**
)
MARK S. ZIMA,) OAH Case No.: 1202857
Respondent) Agency Case No.:

HISTORY OF THE CASE

On April 25, 2012, the Teacher Standards and Practices Commission (TSPC or the Commission) issued a Notice of Opportunity for Hearing to Mark S. Zima (Respondent). On May 3, 2012, Respondent requested a hearing.

On July 3, 2012, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). Senior Administrative Law Judge (ALJ) Dove L. Gutman was assigned to preside at hearing.

On August 30, 2012, a prehearing telephone conference was conducted by ALJ Gutman. Assistant Attorney General Judith Anderson represented the Commission. Elizabeth McKanna, Attorney at Law, represented Respondent. On August 30, 2012, ALJ Gutman issued a Pre-Hearing Order, which, among other things, set forth the dates of hearing.

On February 5, 2012, a hearing was held in Eugene, Oregon. ALJ Gutman presided. Ms. Anderson represented the Commission. Jeff Van Laanen appeared on behalf of the Commission. Ms. McKanna represented Respondent. Testifying on behalf of the Commission were the following: Larry Williams, former Assistant Principal at Meadow View School (MVS); Amy James-Seery, teacher at MVS; Sarah Campbell, teacher at MVS; Carly Waters, teacher at MVS; Linda Mohr, teacher at MVS; Reagan Weaver, teacher at MVS; Kathi Holvey, former Assistant Principal at MVS; Jennifer Sink, former Assistant Principal at MVS; Sebastian Bolden, teacher at MVS; Christina Parra, Assistant Superintendent of Bethel schools; and Brian Flick, Principal at MVS. Testifying on behalf of Respondent was Natalie Oliver, former teacher at MVS.

The hearing continued on February 6, 2012. ALJ Gutman presided. Ms. Anderson represented the Commission. Jeff Van Laanen appeared on behalf of the Commission. Ms. McKanna represented Respondent. Testifying on behalf of Respondent were the following: DB, former student at MVS; and Respondent. The record closed at the conclusion of the hearing.

ISSUES

1. Whether, on or about May 31, 2007, Respondent engaged in gross neglect of duty by telling a student to question a teacher about her personal life.

2. Whether, on or about June 4, 2010, Respondent engaged in gross neglect of duty by yelling at two students.

3. Whether, on or about September 22, 2011, Respondent engaged in gross neglect of duty by grabbing the arm of an autistic student and yelling at the student.

4. Whether, during the period of February through April 2011, Respondent engaged in gross neglect of duty by making inappropriate comments and sending sexually suggestive emails to a female coworker/supervisor.

5. Whether, during the period of February 2, 2011 through April 22, 2011, Respondent engaged in gross neglect of duty by failing to adhere to directives regarding unwanted physical contact and inappropriate verbal interaction with staff.

6. Whether, during the period of March 28, 2011 through April 22, 2011, Respondent engaged in gross neglect of duty by failing to adhere to directives regarding refraining from any physical contact with students and refraining from using pet names with students.

7. Whether, if the violations are proven, the Commission may suspend Respondent's license for six months; place Respondent on probation for four years; and require Respondent to take boundary training.

EVIDENTIARY RULING

Exhibits A1 through A18, offered by the Commission, were admitted into the record without objection. Exhibits R1 through R5, R7 through R15, and R17, offered by Respondent, were admitted into the record without objection. The Commission objected to Exhibits R6 and R16 on the basis of reliability. The objections were overruled and Exhibits R6 and R16 were admitted into evidence.¹

AMENDED NOTICE

OAR 137-003-0530 is titled "Late Filing and Amendment of Documents" and provides, in part:

(4) Notwithstanding any other provision of these rules, after the notice required by ORS 183.415 is issued:

(a) An agency may issue an amended notice:

(A) Before the hearing; or,

¹ Exhibit R16 is a letter written by Polly H. Jamison, Ph.D. It was admitted to show Respondent sought treatment with Dr. Jamison to address the difficulties he faced in his work environment.

(B) During the hearing, but before the evidentiary record closes, if the administrative law judge determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties.

On February 6, 2013, Ms. Anderson, on behalf of the Commission, moved to amend its Notice, changing the date of the first email that is quoted under allegation number five from February 6, 2011 to February 16, 2011. Ms. McKanna, on behalf of Respondent, objected on the basis of prejudice.

On February 6, 2013, ALJ Gutman overruled Ms. McKanna's objection, granting the motion and finding no prejudice as Respondent had been provided a copy of the email with the correct date as part of the Commission's exhibits prior to hearing.

OFFER OF PROOF

OAR 137-003-0610 is titled, "Evidentiary Rules" and provides, in part:

(5) The administrative law judge shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the reviewing agency or court to determine whether the evidence was properly excluded. The administrative law judge shall have discretion to decide whether the offer of proof is to be oral or written and at what stage in the proceeding it will be made. The administrative law judge may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer.

On February 6, 2013, Ms. McKanna, on behalf of Respondent, made an offer of proof about Respondent saving Sharon Dye's life.

CREDIBILITY DETERMINATION

A witness testifying under oath or affirmation is presumed to be truthful unless it can be demonstrated otherwise. ORS 44.370 provides, in relevant part:

A witness is presumed to speak the truth. This presumption, however, may be overcome by the manner in which the witness testified, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence.

A determination of a witness' credibility can be based on a number of factors other than the manner of testifying, including the inherent probability of the evidence, internal inconsistencies, whether or not the evidence is corroborated, and whether human experience

demonstrates that the evidence is logically incredible. *Tew v. DMV*, 179 Or App 443 (2002).

Testimony of Jennifer Sink and Respondent

Jennifer Sink, then Assistant Principal at MVP, testified that on June 4, 2010, she was in her office (located in the front office) when she heard Respondent in the front office yelling at two students to sit down. Ms. Sink testified that she approached Respondent and told him he could not yell at students. Ms. Sink further testified that she informed Brian Flick, Principal at MVP, about Respondent's behavior. Ms. Sink's testimony was logical, consistent and reliable. In addition, Ms. Sink's testimony was corroborated the testimony of Mr. Flick and by the Letter of Reprimand that Ms. Sink prepared and issued to Respondent on June 7, 2010. (Exhibit A2.)

Respondent, on the other hand, testified that he did not yell at the students but spoke loudly and directly to them. Respondent's testimony was not logical or reliable, and was contradicted by the investigation completed by Ms. Sink. (Exhibit A4.)

I find, more likely than not, that on June 4, 2010, Respondent yelled at two students in the front office to sit down. I further find that the testimony of Respondent will not be relied upon when it contradicts the evidence presented by the Commission.

Testimony of Sarah Campbell and Respondent

Sarah Campbell, a sixth grade teacher at MVP, testified that on September 22, 2011, she was standing in the hallway to greet students as they began to arrive for class. Ms. Campbell testified that she observed EH, an autistic student, walking down the hall. Ms. Campbell testified that Respondent said something to EH and EH said, "Leave me alone." Ms. Campbell testified that she observed Respondent grab EH by the arm and spin him around, causing the student's backpack to fall to the ground. Ms. Campbell testified that Respondent yelled at EH, "Do you know who I am." Ms. Campbell's testimony was logical, consistent and reliable. In addition, Ms. Campbell's testimony was corroborated by the statements she gave to Mr. Flick on September 22, 2011 and to Christina Parra on September 26, 2011. (Exhibits A17, A18.) Moreover, Ms. Campbell's testimony regarding Respondent yelling at EH was corroborated by the testimony of Amy James-Seery, Carly Waters, and Linda Mohr.

Respondent, on the other hand, testified that he did not touch EH and he did not yell at EH. Respondent's testimony was not logical or reliable, and was contradicted by the investigations completed by Mr. Flick and Ms. Parra. (Exhibits A17, A18.)

I find, more likely than not, that on September 22, 2011, Respondent grabbed EH by the arm, spun him around, and yelled at him. I further find that the testimony of Respondent will not be relied upon when it contradicts the evidence presented by the Commission.

Testimony of Kathi Holvey and Respondent

Kathi Holvey, then Assistant Principal at MVS, testified that Respondent sexually harassed her during the period of February through April 2011. Ms. Holvey testified that

Respondent made inappropriate comments to her at work like, “You know you want me,” and “You know I am good.” Ms. Holvey testified that Respondent sent her sexually suggestive emails including:

Listen, you beautiful blue eyed Babe, Do you have any idea of the virility, stamina, and down right alpha-stud-maleness it takes to climb 69 floors, fully packed up, on air, in 24 minutes???. Imagine all of that virility unleashed...kinda makes you think, doesn't it? I hope you are thinking what I am thinking, because you are just too damn HOT for me to just leave alone. Think about it...

Ms. Holvey testified that she did not “come on” to Respondent and that on two occasions she told Respondent to stop and that she would never be with him for professional and ethical reasons, but the behavior continued. Ms. Holvey testified that she felt confused, embarrassed, angry, and offended by Respondent’s behavior. Ms. Holvey testified that she told Mr. Flick and Ms. Sink about Respondent’s behavior. Ms. Holvey testified that she filed a sexual harassment complaint on April 25, 2011 when the behavior continued. Ms. Holvey’s testimony was logical, consistent and reliable. In addition, Ms. Holvey’s testimony was corroborated by the complaint she filed, the statement she prepared regarding her interactions with Respondent, the complaint findings by Christine Parra, the emails from Respondent, and the testimony of Mr. Flick and Ms. Sink. (Exhibits A14, A15.)

Respondent, on the other hand, testified that he did not sexually harass Ms. Holvey, that she “came on” to him first, that he was flirting with her, that she was a co-participant, and that he stopped when she told him she had a “sweetie.” Respondent’s testimony was not logical or reliable, and was contradicted by the sexual harassment complaint filed by Ms. Holvey on April 25, 2011, Ms. Holvey’s notes, Mr. Flick’s notes, the complaint findings by Ms. Parra, and the emails Ms. Holvey received from Respondent. (Exhibits A8, A14, A15.)

I find, more likely than not, that Respondent sexually harassed Ms. Holvey by making inappropriate comments and sending sexually suggestive emails. I further find that the testimony of Respondent will not be relied upon when it contradicts the evidence presented by the Commission.

FINDINGS OF FACT

Background

1. Respondent is employed by the Bethel School District and has been since the fall of 1999. Respondent is a teacher at Meadow View School. He has worked there for approximately eight years. (Test. of Respondent.)

2. Respondent has an Initial II Teaching License (teaching license) with endorsements in Basic Math, Language Arts and Multiple Subjects. The teaching license is effective August 13, 2009 through April 9, 2013. (*Id.*; Ex. R1 at 1.)

3. Respondent has been married for approximately ten (10) years. (Test. of Respondent.)

4. Respondent is a volunteer firefighter. He teaches classes on safety, including CPR and Safety Skills. (*Id.*)

5. Respondent is an alcoholic. He is a binge drinker. He has been sober since September 23, 2012. (*Id.*)

Incident of May 31, 2007

6. Larry A. Williams is the current Principal of Edgewood Community Elementary School. In May 2007, Mr. Williams was the Assistant Principal at Meadow View School. Mr. Williams was also Respondent's supervisor. (Test. of Williams.)

7. Reagan Weaver is a teacher at Meadow View School. Her current position is Middle School Room Resource Teacher. She has held that position for 11 years. Ms. Weaver teaches students that are on IEPs. Ms. Weaver has a Special Education license and an Elementary license. She has been teaching for approximately 13 years. (Test. of Weaver.)

8. On May 31, 2007, Respondent, while teaching a mathology class at Meadow View School, called on a student who had raised his hand. The student asked Respondent if Ms. Weaver was an alcoholic. Respondent told the student the question was inappropriate. Respondent also told the student, "If you think that is funny, why don't you ask her." Respondent sent the student out into the hall as a disciplinary action. The student was supposed to wait in the hall until Respondent came out to speak to him about his conduct.

The student did not wait in the hall. The student went to Ms. Weaver's classroom to ask the question. A substitute teacher was teaching Ms. Weaver's class. The student entered Ms. Weaver's classroom and asked the question.

Respondent did not intend for the student to go to Ms. Weaver's classroom and ask the question.

Ms. Weaver found out about the incident and was hurt by the behavior. Ms. Weaver complained to Nancy McCullum, the Principal of Meadow View School. (Test. of Respondent, Williams, Weaver.)

9. On June 1, 2007, Mr. Williams spoke with Respondent regarding the matter. (Test. of Williams; Ex. A1 at 1.)

10. On June 5, 2007, Mr. Williams issued a Letter of Reprimand to Respondent, which stated, in pertinent part:

You have violated expectations of our school district and Oregon Administrative Rule 584-020-0030, under TSPC Human Relations

and Communications, in your manner of communicating with a student in your classroom on May 31, 2007.

On Thursday, May 31, 2007, one of your colleagues reported to Nancy McCullum that you recommended to a student that the student question a teacher colleague about her personal life during your mathology class. Mrs. McCullum phoned your classroom that afternoon to speak with you about this but you had left for the day. When you came to my office on the morning of June 1, 2007, you shared with me the incident from your perspective. I did speak with the other teacher about her feelings regarding this incident and she expressed hurt and disappointment in your lack of judgment. Allowing the student to leave your classroom and gain access to the other teacher, who has a classroom located next door to yours, was a lapse in professional judgment.

I do recognize your frustration with this student but I can not excuse you from your professional duty to communicate effectively and use sound judgment in educational matters. This is a serious incident, Mark. You are directed to act in a professional and controlled manner with respect to communications with, and in front of students. Failure to do so may result in further discipline, up to and including a recommendation for dismissal.

(Ex. A1 at 1.) Respondent did not grieve the reprimand. (Test. of Respondent.)

June 4, 2010 incident

11. Brian Flick is the current Principal at Meadow View School and has been for approximately five years. Mr. Flick has been an educator for approximately 26 years. (Test. of Flick.)

12. Jenny Sink is the current Principal at Fairfield Elementary School. In June 2010, Ms. Sink was the Assistant Principal at Meadow View School. She was also Respondent's supervisor. (Test. of Sink.)

13. On June 4, 2010, at approximately 10:25 a.m., two male students (JS and AS) were walking down the hallway of Meadow View School following a morning assembly. JS and AS were messing around and trying to pull each other's hoods over each other's heads. LK, another student, was walking next to JS and AS. Ms. Weaver was following behind JS and AS.

As JS and AS neared the hallway to the 8th grade wing, Respondent grabbed the two students, pushed them up against the wall, and yelled at them to, "Get to the office." Respondent followed JS and AS to the office. Upon entering the office, Respondent yelled at the two

students from across the office to, "Sit down." Two secretaries, a grandparent, and another student witnessed the behavior.

Ms. Sink was in her office and heard Respondent yell at the two students to sit down. Ms. Sink approached Respondent and told him that he couldn't yell at the students. Respondent expressed his frustration to Ms. Sink indicating that the two students were out of control. Respondent then began processing incident reports on the two students.

Ms. Sink reported the incident to Mr. Flick.

(Test. of Sink, Weaver, Exs. A2, A3, A4.)

14. On June 4, 2010, Ms. Sink interviewed JS, LK, AS, and Ms. Weaver regarding the incident. Ms. Sink prepared notes detailing the interviews,² which stated, in part:

[Student Interview 1]

At 12:25 p.m., two students came to the office wishing to see me, JS and LK. I brought in JS, a 7th grade student to talk. JS was visibly upset. He didn't think the way Mr. Zima handled him and the other boy was appropriate. At that point, I stressed to JS that he needed to be absolutely honest in his recall of the incident that took place. JS reported that he and AS were walking back from the assembly. JS b[umped] up in to AS and AS bumped back. AS took JS's hood and pulled it over his face. JS did the same to AS. JS alleged that the next thing he knew the hood was being pulled off his head and Mr. Zima had put his hand on JS's shoulder forcing him against the wall. JS stated that he [hit] his head lightly against the wall. JS said that Mr. Zima pressed him against the wall and yelled at him to go to the office and then let go. He said that Mr. Zima was not holding them very long, maybe a few seconds.

At this point, JS was in tears. JS showed me how Mr. Zima pushed him. Mr. Zima grabbed him at the shoulder and pushed him up against the wall. A diagram was drawn on the white board to pinpoint the location of the incident. I asked JS if anyone else saw it happen. He shared that he thought all of the kids in the hallway at the time would have seen it. He specifically named BM, LK, AG, and Mrs. Weaver, another staff member. JS admitted to horsing around in the hallway but he didn't think that Mr. Zima's reaction was appropriate.

Student Interview 2

Following my visit with JS, I met with LK. I asked LK to tell me what he witnessed in the hallway after the assembly with the boys

² The students' full names have been blacked out. The students' initials are used in this order. (Ex. A4.)

and Mr. Zima. LK shared that he was walking next to JS and AS in the hallway. AS was closest to the wall and JS was in the middle. JS tapped AS on the shoulder and AS started putting JS's hood on over his head. Mr. Zima grabbed both of them by their shirts at their arms. He shoved them in to the wall. He started yelling at them to go to the office. I asked LK where the incident happened and he described the same place that JS did, in the hallway rounding the corner to go to the 8th grade wing. LK didn't think that Mr. Zima should have grabbed them nor should he have yelled at them. I asked LK who else saw the alleged incident and he said a lot of kids would have seen it and Mrs. Weaver was in the hallway too.

Student Interview 3

AS was called to the office after LK. I asked him to tell me what happened in the hallway with Mr. Zima. He said that they were coming back from the assembly and messing around. He and JS were trying to put the other's hood on over their head. I asked him if he understood how the behavior wasn't safe and he did. He went on to say that Mr. Zima came up to them as they were going around the corner to the 8th grade hall. He grabbed AS's right arm at the shirt and pinned him against the wall. He had his other arm on JS. He told them to get to the office and then let go. I asked AS about how long Mr. Zima had hold of them and he said about 3 seconds.

At approximately 1:25 I visited with Regan Weaver in my office. Regan was the staff member who witnessed the incident in the hall. I asked Regan if she had seen the interaction between Mark Zima and the two boys. She was disturbed at the behavior shown by Mark and said that she intended to talk to either me or Brian. She was walking in the hall behind the boys. She didn't seem to think their behavior was that bad but the boys did have their arms around each other. She said Mr. Zima screamed at the boys, banged them up against the wall, and continued to yell at them to get to the office. She shared that his behavior was very inappropriate. She said that the boys seemed to be intimidated by his behavior. She also stated that if she was a parent of one of the boys, she would be calling a lawyer. I told Regan that Brian and I would probably want to visit with her again.

(Test. of Sink; Ex. A4 at 1-3.)

15. On June 4, 2010, Mr. Flick and Ms. Sink interviewed Respondent regarding the incident. Ms. Sink prepared notes, which stated, in part:

2:35 Zima Interview

Mark was invited to come to the office after school to debrief the incident. Mark mentioned that the kids were crazy coming down the hall following the assembly. One student came running through weaving in and out of students and shoving them. Mark sent that student to the office. I then asked him about the other two students. He said they were stumbling down the hallway and messing around, pulling their hoods over their heads and falling over each other. I told Mark that it was reported by a staff member that he grabbed the two students and shoved them against the wall. Mark was noticeably upset that the staff member came to administration before going to him. Mark admitted to grabbing the boys by their shirts because they were falling down, one was falling one way and one was falling the other. He stated that they were already up against the wall. Mark's position was that he was keeping the boys safe from falling down or falling on someone else. Mark shared that he would never grab a student but that he did grab them by their shirts because they were falling and out of control. He again expressed his frustration at the staff member who didn't talk to him and because he felt like he was the only one in the hallway. Mark wanted to know who it was or at least have us encourage the staff member to talk to him. Brian shared that it was not important who it was and we needed to better understand what was happening. Mark again shared that both students were out of control and falling down; one was falling one way and one was falling the other way. He grabbed both boys by their shirts to keep them from falling. In Mark's opinion, he was keeping the students safe. Brian shared with Mark the importance of not putting hands on kids for whatever the reason.

Following the meeting with Mark, we again visited with Regan Weaver. Regan shared what she saw transpire after the assembly. She said she was walking behind the boys in the hallway. She did not seem to think that the boys were acting that badly. She said they had their arms around each other and were making contact with each other. She heard Mark yell, grab the boys, push them against the wall and yell at them against to get to the office. Regan said that the boys were not up against the wall until Mark pushed them there. She also didn't seem to think that the boys were falling over prior to Mr. Zima grabbing them. Regan was asked why she thought Mark acted in this way...was trying to keep the boys from falling? Regan emphatically said no. The way it looked to her, Mark was very angry.

(Test. of Sink, Flick; Exs. A3 at 1-2, 4-6, A4 at 3-4.)

16. On June 7, 2010, Ms. Sink prepared a Letter of Reprimand for Respondent, which stated, in relevant part:

On June 4, 2010, at approximately 10:25 a.m. you directed three 7th grade male students to the office. Upon following them to the office area you yelled at two of the students from across the office to sit down. This action was carried out in front of me, two secretaries, a grandparent, and the three students. I immediately approached you by my office and explained to you that yelling at students was unacceptable.

It was later reported to me by another staff member that you were witnessed being physically inappropriate with two of the 7th grade students who were sent to the office. As students were returning to their lockers following the assembly, two boys were pulling each other's hoods over their heads as they were walking down the hallway. When rounding the hallway going into the 8th grade hall, it was alleged that you quickly approached the boys, grabbed both by their shirts at the arms, pushed them up against the wall, and shouted at them to get to the office. Though you indicated that you were keeping the students from "falling" my investigation determined that you did engage in inappropriate physical contact with the two 7th grade students.

This type of behavior is detrimental to the learning environment at Meadow View and will not be tolerated. You are directed to refrain from any physical contact with students and you are to speak to students with an appropriate tone of voice. In the future, should you verbally or physically intimidate students, further discipline, up to and including a possible recommendation for dismissal, may occur.

(Test. of Sink; Ex. A2 at 1.) On June 7, 2010, Mr. Flick and Ms. Sink met with Respondent and provided him with the letter of reprimand. Mr. Flick prepared notes documenting the action, which stated, in part:

June 7, 2010

At approximately 2:20, Jenny told Mark to come and see us after school to discuss the incident from last Friday. At approximately 2:45, Mark came to my office, Jenny closed the door and Jenny told Mark we had looked further into the allegations of Friday's events. At that time Mark asked if this had anything to do with

discipline. I told Mark it depended on how he viewed discipline. Mark went on to say that he had been in contact with Jeff Jackson and that if this involved discipline, he would only discuss it with Jeff present. Jenny then told him we had been in contact with Tim Keeley, shared our findings and the decision had been made to give him a letter of reprimand. She then placed the letter on the table and Mark did not touch it. Mark again wanted to know if this was discipline and I shared it was a letter of reprimand and he could either take the letter with him or we would put it in his mailbox. As Mark stood up angrily and prepared to leave, I went on to tell him that the letter specifically stated that he is to have professional interactions with students by not touching them and addressing them in an appropriate tone of voice at all times. Mark then exited the office and returned to his room with his letter.

(Test. of Sink, Flick; Exs. A3 at 3, A5.) Respondent did not grieve the reprimand. (Test. of Respondent.)

The period of January through April 2011, and the sexual harassment complaint

17. Kathi Holvey is currently employed as a consultant grant writer. During the relevant time period of January through April 2011, Ms. Holvey was the Assistant Principal at Meadow View School. She was also Respondent's supervisor. At some point in time, Ms. Holvey gave her personal email account to Respondent, as well as the other teachers at Meadow View School. (Test. of Holvey.)

18. Sebastian Bolden is a teacher at Meadow View School. He teaches eighth grade. He has been at Meadow View School for five years. (Test. of Bolden.)

19. Natalie Oliver is currently employed as a teacher at Cascade Middle School. During the relevant time period of January through April 2011, she was employed at Meadow View School teaching seventh grade. Ms. Oliver taught in classroom 36. Respondent taught in classroom 37. (Test. of Oliver.)

20. Christina Parra is currently employed as the Assistant Superintendent for the Bethel School District. She has held that position for three years. She is familiar with the rules of professional conduct for teachers. Ms. Parra was previously employed by the South Lane School District for 21 years. (Test. of Parra.)

21. Sharon Dye and Erik Wright were teachers at Meadow View School during the relevant time period of January through April 2011. (Ex. A11.)

22. Staff at Meadow View School can review the Staff Handbook to determine what behaviors are appropriate and/or expected. Staff can also review the Commission's rules and regulations. (Test. of Flick.)

23. On January 28, 2011, Mr. Bolden met with Mr. Flick to discuss the inappropriate behaviors that he and several other teachers (Natalie Oliver, Sharon Dye, and Erik Wright) had observed of Respondent while at Meadow View School.

The teachers had just completed an online training for sexual harassment. Following the training, Mr. Bolden, Ms. Dye, Ms. Oliver, and Mr. Wright discussed the red flags they had seen at Meadow View School. Mr. Bolden was elected to report the information to Mr. Flick.

Mr. Bolden told Mr. Flick that he and the other teachers had observed Respondent call female staff and students inappropriate names such as "honey" and "sweetie." Mr. Bolden also told Mr. Flick that he and the other teachers had observed Respondent touch female staff and students inappropriately.

Mr. Flick then spoke with Sharyn Dye, Natalie Oliver, and Erik Wright regarding their concerns and observations. (Test. of Bolden, Flick; Ex. A8.) Mr. Flick prepared notes detailing the interviews, which stated, in part:

On Friday, January 28th (grading day), I was approached by Sebastian Bolden who came down to my office and shared that after participating in the child abuse and sexual abuse online trainings, the 7/8 team had concerns with Mark Zima's behavior. Sebastian felt awkward reporting and claimed because he was in the administration program, he was the selected spokesperson. Sebastian shared the concerns and claimed that Mark has [engaged in] inappropriate touching of the female gender and uses inappropriate names when referring to the female gender.

Upon hearing this report, I went down the 7/8 wing to gather some more information from the teachers.

Sharyn Dye claimed that for years, Mark has touched the girls inappropriately by hugging or giving headlocks and that no one has ever reported it. She also reported that he had recently laid his head on her shoulder when in the hallway and she didn't like it, but also didn't say anything to him. Sharyn also shared that he uses words like "sweetie, darling and honey" when talking to female staff and students.

When I visited with Natalie Oliver, she claimed that Mark had referred to her as "darling" on several occasions and she didn't like it as it was very unprofessional. When I asked her if she had called it to his attention she shared that she had not. She also had observed questionable touching in the hallways with female students.

In talking with Eric Wright, he too shared that he has heard the unprofessional names spoken from Mark and had observed CM getting a headlock in the hallway.

All of the teachers were unsure if Mark even knew he was aware of his actions, claimed they didn't want him to get in trouble but that they did want him to act professionally around the children and them as teachers. I told them I would address it with Mark.

(Test. of Flick; Ex. A8 at 1-2.)

24. On February 2, 2011, Mr. Flick met with Respondent to discuss the behaviors witnessed by the other teachers. During the meeting, Mr. Flick shared the other teacher's observations and concerns. Mr. Flick also informed Respondent that he expected the inappropriate behaviors towards female staff and students to stop. (Test. of Flick; Ex. A8 at 1-2.) Mr. Flick prepared notes detailing the discussion, which stated, in part:

I met with Mark in the afternoon on February 2 and I shared the following:

- I met with the teachers on his team on Friday and they were concerned with his professional actions at school in regard to touching female students and calling females names such as "sweetie, darling and honey." Mark was very surprised and claimed he was not aware of this issue and was bothered that his colleagues wouldn't come directly to him. I informed Mark that this is not an easy [] conversation to have with a colleague, his colleagues didn't want him to get in trouble but that they did want it to stop and I expected it to stop. Mark claimed he was from the mid-west and those were words he grew up hearing and using.
- I also explained that there were concerns with touching females and that it had been reported he had put kids in headlocks in the hallways. I used CM as and [sic] example that had been reported to me. Mark claimed that he knew the family very well, and that if he had done a headlock it was just being playful (he didn't remember doing it).
- I explained to Mark that he needed to have a hands-off policy for two reasons. The first one was that he was written up at the end of 2009-2010 school year and it stated he was to keep his hands off kids. The second reason was that he is male and that anytime he touches a female, he is setting himself up for a possible problem if the female reports he hurt her or touched her inappropriately. I explained it is all about a student's interpretation and he should know that because last June his interpretation of the incident was very different than the student in the hallway.
- I told Mark that now that he was aware, he needed to not be touching students at school and he needed to be very careful in

how he addresses the females in the school because it wasn't professional behavior.

- I also talked to Mark about the amount of time he was spending in the school and always around Erin Landauer. They always seem to be together. I told him it looked bad, people were wondering what was going on and he needed to correct it or I would need to visit with Erin about the issue. Mark claimed he is like a counselor consultant for her because she has a lot of issues.
- Mark thanked me for calling it to his attention and said he would work on it.

(Test. of Flick; Ex. A8 at 1-2.)

25. On February 24, 2011, at 1:33 p.m., Mr. Flick sent an email to Respondent that stated, in part:

Mark,

Just an FYI...on Tuesday during our team meeting you referred to Sharyn as "honey" and on Wednesday when you popped into Kathi's office, you referred to her as "darling." I didn't want to call you out on the spot and embarrass you but I do need you to be aware about how you address the female gender here at school. Please continue to work on it and improve it.

(Ex. A9.) On February 24, 2011, at 5:22 p.m., Respondent sent an email to Mr. Flick that stated:

Thanks for pointing that out. I have been making a conscious effort to change my speech patterns. I occasionally slip up, but have improved greatly, and will continue to do so.

(Ex. A9.)

26. During the period of February through April 2011, Respondent made inappropriate comments to Ms. Holvey at work like, "You know you want me," and "You know I am good." Respondent also made inappropriate comments to Ms. Holvey and others at work regarding how Ms. Holvey looked, commenting on her clothes, her legs, and her eyes.

On two occasions prior to April 25, 2011, Ms. Holvey told Respondent to stop and that she would never be with him for professional and ethical reasons but the inappropriate behavior continued. Ms. Holvey also reported Respondent's inappropriate behavior to Mr. Flick and Ms. Sink. Ms. Holvey felt confused, embarrassed, angry, and offended by Respondent's behavior. Ms. Holvey did not "come on" to Respondent. (Test. of Holvey; Ex. A15 at 4-5.)

27. On or about March 30, 2011, Ms. Holvey spoke with Mr. Flick regarding a sexual comment Respondent had made about her to Karen Lindley, another teacher at Meadow View

School. (Test. of Holvey, Flick; Ex. A8 at 2.) Mr. Flick made notes detailing the conversation, which stated, in part:

On March 30, Kathi shared with me that Karen Lindley had reported to her that Mark had made a sexual comment to her about the jeans she was wearing. I pulled both Karen and Kathi into my office and had Karen share [] what she heard Mark say in the hallway. She reported the date was March 15, the March Madness Basketball game day. Karen shared the comment that was about Kathi's jeans from Mark. Karen reported that Mark said, "Did you see Holvey's jeans[,]" and then went on to say ["I can't believe she wears jeans that tight. Damn Kathi." Upon hearing the comment, I felt that it implied Kathi's jeans were tight and she was getting away with wearing them at school. It was a very grey comment that could be taken several ways. I told both of them to keep an open ear and let me know if they hear other things being said.

(Test. of Flick; Ex. A8 at 2.)

28. Sometime during the week of April 11, 2011 through April 13, 2011, Ms. Holvey told Mr. Flick that Respondent had invited her to his farm and that she had told Respondent she was not getting involved and does not get involved with colleagues. Ms. Holvey told Mr. Flick that she believed Respondent was emailing her personal account but she had not opened the emails. Ms. Holvey also told Mr. Flick that she did not want him to say anything, that she would be very direct with Respondent, and that she would take care of it. (Test. of Holvey, Flick; Ex. A8 at 2-3.)

29. On April 21, 2011, during a TAT meeting before school, Mr. Flick observed Respondent slap his lap and tell Erin Landauer, another teacher at Meadow View School, to have a seat. At the end of the meeting, Mr. Flick observed Respondent put his hand on Kathi Holvey's head and move his fingers up and down. Following the meeting, Mr. Flick walked down to the 7th and 8th grade hallway and observed Respondent giving AM, a female student, a headlock. (Test. of Flick; Ex. A8 at 3.)

30. On April 22, 2011, Mr. Flick met with Respondent to discuss the behavior he had witnessed the previous day. (Test. of Flick; Ex. A8 at 3.) Mr. Flick made notes detailing the meeting, which stated, in part:

[I] called Mark down when he came up to the office on his prep with Erin Landauer. I explained the following:

- I had observed the lap slap with Erin during the TAT meeting and it was very unprofessional. Mark claimed he was just joking around. I told him it was not appropriate for the workplace.

- I shared the Kathi Holvey head touch and how he had no right to touch her, it again was not appropriate or professional. Mark claimed he meant nothing by it.
- I shared the AM headlock in the hallway and again reminded him that he was not to have contact with the kids in the hallways. Mark claimed he didn't eve[n] know he had done it.
- In closing, I told Mark that I was done talking to him about his behavior and that in the event I heard about or observed one more event that was inappropriate, I would contact Chris Parra at the district office and the district would be getting involved. I said the ball was in his court and he could decide how it bounced and again reminded him that he needed to act professional at all times.

(Test. of Flick; Ex. A8 at 3.)

31. On April 22, 2011, Mr. Flick met with Ms. Holvey after school. Ms. Holvey reported that she had emails from Respondent that she had not opened but she suspected were inappropriate. Mr. Flick told Ms. Holvey to open the emails on his computer and she did. Mr. Flick viewed some of the emails and said that it had to be reported to the district. Mr. Flick instructed Ms. Holvey to print the emails and prepare a timeline the best she could. (Test. of Flick, Holvey; Ex. A8 at 3-4.)

32. On April 22, 2011, Mr. Flick went to the district office and spoke with Ms. Parra regarding Respondent's inappropriate behaviors with female staff and students, and Respondent's inappropriate emails to Ms. Holvey. (Test. of Flick, Parra; Ex. A10.)

33. On or about April 22, 2011, Ms. Holvey prepared a timeline of events detailing Respondent's inappropriate behaviors, which stated, in part:

Starting back in early February.

1. Zima invited me to meet him for a beer.
2. A day or two later he asked for my home email address. I don't remember his reasoning but I gave it to him.
3. The he started being more flirtatious at work, talking about a romantic dinner instead of a beer, commenting on how I looked that day, complimenting my legs, my eyes, and other unprofessional and embarrassing comments.
4. A few days later, he was in my office and I reminded him that he was a married man, a colleague, and I would never be with either and told him I couldn't meet him for a beer.

5. I had been getting emails from a "Jack Burton" but deleted them without opening/reading because I didn't know anyone by the name of "Jack Burton."

6. Then one day he stopped by my office and asked why I hadn't responded to his emails and told me he was "Jack Burton."

7. I read some of them and then again reminded him of what I had said in number 5 and added that I had a boyfriend who would not appreciate his actions.

8. Zima continued to flirt and say things at work that embarrassed me. I had spoken with Karen Lindley, Jenny Sink, Jennifer Lister, and Jill Lister about the stuff he was saying and doing. More often than not their reactions were "that's Zima." They asked if he had tried hugging me. At that time he had not. A short time later he did, however, I turned my shoulder into him. This has not happened again. This occurred at work in the hallway outside of my office.

9. I started thinking I was making a big deal out of nothing. I had told Brian [Flick] about some of [the] things Zima was saying and how he made me feel uncomfortable. Brian, Karen, and I concluded that the things I shared could be interpreted different ways. I just knew they made me feel uncomfortable.

10. Then one day in early April he made a comment to Karen Lindley about how I looked in my jeans. To Karen it was clearly a sexual comment based on his tone of voice.

11. Another day he walked into the office at the conclusion of a conversation between Brian, Karen, and I regarding her moving out. He asked if Karen and her boyfriend had broken up. I told him yes. He then made a comment about being "with" both of us as he walked out of my office.

12. On either April 11, 12, or 13, I told Brian I had to talk with Zima because his actions were really bothering me. This had been going on now for a little over 2 months.

13. As of Friday, April 2[2], I had not spoken with Zima. After school this day, Brian shared his morning conversation with Zima and I told him about the emails. We sat at his computer and I opened the emails sent in March and April, most of which I had never opened.

14. The evening of Friday, April 2[2], Karen Lindley and Jenny [S]ink came to my house and we read through all of Zima's emails. They saw the ones I accidentally deleted when I was trying to print them for this meeting. Brian also saw these emails.

15. Explanation for Response on March 12: Mark continuously brags about being a fireman and the danger of his work. In response, I have mockingly said "yeah, your dangerous," making fun of him. Karen Lindley has been present during most of these conversations. One day he commented about my sarcasm and said that all women find fireman hot and sexy and didn't understand why I didn't. In addition, he has told me I think too much and should just give him a try. This has been repeatedly stated in his emails.

(Test. of Holvey; Ex. A15 at 4-5.)

34. On or about April 24, 2011, Ms. Holvey printed off several emails that she had received from Respondent, which stated, in part:

- Date: 02/16/11 02:36 PM
From: jack burton

I can't believe you deleted me! Sigh...now I know where I stand...sigh...So, 14 Hands Merlot, eh???? Seems to me I ought to stock up on that at the farm...you know how it is in the country...so lonely...so quiet...so remote...nice when folks drop by and set a spell...

- Date: 02/16/11 10:52 PM
From: jack burton

dammit woman, don't you ever check this account????????

- Date: 02/16/11 10:04 PM
From: jack burton

sure...play hard to get... :)

- Date: 02/17/11 01:33 PM
From: jack burton

are you ignoring me???? :)

- Date: 02/19/11 05:34 PM
From: jack burton

It's Saturday night. We haven't seen each other in three days.
If you are curious, let me know...

- On 02/20/11, jack burton *** wrote:

Are you there??? Are those seeds germinating??? Cmon, what have you got to lose??? Don't knock it til you try it!!!! I'm waiting for an answer....

- [no date or time]

Albertsons carries 14 Hands 2008 Merlot! What are the odds? I just picked up a bottle because you never know when you might have a beautiful woman to entertain...that's me, always prepared!

- On 03/11/11, jack burton *** wrote:

Listen, you beautiful blue eyed Babe,

Do you have any idea of the virility, stamina, and down right alpha-stud-maleness it takes to climb 69 floors, fully packed up, on air, in 24 minutes??? Imagine all of that virility unleashed...kinda makes you think, doesn't it? I hope you are thinking what I am thinking, because you are just too damn HOT for me to just leave alone. Think about it...

(Ex. A15 at 6-13.)

35. On April 25, 2011, Ms. Holvey filed a sexual harassment complaint against Respondent with Bethel School District for inappropriate comments, inappropriate sexually suggestive emails, and inappropriate/unprofessional unwarranted touching. In the complaint, Ms. Holvey stated that she had told Respondent on two occasions that she would never be with him for professional and ethical reasons. Ms. Holvey also stated that the remedy she was seeking was immediate discontinuation of stated behaviors and actions. (Test. of Holvey; Ex. A15 at 1.)

36. On April 26, 2011, Ms. Parra interviewed Ms. Dye, Ms. Oliver, Mr. Wright, Mr. Bolden, Ms. Lister, Ms. Sink, and Ms. Lindley. Ms. Parra prepared investigatory notes documenting the interviews, which stated, in part:

Sharon Dye

- Sharon noted that she mentors other teachers, and will help other staff members out when enforcing the dress code with students.

- Feels the teacher's discussions surrounding Zima [unprofessional behavior] has been professional versus gossip, and that they don't want other [newer] teachers to feel as though Zima's behavior is appropriate.
- Some teachers have become uncomfortable with Zima's behavior – touching of adults and students (e.g. head on shoulders, girls in headlocks, forehead to forehead with a girl, hugging girls, though the 8th grade girls seems [sic] to like it.) Mr. Flick talked to Zima in January the behavior stopped but then started again after spring break – “back to where we started.”
- Ms. Dye reports that she doesn't like to be around Mr. Zima.
- Reports that Mr. Zima will say things such as:
“Doesn't she look beautiful?” and “You're beautiful.”
“Look at those beautiful blue eyes” and will call other teachers
“Darling” and will do this in front of parents as well.

Natalie Oliver (8:20am)

- Ms. Oliver, Sebastian Bolden, Sharon Dye, and Eric Wright were very uneasy after watching the required “Sexual Conduct with Students” training. They felt very uneasy about the amount of physical “touching” by Mr. Zima toward female staff members and toward students. Ms. Oliver reported that it was “wrong to not come forward,” and that they “can't not come forward.”
- Ms. Oliver reported that Mr. Zima focuses on women and reported comments made about female students – “Tight jeans,” “Look at that shirt. Those things are busting out.”
- At one point Ms. Oliver witnessed Mr. Zima putting his forehead against an 8th grade girl's forehead after the student asked if she could use the restroom. Ms. Oliver reportedly said to Mr. Zima, “That's weird” in reference to the forehead-forehead interaction, and Mr. Zima reportedly said, “Oh, it was? I didn't know.”
- Ms. Oliver reported that Mr. Zima is comfortable talking to her.
- Mr. Zima will talk to Erin Landauer before and after school while on duty about his wife and volunteer firefighting. [Mr. Zima shared this with Ms. Oliver]
- Mr. Zima will rest his head on Ms. Oliver's shoulder and say things such as, “Oh, you women want to be wanted.” When asked if she has allowed Mr. Zima's behavior to continue, Ms. Oliver reported that she has given him non-verbal “cool it” cues and that Mr. Zima asked her why she was doing that and Ms. Oliver's response was, “I'm not in the mood.”
- She has recently observed Mr. Zima placing a student in a head-lock twice (1 week apart). This incident was with the same student.
- Mr. Zima uses unnecessary language when referring to female staff members such as “sweetie, honey, darling.”

- According to Ms. Oliver, Mr. Zima “manhandles” students, particularly male students. He occasionally calls them “small and weenie.”
- In November Ms. Oliver witnessed Mr. Zima [standing beside Ms. Oliver in the hallway], watch Ms. Holvey walk down the hall in front of them. Ms. Oliver reported that Mr. Zima was “obviously” following Ms. Holvey “with his eyes.”

Eric Wright

- Mr. Wright’s concerns regarding Mr. Zima were discussed with Sharon Dye, Sebastian Bolden, Natalie Oliver.
- Mr. Wright reported the group was concerned about “pet names” that Mr. Zima used toward female staff members such as, “hon, honey.”
- Another concern was that Mr. Zima frequently “wrestled” with students, and on two occasions this past winter, Mr. Zima threw students on his shoulder [one male, one female].
- Mr. Wright reported that Mr. Zima “frequently” give[s] hugs on the neck and waist to female students and will put both male and female students in headlocks. This behavior, according to Mr. Wright, still occurs.

Sebastian Bolden

- Mr. Bolden has observed Mr. Zima “go out of his way and ‘force’ hugs to the point where students seemed uncomfortable.” Ms. Bolden said this was a “very common occurrence.” Mr. Bolden reported that at first, he “let this behavior slide” but when he began to see, in his opinion, that students were uncomfortable, Mr. Bolden had to say something. After Mr. Flick spoke to him, Mr. Bolden saw a decrease in this behavior by Mr. Zima but that it now is “as bad as it was before both in terms of frequency and ‘uncomfortableness’ [of the students].”
- Mr. Bolden “routinely” – once a week – observes Mr. Zima horseplay with boys.
- Mr. Bolden has observed Mr. Zima calling female staff members by pet names such as “honey, sweetie” and spends a lot of time with Erin Landauer. Mr. Bolden heard a student refer to Ms. Landauer as Mr. Zima’s “work wife.” Mr. Bolden’s opinion is that these interactions between Mr. Zima and Ms. Landauer are “odd” because they do not have students in common and therefore Mr. Bolden’s [sic] feels it is likely not work related. Mr. Bolden is concerned about how students may interpret the relationship between Mr. Zima and Ms. Landauer.
- Mr. Bolden has observed Mr. Zima touching female staff.
- In Mr. Bolden’s opinion, Mr. Zima has made reference to Ms. Holvey “being pretty” in a “complimentary” but “sleazy” way.

When asked to explain this further, Mr. Bolden commented, “with the implication that she [Ms. Holvey] was ‘hot’.”

- Mr. Bolden mentioned that a female student came up to him [Mr. Bolden] and retold a story that Mr. Zima had said to the class. Mr. Zima allegedly told the class about a “hot blond” he met at a cell phone booth. While the student was sharing this story with Mr. Bolden, Mr. Zima approached, heard what the student was relaying and according to Mr. Bolden, “tried to cover it up.” When asked to explain how Mr. Zima tried to “cover it up,” Mr. Zima reportedly said that the hot blond and his wife were together.

Jennifer Lister

- Ms. Lister reported that Mr. Zima got down on his knees to lay his head on her shoulder. She felt this was “weird” and that “there was no reason for him to have done that. No purpose for the interaction. He didn’t need to speak to me about anything.”
- Ms. Lister reported that Mr. Zima refers to Ms. Landauer as his “work wife.”
- Ms. Lister reported observing Mr. Zima, Ms. Landauer, and Ms. Lindley in front of the office and that “out of the blue” Mr. Zima said, “Yeah, they both want me.”
- Ms. Lister also reported that Mr. Zima was trying to find a home for his dog and Ms. Lister mentioned that her dog hadn’t been spayed and wanted to know if Mr. Zima’s dog had been fixed. According to Ms. Lister, Mr. Zima’s response was, “He’s just an old dog and hasn’t seen action, and that he [Mr. Zima] hasn’t had any action – no sex – for months.”

Jennifer Sink

- Jennifer Sink was contacted by Kathi Holvey because she wanted to know if Karen Lindley had mentioned to Jenny Sink about an inappropriate comment [tight jeans comment] made by Mark Zima in reference to Kathi Holvey. Ms. Sink reported that Ms. Holvey was uncomfortable with comments made by Mr. Zima toward Ms. Holvey.
- Jennifer [Sink] also reported that Ms. Holvey said that she was uncomfortable about a comment made by Mr. Zima toward Karen Lindley and Ms. Holvey [both were in Ms. Holvey’s office] when Mr. Zima came to the office. Mr. Zima reportedly said, “I’m imagining the three of us together.” Ms. Sink asked Ms. Holvey what she intended to do about the comment and Ms. Holvey reportedly responded that she [Ms. Holvey] needed to take care of it.
- On 4.22.2011 Ms. Sink read emails written by “Jack Burton” [Mr. Zima’s email alias] to Kathi Holvey on Ms. Holvey’s college email account. Ms. Sink reports that one email in particular said how

“sexy” Ms. Holvey looked in her jeans and that all [emails] were sexual in nature.

Karen Lindley

- Ms. Lindley reports that Mr. Zima would frequently hug students in the previous year, but “not as much” this year.
- Ms. Lindley reports that Mr. Zima’s behavior toward female staff members is “just Mark” when he calls them “sweetie and hon.” She also mentioned that Mr. Zima calls his students these names as well although he hasn’t called the students “sweetie and hon” this year.
- Ms. Lindley reported that Mr. Zima would frequently voice his concerns about female student dress and ask Ms. Lindley to address the concerns.
- Ms. Lindley reported that female staff members have informally come to her out of concern about Mr. Zima calling them “sweetie and hon.”
- Ms. Lindley reported that on “multiple” occasions Mr. Zima has said to her, “If I were 2 inches taller and 20 years younger...” and that “You are a very attractive woman.” When Ms. Lindley was asked what her response was to Mr. Zima, she said that she “ignored” the response because she was the “new, young one.”
- Ms. Lindley reported that when in the office last week and next to Mr. Zima and Ms. Landauer, that Mr. Zima said, “They are both fighting for me and want me.” Ms. Lindley reported that upon hearing this, she stopped and let Mr. Zima and Ms. Landauer go ahead.
- Ms. Lindley reported that Mr. Zima came to her after the Christmas Party out of concern that some staff members may have been thinking that there was something going on with Mr. Zima and Ms. Landauer.
- During supervision with Mr. Zima on March 15 [staff BB game before spring break], Ms. Lindley reported that Mr. Zima ask[ed] her, “Would you wear jeans that tight?” in reference to Ms. Holvey who had just walked past. Ms. Lindley reported that Mr. Zima then said, “I can’t stop thinking of her in those jeans – I’m like, damn, Kathi Holvey.”
- Ms. Lindley reports that Mr. Zima will occasionally walk past a room where two women are talking and say, “Two women in a room, must be talking about me.”
- Ms. Lindley reports that other staff members would ask her, “Has he [Mr. Zima] tried to hug you yet?”
- Ms. Lindley reported that Ms. Holvey had come to her because she was uncomfortable with the way Mr. Zima was behaving toward her. According to Ms. Holvey [as reported to Karen Lindley], Mr. Zima would pop in to her office and tell Ms. Holvey how nice she

looked, and sometimes make a “click” noise and wink at her. Ms. Holvey also reported that Mr. Zima would try to hug her. Ms. Holvey also reported to Ms. Lindley that Ms. Holvey had been getting emails from Mr. Zima but that she wasn’t reading them. Ms. Lindley reported that she encouraged Ms. Holvey not to delete the emails. Ms. Lindley reported that later, on 4.22.2011 she went back to MV to drop off something and saw Ms. Holvey crying in Mr. Flick’s office [over the interactions with Mr. Zima].

- In “hindsight,” Ms. Lindley reported the “totality” of the “specific comments” made to her by Mr. Zima made her feel uncomfortable.

(Test. of Parra; Ex. A11 at 1-4; emphasis in original.) On April 26, 2011, Ms. Parra interviewed Respondent and prepared notes detailing the interview.³ (Test. of Parra.)

37. On April 27, 2011, Mr. Flick interviewed several students including NG, KH, TG, GM, AT, KB, and CD. Mr. Flick prepared notes detailing the interviews, which stated, in part:

NG:

Ice breaker questions about state testing and how school was going and hard/easy subjects

Q= Who are some of your favorite teachers here at MV?

A= Oliver and Bolden.

Q= Have you ever been picked up by Mr. Zima while at school?

A= Yes, he is cool. He knows my dad who is a fire fighter. He puts me in a headlock and then picks me up.

Q= Where does this happen?

A= It happens in the hallway.

KH:

Ice breaker questions about state testing and how school was going and hard/easy subjects

Q= What is your favorite class?

A= Reading.

Q= Hardest class?

A= Science.

Q= Who is your favorite teacher?

A= Zima.

Q= Why Zima?

A= He is awesome and he plays around with you.

Q= How does he play around with you?

A= Can’t really describe it.

Q= Has he ever picked you up before?

A= Yes, he picked me up once. He also tells stories.

Q= What kind of stories?

³ Ms. Parra documented Respondent’s admissions and responses in the written reprimand issued on April 28, 2011. (Ex. A6.)

A= EMT stories.

Q= Does he tell stories about blood and guts?

A= No.

TG:

Ice breaker questions about state testing and how school was going and hard/easy subjects

Q= Who is your favorite teachers?

A= Bolden and Zima.

Q= Why?

A= Bolden is entertaining. Zima, I have known him since I was three. He and my dad are friends. He has hung out with my mom and taught my sister. I have known him forever.

Q= Has he ever picked you up before?

A= No.

Q= Have you ever seen him hug others before?

A= Yes, he has hugged TE.

GM:

Q= I was talking to some teachers recently and I heard something I need to ask you about. Do you recall asking to go to the bathroom the other day and Mr. Zima putting his forehead on your forehead?

A= No.

Q= Does he ever put his forehead on yours?

A= Sometimes we talk forehead to forehead. We joke around and talk like that.

Q=When was the last time that happened?

A= Two weeks ago. It lasts just a second or two.

We then talked about school and how it was going...likes and dislikes and she shared she loves art and has recently been making carton sketches.

Q= Have you ever heard Mr. Zima tell a story about a cell phone at a kiosk?

A= No.

Shared: In the future, it is best to have conversations that aren't forehead to forehead.

AT:

Q= [I] heard earlier in the year Mr. Zima had hugged you and you didn't like it. Do you recall that happening?

A= No.

Q= Has he ever hugged you before?

A= Yes, he does it often. He teases me that I don't like him and he's not my favorite teacher.

Q= Does it bother you?

A= It is playful and doesn't bother me at all.

Q= When was the last time it happened?

A= Probably a few weeks ago.

KB:

Ice breaker questions about state testing and how school was going and hard/easy subjects

Q= What is your favorite class?

A= Writing.

Q= Hardest class?

A= Math.

Q= Who is your favorite teacher?

A= Zima.

Q= Why?

A= We get along good. He likes me and tells me that he likes me a lot.

Q= Has he ever hugged you?

A= Yes.

Q= Does he ever put you in headlocks?

A= Yes.

Q= How often?

A= Daily.

Q= Do you have many classes with Mr. Zima?

A= I'm in his class for Block A and my elective. I can't go to Art with my arm right now so I sit in his class.

Q= Is that during his prep or explorer class?

A= It is when he teaches Mathology.

CD:

Q= [I] heard the other day that Mr. Zima has referred to Ms. Landauer as his work wife. Have you ever heard of this before?

A= Yes, he reported it to the whole class in Block B. He said he heard it on Oprah and explained what it meant to the whole class. He said that she decided she was his work wife.

Q= When did this happen?

A= I think it was back in February.

Q= Have you ever heard him tell a story about a cell phone at a kiosk?

A= No.

(Test. of Flick; Ex. A12 at 3-5; emphasis in original.)

38. On April 27, 2011, Ms. Dye spoke with Mr. Flick regarding two additional incidents involving Respondent. Mr. Flick prepared notes detailing the incidents, which stated, in part:

Incident #1:

Sometime last week Sharyn walked into Mark's room during her prep and found Erin Landauer in his room standing at his desk during Mark's prep. Sharyn shared she needed to ask him a question and apologized for interrupting. He later approached her and said, "I council [sic] her on her love life. I don't know why she picked me."

Incident #2:

A few weeks ago, Sharyn Dye and Shelly Stager were walking in the hallway and passed Erin Landauer and Mark in the hallway. Mark replied, "Hi Ladies" and then made a mouth noise that went click, click.

(Test. of Flick; Ex. A12 at 2; emphasis in original.)

39. On April 28, 2011, Ms. Parra issued a written reprimand to Respondent, which stated, in part:

RE: WRITTEN REPRIMAND FOR FAILURE TO FOLLOW SUPERVISOR'S DIRECTIVE

In January 2011, a concern on behalf of several staff members regarding the level of physical contact with and verbal interactions toward female staff members by you was brought to Mr. Flick's attention. Mr. Flick addressed this issue with you on February 2, 2011 and directed you to immediately refrain from all physical contact with staff members and to stop referring to them as "hon," "sweetie," and "darling."

On April 22, 2011, after witnessing inappropriate behavior by you toward female staff members, Mr. Flick again directed you to refrain from touching female staff members or displaying inappropriate actions; however, this incident led to Assistant Principal Kathi Holvey's subsequent reporting of additional inappropriate physical and verbal interactions made to her by you. While making inquiries related to these incidents, Mr. Flick became aware of additional previously unreported but significant incidents of inappropriate physical contact with and verbal interactions toward female staff members by you.

In separate investigatory interviews on April 26, 2011, eight staff members were interviewed. Specific events witnessed and/or experienced after February 2, 2011 by those interviewed and your responses, are outlined below:

1. Reference to female staff members as “hon,” “sweetie,” and “darling.” Your response to this was that you were from Chicago and it’s “just how you are.”

2. Attempting to hug female staff members, who reportedly move away in an attempt to avoid them. Your response was that you occasionally hug staff members but the hugs are more like a “patting on the back.” In addition, you said that you do hug one staff member but that she “hugs you back.”

3. Resting your head on the shoulders of female staff members. Your response was that you had no recollection of such incidents. Three separate staff members reported this behavior.

4. Asking other adults and students, “Isn’t she beautiful?” in reference to another female staff member present (in hallway or classroom). Your response was that these interactions were of a complimentary nature.

5. Reportedly asking a colleague in March 2011, “Would you ever wear jeans that tight?” and, “I can’t stop thinking of her in those jeans,” in reference to Assistant Principal Kathi Holvey after she passed you and a colleague in the hall. You admitted to making this comment; however, you also said that you immediately apologized for the behavior to both Ms. Holvey and the colleague present. Ms. Holvey reports that she was not made aware of your remarks until later. The colleague made no report of an apology.

6. Telling a staff member that your dog “hasn’t seen any action” and that you hadn’t had any action – meaning sex for months. Your response was that you did not recall this particular comment, but that you “may have made this comment” because “we are friends.”

7. Announcing in the front office as you walked by, flanked by two other female staff members, “they both want me” and are “fighting over me.” Your response was that while you do not recall saying “they both want me,” you might have said something like “they are fighting over me.”

8. Upon entering Assistant Principal Kathi Holvey’s office and overhearing that another staff member was now single, making the comment about “imagining the three of us together.” You denied making this comment. Both Ms. Holvey and the other staff member present separately and similarly reported this event.

9. Telling a staff member who recently broke up with a boyfriend, "If I were only 2 inches taller and 20 years younger..." This staff member reported that you have made this comment multiple times to her. When asked to clarify what was meant by the comment (If...then...) you replied, "Then I would date her." You clarified that what you actually said was, "If I was 2 inches taller, 20 years younger, and single." You wanted to make the point that you are a married man. You admitted making this comment but said it was in an effort to console her and make her feel better while she was getting over a break-up with a boyfriend.

10. Making references to Assistant Principal Holvey's legs and manner of dress. You admitted telling Ms. Holvey that she had "great runner's legs" and that you did tell her she had "great outfits."

11. On April 22, 2011 during a TAT meeting, when a staff member walked in looking for a place to sit, you slapped your hands upon your lap, indicating she could sit there. You admitted to this but said you were only joking.

12. During the same TAT meeting referenced above, you placed your hand upon Assistant Principal Kathi Holvey's head upon leaving the meeting. You admitted to "drumming your fingers across Kathi's head."

13. You exchanged personal email addresses with Assistant Principal Kathi Holvey and began emailing her messages that increased in sexual innuendo. On at least one occasion, you referenced the email messages during the workday with Ms. Holvey, asking her why she was not responding to them. In addition, two of these emails were sent while on duty using district equipment and Internet access. You admitted that the emails were "sexual in nature" but that you "never thought it would come to that," and they were all "in jest." While initially denying that you sent personal emails during the workday, you acquiesced when I made it known I was in possession of the emails with the time sent indicated. You further responded that Ms. Holvey replied to "1 or 2 emails." When reminded that Ms. Holvey actually hadn't read a large majority of the emails and was instead trashing them, you acknowledged that you went into her office to ask her why she wasn't initially responding and that [] you were "jack burton" (alias used by you on personal email account). In fact, Ms. Holvey retrieved emails from her personal account – emails that were in her trash and the majority of them, particularly the most recent and most sexually graphic, were unread. Ms. Holvey retrieved these

emails in the presence of two other staff members who confirm this account.

14. While on duty, you discussed with Assistant Principal Kathi Holvey the desire to entertain her "out on the farm" and indicated that your wife was not home at the time. You acknowledged a conversation occurred but that it grew out of an exchange at a Christmas party and "never thought we would," [have a romantic dinner], and "didn't expect it" [to occur]. You denied ever saying that your wife was out of town.

During the investigatory interview with you on Tuesday, April 26, 2011 you acknowledged receiving the directives on February 2, 2011; however, you claimed that while you understood the directive as it applied to students, you didn't recall Mr. Flick including staff members. In an email exchange on February 24, 2011, Mr. Flick reminded you to "continue to work on" improving how you address female staff members after he heard you call them "Honey" and "Darling." Your reply indicated you were making an effort, but that you "occasionally slip up." These exchanges confirm a previous discussion and directive on this matter.

Based upon the investigation as detailed in this letter of reprimand, not only have you failed to refrain from physical contact with and inappropriate verbal references towards female staff members, it has instead escalated to the establishment of a clear pattern of inappropriate sexual references and behaviors toward targeted female individuals. These behaviors are a clear violation of the directives provided to you on February 2, 2011 and February 24, 2011.

You are hereby directed to discontinue physical contact with and inappropriate verbal interactions, including those of a personal and sexual nature, toward female staff members. Should you fail to do so, further discipline, up to and including a recommendation for dismissal, may occur.

(Ex. A6; emphasis in original.) Respondent did not grieve the reprimand. (Test. of Respondent.)

40. On April 28, 2011, Ms. Parra issued a letter of discipline to Respondent, which stated, in part:

RE: SUSPENSION WITHOUT PAY ON WEDNESDAY, MAY
4, 2011

You are not to report to work on Wednesday, May 4, 2011 because you are being suspended without pay for failure to adhere to directives provided to you on June 7, 2010 (Letter of Reprimand) and February 2, 2011 (meeting with Mr. Flick), whereby you were directed to refrain from any physical contact with students.

As you are aware, in January 2011, a concern on behalf of several staff members regarding the frequency and level of physical contact of students by you was brought to Mr. Flick's attention. Mr. Flick addressed this issue with you on February 2, 2011.

In separate investigatory interviews, four staff members reported that since spring break (March 21-25), they have witnessed you interacting with students in a manner that is concerning to them. These interactions include placing students in headlocks, wrestling/horseplay, referring to students as "honey" and "sweetie" and hugging students. In addition, on Thursday, April 21, 2011, Mr. Flick witnessed you placing a female student in a headlock in the hallway.

During the investigatory interview with you on Tuesday April 26, 2011 you acknowledged receiving the directives on June 7 and on February 2, 2011. In this interview you also admitted to "occasionally" putting kids in headlocks. While you initially denied throwing kids up on to your shoulder, particularly females, you then changed your statement to "perhaps with a boy, but never with a girl." You also indicated that you provide hugs to students because they want them. Finally, upon hearing that several staff stated that you referred to students as "honey" and "darling," placed students in headlocks, hugged students, threw students over your shoulder, and that these interactions occurred with frequency, you stated that you disagree that these activities occur "frequently."

Your repeated failures to refrain from all physical contact with students is a clear violation of the directives provided to you on June 7, 2010 and again on February 2, 2011.

You are hereby directed to discontinue having physical contact with students. Should you fail to do so, further discipline, up to and including a recommendation for dismissal, may occur.

(Ex. A7; emphasis in original.) Respondent did not grieve the suspension. (Test. of Respondent.)

41. On May 3, 2011, Mr. Flick met with Respondent and went over the following written directives:

Students:

- No physical contact with students – this includes playful wrestling, headlocks, throwing kids over the shoulder, hugs, etc. (The only exceptions would be those allowable by law – safety/dangerous situations.)
- Refer to students by name.

Staff

- All interactions with staff members are to be in a professional manner at all times.
- Do not refer to staff members as honey, sweetheart, darling or other pet names. Refer to staff members by name.
- No physical contact with female staff members, including laying your head on their shoulder.
- No winking/clicking noises made toward female staff members.
- Before/after school/prep times are times when you are on duty. These are provided for you to prepare for class, not counseling staff. You are directed to advise staff members that you are unable to engage in such conversations while on duty.
- You are not to engage in sexually suggestive/explicit verbal or written communications with female staff members, even in jest.
- You are to adhere to the district technology agreement***.
- All district email will be for professional purposes and professionally written.

Kathi Holvey:

- All conversations are to be strictly professional
- Do not compliment Kathi Holvey on her clothing or make reference to her manner of dress.
- You are to have no physical contact with Kathi Holvey.
- Emails to Kathi Holvey will be for professional purposes and professionally written.
- Kathi Holvey will no longer supervise Mark, therefore, Brian will become his main point of contact.

Other:

- Arrange to cover Mark's class so he can take the SafeSchools courses on Sexual Harassment – staff to staff (20 minutes). ***.

(Test. of Flick; Ex. A13; emphasis in original.) After going over each directive one at a time, Mr. Flick asked Respondent if he had any questions about the directives. Respondent replied,

“No, I do not.” Mr. Flick also told Respondent that if any of the directives are violated, Mr. Flick would immediately contact Ms. Parra. (Test. of Flick; Ex. A13.)

42. On May 5, 2011, Remie Calalang, Equity and Diversity Coordinator, and Ms. Parra met with Respondent, Jeff Jackson, Respondent’s representative, and Ms. Holvey to try to resolve the sexual harassment complaint. (Test. of Parra; Ex. A14.)

43. On May 7, 2011, Ms. Parra documented the findings she made regarding the sexual harassment complaint filed by Ms. Holvey, which stated, in part:

**RE: Zima/Holvey Complaint Findings
 Board Policy GBN-AR**

Background

On April 25, 2011 Meadow View Assistant Principal Kathi Holvey filed a sexual harassment complaint against Meadow View teacher Mark Zima, alleging, “inappropriate comments, inappropriate sexually suggestive emails, inappropriate/unprofessional unwarranted touching.”

In the complaint, Ms. Holvey wrote that she had previously told Mr. Zima on two separate occasions that she would never be with him for professional and ethical reasons.

As part of a related investigation and this complaint, the District separately interviewed Ms. Holvey and Mr. Zima (among others) on April 26, 2011.

In an attempt to resolve the complaint filed on April 25, 2011, Ms. Holvey agreed to meet with Mr. Zima on Thursday, May 5, 2011.

Those present at the meeting:

Facilitator – Remie Calalang, Equity and Diversity Coordinator
Co-Facilitator and Investigator – Chris Parra, Assistant Superintendent

Complainant – Kathi Holvey, Meadow View Assistant Principal

Alleged Perpetrator – Mark Zima, Meadow View Teacher

Teacher Representative – Jeff Jackson, UniServ Consultant

Investigation Summary

- Mr. Zima admitted to making inappropriate sexually suggestive comments about how Ms. Holvey looked in her jeans. This comment was made to another female colleague in reference to Ms. Holvey.
- On April 26, 2011, Mr. Zima admitted to drumming his fingers across Ms. Holvey’s head and to making “complimentary” comments about Ms. Holvey’s manner of dress and commented to

her that she had “runner’s legs.” Mr. Zima could not recollect ever touching Ms. Holvey other than drumming his fingers across her head. Ms. Holvey, in the meeting on May 5, 2011 felt Mr. Zima’s various comments over time toward her, and “vertical scans” of her body, “crossed the line of being complimentary” and made her uncomfortable.

- Mr. Zima’s emails from his personal email account to Ms. Holvey’s personal email account over time increased in sexual innuendo and were sexually graphic in nature. Some emails from Mr. Zima were sent during the workday and he referenced them at work in conversations with Ms. Holvey. Ms. Holvey again expressed how uncomfortable this ongoing behavior made her feel and further stated that she has never been the recipient of emails of that nature. On April 26, 2011, Mr. Zima admitted the emails were “sexual in nature” but in the meeting on May 5, 2011 Mr. Zima explained that he felt Ms. Holvey’s one email response to him was “encouraging.” Mr. Zima further explained that he enjoyed the attention and what he perceived as “bantering” behavior with Ms. Holvey.
- Mr. Zima admitted that Ms. Holvey asked him to stop his behavior twice but that he only took it seriously on the second request as he finally “fully understood.” When pressed about why it took two requests, Mr. Zima responded that when Ms. Holvey mentioned she had a “sweetie,” it “got his attention” and he stopped all behavior, including the sending of emails.

Findings

Based on the evidence obtained during investigatory interviews and a record email exchanges, the District has determined that Mr. Zima has violated Board Policy GBN. Furthermore, by his own admission on May 5, 2011, Mr. Zima explained that he “took it over the top...was wrong...” and “should not have done those things.”

Resolution

In her complaint, the remedy Ms. Holvey has requested is an “immediate discontinuation of stated behaviors and actions.” Mr. Zima apologized to Ms. Holvey for his behavior and expressed that he felt he could continue to work professionally with Ms. Holvey. The parties have entered into a mutual agreement with the following stipulations:

- Ms. Holvey will no longer be the immediate supervisor for Mr. Zima and will no longer formally evaluate him. Principal Brian Flick has already assumed these duties.
- Mr. Zima agrees to an immediate discontinuation of all stated behaviors;

- Conversations between Mr. Zima and Ms. Holvey will only be of a professional nature;
- Ms. Holvey will informally check in with Mr. Zima every 2-3 weeks regarding their professional working relationship;
- Any and all issues or concerns will be promptly reported and addressed with Remie Calalang; and
- Remie Calalang will check in with both parties by the end of the school year to determine if any further issues remain or if further support is needed.

(Test. of Parra; Ex. A14 at 2-3; emphasis in original.) On May 9, 2011, Ms. Parra sent copies of the findings to Ms. Holvey and Respondent. (Ex. A14 at 1-3.)

Incident of September 22, 2011

44. Sarah Campbell is a teacher at Meadow View School. She teaches sixth grade. She has been at Meadow View School for five years. (Test. of Campbell.)

45. Carly Waters is a teacher at Meadow View School. She teaches sixth grade. She has been at Meadow View School for 13 years. (Test. of Waters.)

46. Linda Mohr is a teacher at Meadow View School. She teaches art. She has been at Meadow View for 10 years. (Test. of Mohr.)

47. Amy James-Seery is a teacher at Meadow View School. She teaches sixth grade. Ms. James-Seery has been at Meadow View for two years. (Test. of James-Seery.)

48. EH is a student at Meadow View School. He is autistic (on the high end of the spectrum), and does not like to be touched. (Test. of Campbell, Weaver.)

49. On the morning of September 22, 2011, Ms. Campbell was standing in the hallway waiting to greet students as they arrived for class. Ms. Campbell was standing between classroom 30 (her room) and classroom 29. Ms. Campbell observed EH walking down the hall towards her. Ms. Campbell observed Respondent say something to EH. Ms. Campbell heard EH reply, "Leave me alone." Ms. Campbell then observed Respondent grab EH by the arm and spin him around, causing EH's backpack to fall to the ground. Ms. Campbell heard Respondent yell loudly at EH, "Do you know who I am?" Ms. Campbell observed that Respondent was standing in the hallway near the bathrooms and classroom 28 during the incident. Ms. Campbell found the act to be violent and upsetting. Ms. Campbell reported the incident to Mr. Flick. (Test. of Campbell; Exs. A17, A18.)

50. On the morning of September 22, 2011, Ms. Waters was standing in the hallway waiting for students to arrive for class. Ms. Waters was standing outside classroom 34 (her room), which is across from classroom 29. Ms. Waters heard Respondent yell, "Do you know who I am?" Ms. Waters turned towards the noise and observed Respondent and EH standing in the hallway near the bathrooms and classroom 28, facing one another. Ms. Waters observed that

Respondent's tone of voice was angry. Ms. Waters heard Respondent yell, "You never talk to a teacher like that." Ms. Waters was intimidated and scared by Respondent's behavior. Ms. Waters reported the incident to Mr. Flick. (Test. of Waters; Exs. A17, A18.)

51. On the morning of September 22, 2011, Ms. Mohr was in classroom 33 (her room), which is across from classroom 28. Ms. Mohr's door was open. Ms. Mohr heard an adult shouting, "Who do you think I am? You don't talk to a teacher like that. Don't you ever speak to me like that again." Ms. Mohr exited her classroom and observed Respondent in EH's face. Ms. Mohr also observed that Respondent was really angry and his body was tensed up. Ms. Mohr believed Respondent was out of control. Ms. Mohr spoke to Mr. Flick regarding the incident. (Test. of Mohr; Ex. A17.)

52. On the morning of September 22, 2011, Ms. James-Seery was in classroom 28 (her room), when she heard someone yell, "You will look me in the eye. You will show me respect." Ms. James-Seery exited her classroom believing someone was being bullied. Ms. James-Seery observed Respondent yelling at EH, face to face, with less than one foot between the two. Ms. James-Seery heard Respondent yell, "Do you know who I am?" Ms. James-Seery was stunned by Respondent's behavior. Ms. James-Seery spoke to Mr. Flick regarding the incident. (Test. of James-Seery; Exs. A17, A18.)

53. On the morning of September 22, 2011, Ms. Weaver was in the supervision area when EH arrived at school upset. Ms. Weaver and Mr. Flick both spoke to EH. As Ms. Weaver walked down the hallway trailing EH, she suddenly heard Respondent say in a loud and angry voice, "Do you know who I am?" Ms. Weaver looked up and observed Respondent standing approximately one foot from EH's face and leaning into EH. Ms. Weaver observed that Respondent was not using a "teaching" voice. Ms. Weaver believed Respondent was reacting in anger and bullying EH. Ms. Weaver spoke to Mr. Flick regarding the incident. (Test. of Weaver; Exs. A17, A18.)

54. On September 22, 2011, Mr. Flick interviewed EH, Ms. Campbell, Ms. Waters, Ms. Weaver, Ms. Mohr, and Respondent regarding the incident. Mr. Flick made investigatory notes, which stated, in part:

At approximately 8:45am, Sarah Campbell and Carly Waters came by my office and asked if they could see me as they wanted to share with me a negative interaction they had witnessed in the hallway before school on Thursday, September 2[2], 2011 involving a 6th grade student named EH and Mark Zima. I encountered EH earlier in the morning and knew that he had a rough morning because he had a difficult time on the bus. Eyewitness distances range from 10 yards – 20 yards from the event.

EH

Report from conversation with EH:

- EH was walking down the hallway when “the teacher” [Mr. Zima] asked him if he was hurt. EH said that he told the teacher, “No, please leave me alone,” because EH was upset. EH further reported that, “Then he stopped me and got mad at me.”
- When asked how he was stopped by Mr. Zima, EH reported, “He grabbed me on the arm and turned me around and then started talking to me,” and that “He wanted to know if I was Ok, really loud.”
- EH did not recall if Mr. Zima asked him, “Do you know who I am?”
- When asked to describe how Mr. Zima spoke to him, EH reported that Mr. Zima was “Talking with a mean tone of voice and I knew he was upset.”
- In a re-enactment, EH indicated that Mr. Zima was approx. 18-20 inches away from his face.
- When asked how the situation ended, EH reported that Mrs. Weaver came and took him to her room.

Sarah Campbell & Carly Waters

Report from conversation with [Carly] Waters and Sarah Campbell:

- Both teachers saw EH walking down the hallway upset. Mr. Zima walked over to EH and asked EH if he was okay. EH responded by saying, “Leave me alone.”
- Sarah reported seeing Mark put his arm on EH and turn EH around and say in a loud, yelling voice, “Do you know who I am? You never talk to a teacher like that.”
- The two reported that Mark’s voice was a “Loud, yelling voice that brought both Amy Seery and Linda Mohr out of their classrooms to see what was going on.”
- Both teachers reported that Regan Weaver [teacher] then came up and took EH to Ms. Weaver’s class.
- When asked why they didn’t go to Mr. Zima directly regarding their concern, they indicated that they were afraid to confront Mark because they fear his reaction toward them.

Regan Weaver

Report from conversation with Regan Weaver:

- Ms. Weaver was following EH down the hallway because she had visited with him after he come in to school directly from the bus and he was upset (I was in the supervision area and we both had talked with him).
- When Ms. Weaver looked up, she saw Mr. Zima talking to EH in the hallway and he was “really mad.” She heard Mr. Zima say,

“Do you know who I am?” Mr. Zima again asked EH this same question, “Do you know who I am?”

- When Mr. Zima saw Ms. Weaver, he told her he had seen EH in the hallway crying, wondered if he was upset from being bullied or hurt, and that EH had said, “Leave me alone.”
- Ms. Weaver reported that she did not see Mr. Zima physically touch EH.
- Ms. Weaver reported that Mr. Zima came to see her later in the morning and told Ms. Weaver that he didn’t realize EH was one of her students and again claimed that he had spoken to EH because he thought EH had been bullied.
- Ms. Weaver reported that Mr. Zima’s voice was “angry,” but that “it was controlled. A firm voice without yelling.”
- Ms. Weaver’s opinion was that the interaction between Mr. Zima and the student was “borderline unprofessional” because “of the tone and closeness to EH’s face.” Ms. Weaver estimated that Mr. Zima’s face was approximately a foot and a half away from EH’s face.
- Ms. Weaver reported that other 6th grade teachers [Sarah Campbell and Carly Waters] and Linda Mohr mentioned the interaction to her.

Linda Mohr

Report of conversation with Linda Mohr:

- Ms. Mohr reported that she was in her room working when she heard, “Who do you think I am? You don’t talk to a teacher like that. Don’t you ever speak to me like that again.” After hearing these words, Linda walked outside her classroom door to see what was going on and noted a few students were standing and watching too.
- Ms. Mohr further reported that she stepped out of her classroom and indicated that she saw Mr. Zima approximately 2 feet away from EH, in his [EH’s] face, showing he was “muscular.” [When later asked to clarify what was meant by “muscular,” Ms. Mohr explained, “Really angry – his body was tensed-up.”]
- Ms. Mohr described Mr. Zima’s voice as, “Very angry and very loud.”
- Ms. Mohr indicated the incident occurred down in front of the girl’s bathroom and she had heard it from inside her room.
- Ms. Mohr indicated that she did not see Mr. Zima touch the student.
- Ms. Mohr did not hear what EH said to Mr. Zima to make Mr. Zima mad.
- In Ms. Mohr’s opinion, Mr. Zima’s “anger got the best of him.”

- Ms. Mohr saw Ms. Seery come out of her room during the incident.
- Ms. Mohr reported that she has seen similar behavior once before from Mark when he got upset with students.

Mark Zima:

At 2:45 Mark was present with Natalie Oliver serving as the building union representative.

Report of conversation with Mr. Zima:

- Mr. Zima indicated that the students were coming down the hallway and Mr. Zima had been down in the 6th grade hall. Mr. Zima was over to the left when he saw a student crying and upset. Mr. Zima's first thought was to help the student because Mr. Zima suspected the student had been bullied or harassed. As they walked toward each other Mr. Zima put up his left hand to stop the student and told him to stop. At that time the student walked right past Mr. Zima and they brushed each other and the student spun around.
- Mr. Zima indicated that he did not grab the student in any way.
- Mr. Zima reported that when he and the student brushed each other, the student's backpack fell to the ground.
- Mr. Zima asked the student if he was okay, and the student responded, "Don't talk to me."
- Mr. Zima reported being "stunned" by the response he received from the student.
- Mr. Zima indicated that he raised his voice and said to the student, "Wait a minute. You can't talk to me like this. I am an 8th grade teacher here."
- Mr. Zima indicated that Mrs. Weaver then came up behind him and interacted with the student by talking to the student and taking the student to her room.
- Mr. Zima reported that later in the morning he went to see Ms. Weaver and she shared that the student was autistic. Mr. Zima also said he went to see Ms. Weaver again later the same day and Ms. Weaver explained to him that Ms. Weaver felt nothing had been done that was inappropriate.

I explained to Mr. Zima that another staff member had reported that Mr. Zima touched the student on the arm and turned EH to face him.

- In response, Mr. Zima indicated the report of him touching the student on the arm and turning the student toward him was inaccurate.

Mr. Zima then re-enacted the incident.

- Mr. Zima indicated that he put up his left hand telling the student to stop when he and the student passed each other. Mr. Zima indicated that the student's backpack then dropped to the ground.
- Mr. Zima reported that he did not grab the student in any way. Mr. Zima went on to say that he doesn't touch students anymore after what has happened in the past.
- Mr. Zima reported that he was "stunned and surprised," by the student's response [to leave him alone] and that, "It irritated me that he popped off and I wanted to get his attention. The student was not belittled in anyway."
- Mr. Zima reported his tone of voice as "Irritated – not angry, and I was surprised."
- Mr. Zima described the volume of his voice as, "I was loud. I raised my voice."
- Mr. Zima indicated that the exact location of the event was in the area of the girl's bathroom/6-8 entrance.
- When asked if Mr. Zima thought his interaction assisted the student, Mr. Zima responded that he didn't understand the question. I repeated it again and Mr. Zima then stated, "The student never said anything and he didn't seem more upset."
- When asked if he knew the directives provided to him from Ms. Sink's letter of reprimand and from the one received last year, Mr. Zima indicated that he did know and responded, "Keep my voice appropriate and hands off students." Mr. Zima further explained that his voice was appropriate and in his conversation with Ms. Weaver she confirmed it.
- When asked if his voice was calm given the fact that the incident was heard from inside classrooms and that teachers came out of their rooms to see what was occurring, Mr. Zima's response was, "It was loud because I was irritated. At no point did I feel I was inappropriate nor did Regan [Ms. Weaver]."

(Test. of Flick; Ex. A17 at 1-4; emphasis in original.)

55. On September 26, 2011, Ms. Parra, interviewed Ms. Waters, Ms. Campbell, and Ms. Weaver regarding the incident. Ms. Parra prepared investigatory notes, which stated, in part:

2:30pm

Carly Waters and Sarah Campbell

- Ms. Waters and Ms. Campbell indicated that they were approximately 20 yards away from the incident involving Mr. Zima and EH [student].

- Ms. Waters and Ms. Campbell indicate that they were concerned about the incident and reported it to Mr. Flick because the[y] felt Mr. Zima was “yelling and screaming” at EH to the point that Mr. Zima’s “veins were popping out of his neck.”
- In Ms. Waters and Ms. Campbell’s opinions, Mr. Zima’s reaction was “Not appropriate. Never.”
- Ms. Campbell indicated that she saw Mr. Zima place his hand on EH to “spin him [EH] around toward Mr. Zima.”
- Ms. Campbell reported that “No way” would she speak to Mr. Zima regarding the incident because of a previous incident regarding a student and that this behavior “periodically comes out.”
- When asked why neither of them intervened in the incident on behalf of the student, they indicated that Ms. Weaver came up and took the student.

Regan Weaver

- Ms. Weaver indicated that she was trailing EH because he did not have a successful bus ride that morning and that EH was upset because of it.
- Ms. Weaver described Mr. Zima’s behavior toward EH as “controlled anger” and “a bit bullying.”
- Ms. Weaver said that Mr. Zima was close to EH’s face but that EH did not seem to be affected by it.
- Ms. Weaver indicated that she could see Mr. Zima’s veins “popping out of his neck,” and that it appeared to be a “power struggle” with EH.
- Ms. Weaver reported that Mr. Zima did not know that EH had autism.
- When asked what could have brought on Mr. Zima’s response toward EH it was Ms. Weaver’s opinion that when Mr. Zima “isn’t given the respect he deserves, he gets upset.”
- Ms. Weaver reported that Mr. Zima’s interaction with EH “totally stopped” when Ms. Weaver came on the scene.
- Ms. Weaver reported that Mr. Zima came to her room in the morning after the incident to describe the incident to her, to explain that he was trying to assist the student, and to explain that he did not know the student was one of Ms. Weaver’s students.
- Ms. Weaver reported that later that same day Mr. Zima again came to her room and wanted to know what she had reported to Mr. Flick. Mr. Zima knew that the incident had been reported to Mr. Flick and Mr. Zima wanted Ms. Weaver to know that he “didn’t touch that kid.”

(Test. of Parra; Ex. A18 at 1.)

56. On September 27, 2011, Ms. Parra interviewed Mr. Zima regarding the incident. Ms. Parra prepared investigatory notes, which stated, in part:

9:45am

Mark Zima (represented by Rachel Kirtner)

- Mr. Zima indicated that he was in the 6th grade hall way prior to the start of school when a student [EH] came toward him. The student was crying and Mr. Zima wondered if he was hurt or if someone had been “picking on him.”
- Mr. Zima indicated that he made a “slow-down” motion with both of his hands, directed at the student (visual cues – two hands waving). Mr. Zima reported that while making these motions with his hands, he spoke to the student in a soft voice, asking the student what was wrong.
- Mr. Zima reported that when the student responded with “leave me alone,” Mr. Zima indicated that he raised his hand up (visual cue) and told the student, “You can’t talk to me that way.”
- Mr. Zima then indicated that the student stopped and that the student’s back-pack slipped off. Mr. Zima reported that he [Mr. Zima] touched the back-pack in an effort to assist in setting it on the ground.
- Mr. Zima indicated that the student did not respond to Mr. Zima at all after the student’s initial request to leave him alone.
- Mr. Zima reported that he did not physically touch the student in any way nor make an attempt to orient the student toward Mr. Zima and Mr. Zima doesn’t know why the student or a teacher may have reported Mr. Zima to have done so.
- Mr. Zima described his voice as “irritated and loud,” not angry.
- Mr. Zima indicated that the student did not break any school rules and that it was okay for EH to not want to discuss that matter with Mr. Zima; however, he felt EH’s response [“Leave me alone.”] to him was “disrespectful.”
- Mr. Zima reported that Ms. Weaver came up to EH and Mr. Zima and explained that EH “was autistic” and that EH was “in a lot of trouble that day,” and that the interaction was “just fine.”
- When asked [if] Mr. Zima’s response to EH got the desired outcome for the student, Mr. Zima indicated that he didn’t understand the question and did not answer other than to indicate that he did not understand the question.
- When asked if he would address the incident differently if given another opportunity to do so, Mr. Zima indicated that he didn’t understand the question and did not answer other than to indicate that he did not understand the question.

(Test. of Parra; Ex. A18 at 2.)

57. On September 27, 2011, Ms. Parra interviewed EH regarding the incident. Ms. Parra prepared investigatory notes, which stated, in part:

10:30am

EH

- EH reported that he thought that at first Mr. Zima was worried about him and Mr. Zima "said so."
- EH indicated that he told Mr. Zima to "Please leave me alone."
- In a re-enactment, EH described Mr. Zima as having held on to EH on the arm/shoulder area in what EH believes was Mr. Zima's effort to stop EH and have EH turn toward Mr. Zima. EH reported that in this physical interaction EH let go of his back-pack. He reported that Ms. Zima did not touch his back-pack in any way nor did Mr. Zima assist him in lowering his back-pack to the ground.
- EH reported that he was not physically hurt during the interaction.
- EH reported that he believed Mr. Zima was mad at EH because "I told him to leave me alone."
- EH reported that Mr. Zima asked him, "Do you know who I am?"
- EH reported that he didn't know who Mr. Zima was and whether he was a teacher.
- EH reported that he was "a little freaked" regarding the incident and that Ms. Weaver then brought him down to her room.

(Test. of Parra; Ex. A18 at 1-2.)

58. On September 28, 2011, Mr. Flick interviewed Ms. Seery-James regarding the incident. Mr. Flick prepared investigatory notes, which stated, in part:

Amy Seery

Report of conversation with Amy Seery:

- Ms. Seery reported seeing a negative interaction with Mr. Zima and a student on the morning of September 22, 2011.
- Ms. Seery was working in her room when she heard someone yell, "You will look me in the eye," and "You will show me respect." Upon hearing these comments, she thought two students were having a negative interaction so she walked outside her classroom to see what was going on. At that time she observed Mr. Zima talking to a student and saying, "Do you know who I am?"
- Ms. Seery indicated that she did not see Mr. Zima touch the student.
- Ms. Seery did not hear the student say anything prior, nor in response to Mr. Zima's statements toward the student.

- It is Ms. Seery's opinion that Mr. Zima's behavior was "intense and unprofessional."
- Ms. Seery has no idea what led to Mr. Zima's behavior toward the student.
- Ms. Seery estimated that 10 or fewer students were in the hallway and that the hallway wasn't crowded.
- Ms. Seery reported that she was surprised by the interaction and wasn't sure what to do. Ms. Mohr [teacher] was across the hallway watching the incident. In Amy's discussion with Mr. Mohr, the teacher indicated that she had seen this behavior from Mr. Zima before but not recently.
- Ms. Seery did not recall seeing Ms. Weaver during the incident.

(Ex. A17 at 4-5; emphasis in original.)

59. On October 4, 2011, Ms. Parra issued a letter of discipline to Respondent, which stated, in part:

RE: SUSPENSION WITHOUT PAY ON WEDNESDAY,
OCTOBER 12 AND THURSDAY, OCTOBER 13, 2011

You are not to report to work on Wednesday, October 12, and Thursday, October 13, 2011 because you are being suspended without pay for failure to adhere to directives provided to you on June 7, 2010 (letter of reprimand), February 2, 2011 (meeting with Principal), and again on May 4, 2011 (suspension without pay), whereby you were directed to refrain from any physical contact with students. In addition, the directive provided to you on June 7, 2010 directed you to speak to students with an appropriate tone of voice.

On September 22, 2011 after a report by two staff members who came to Mr. Flick out of concern for a student regarding a "negative" interaction by you toward the student, he spoke to several staff members who witnessed the interaction. Several staff members interviewed did report your tone, directed at the student as, "loud and angry" after the student told you to leave him alone. In addition, one staff member reported that you held onto the student's arm as the student was walking past you. The student reported that he felt you were mad at him because he told you to leave him alone. The student also reported that you "grabbed" him by the arm/shoulder area to stop him and to turn him toward you. In an interview with Mr. Flick on September 22, 2011 you admitted that your tone of voice was, "irritated and loud."

Your repeated failures to refrain from all physical contact with students is a clear violation of the directives provided to you on June 7, 2010, on February 2, 2011, and May 4, 2011. In addition, your failure to speak to students with an appropriate tone of voice is a clear violation of the directive provided to you on June 7, 2010.

You are hereby directed to discontinue having physical contact with students and to speak to them in a respectful tone of voice. Should you fail to do so, further discipline, up to and including a recommendation of dismissal, may occur.

(Test. of Parra; Ex. A16; emphasis in original.) Respondent did not grieve the suspension.
(Test. of Respondent.)

Other information

60. Respondent is well-liked and respected by many students and parents. He has received numerous Bethel Spirit Awards over the years. (Exs. R5, R6.)

61. On May 12, 2011, Respondent completed the Sexual Harassment: Staff-to-Staff (Full Course). (Ex. R13.)

62. In August 2011, Respondent sought treatment from Polly H. Jamison, Ph.D., to address the difficulties he faced in his work environment. (Ex. R16.)

63. Ms. Oliver believes that Respondent has shown great improvement in reducing and/or eliminating his use of "terms of endearment" towards staff or students. (Test. of Oliver; Ex. R15.)

64. DB is a former student of Meadow View School. DB was in Respondent's 7th grade class during 2006-2007. DB found Respondent to be an approachable teacher attentive to the needs of the students. DB received hugs from Respondent, which did not make her feel uncomfortable. DB was called "sweetie" by Respondent, which did not make her feel uncomfortable. (Test. of DB.)

CONCLUSIONS OF LAW

1. On or about May 31, 2007, Respondent engaged in gross neglect of duty by telling a student to question a teacher about her personal life.

2. On or about June 4, 2010, Respondent engaged in gross neglect of duty by yelling at two students.

3. On or about September 22, 2011, Respondent engaged in gross neglect of duty by grabbing the arm of an autistic student and yelling at the student.

4. During the period of February through April 2011, Respondent engaged in gross neglect of duty by making inappropriate comments and sending sexually suggestive emails to a female coworker/supervisor.

5. During the period of February 2, 2011 through April 22, 2011, Respondent engaged in gross neglect of duty by failing to adhere to directives regarding unwanted physical contact and inappropriate verbal interaction with staff.

6. During the period of March 28, 2011 through April 22, 2011, Respondent engaged in gross neglect of duty by failing to adhere to directives regarding refraining from any physical contact with students and refraining from using pet names with students.

7. The Commission may suspend Respondent's license for six months; place Respondent on probation for four years; and require Respondent to take boundary training.

OPINION

The Commission contends that Respondent engaged in gross neglect of duty and should be suspended for six months, placed on probation for four years and required to take boundary training. Respondent contends to the contrary. The Commission has the burden of proving by a preponderance of evidence that Licensee's conduct constituted gross neglect of duty. ORS 183.450(2), *Reguero v. Teacher Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on TSPC in disciplinary action); *Cook v. Employment Division*, 47 Or App 437 (1980) (the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987). As set forth below, the Commission has met its burden.

1. Whether, on or about May 31, 2007, Respondent engaged in gross neglect of duty by telling a student to question a teacher about her personal life.

OAR 584-020-0040 is titled "Grounds for Disciplinary Action" and provides, in pertinent part:

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

(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 584-020-0010 is titled "The Competent Educator" and provides, in material part:

The educator demonstrates a commitment to:

(1) Recognize the worth and dignity of all persons and respect for each individual;

(5) Use professional judgment[.]

OAR 584-020-0020 is titled "Supervision and Evaluation" and provides, in relevant part:

(2) The competent teacher demonstrates:

(d) Skill in the supervision of students[.]

OAR 584-020-0030 is titled "Human Relations and Communications" and provides, in pertinent part:

(2) The competent teacher demonstrates:

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

OAR 584-020-0035 is titled "The Ethical Educator" and provides, in material part:

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

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

(D) Honoring appropriate adult boundaries with students in conduct and conversations at all times.

On May 31, 2007, Respondent, while teaching a mathology class at Meadow View School, called on a male student who had raised his hand. The student asked Respondent if Ms. Weaver, another teacher at Meadow View School, was an alcoholic. Respondent told the student the question was inappropriate. Respondent also told the student, "If you think that is funny, why don't you ask her."

Respondent sent the student out into the hall as a disciplinary action. The student then went to Ms. Weaver's classroom, entered the classroom and asked the question.

I find, that by telling a student to question a teacher about her personal life during class, Respondent failed to use professional judgment, failed to recognize the worth and dignity of all persons and respect for each individual, failed to demonstrate skill in the supervision of students, failed to demonstrate skill in communicating with students, failed to maintain an appropriate professional student-teacher relationship by honoring appropriate adult boundaries with students in conduct and conversations at all times, and substantially deviated from the professional standards of competency and ethics.

Therefore, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(n) and OAR 584-020-0040(4)(o).

Respondent contends that he did not intend for the student to ask Ms. Weaver the personal question. However, Respondent's comment to the student is the conduct that is at issue in this matter. Hence, Respondent's argument is unpersuasive.

2. Whether, on or about June 4, 2010, Respondent engaged in gross neglect of duty by yelling at two students.

OAR 584-020-0040 provides, in pertinent part:

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

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

OAR 584-020-0010 provides, in material part:

The educator demonstrates a commitment to:

(1) Recognize the worth and dignity of all persons and respect for each individual;

(5) Use professional judgment[.]

OAR 584-020-0020 provides, in relevant part:

(2) The competent teacher demonstrates:

(d) Skill in the supervision of students[.]

OAR 584-020-0030 provides, in pertinent part:

(2) The competent teacher demonstrates:

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

On June 4, 2010, at approximately 10:25 a.m., two male students, JS and AS, were walking down the hallway of Meadow View School following a morning assembly. JS and AS were engaged in horseplay trying to pull each other's hoods over each other's heads. LK, another student, was walking next to JS and AS. Ms. Weaver was following behind JS and AS.

As JS and AS neared the hallway to the 8th grade wing, Respondent grabbed the two students, pushed them up against the wall, and yelled at them to, "Get to the office." Respondent followed JS and AS to the office.

Upon entering the office, Respondent yelled at JS and AS from across the office to, "Sit down." Two secretaries, a grandparent, another student, and Ms. Sink, the Assistant Principal, witnessed the behavior.

I find, that by yelling at two students from across the office to "Sit down," Respondent failed to use professional judgment, failed to recognize the worth and dignity of all persons and respect for each individual, failed to demonstrate skill in the supervision of students, failed to demonstrate skill in communicating with students, and substantially deviated from the professional standards of competency.

Accordingly, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(n).

Respondent contends that he did not yell at the two students. However, as indicated in the credibility determination, I did not find Respondent's testimony to be reliable. Thus, Respondent's argument is unpersuasive.

3. Whether, on or about September 22, 2011, Respondent engaged in gross neglect of duty by grabbing the arm of an autistic student and yelling at the student.

OAR 584-020-0040 provides, in pertinent part:

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

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

OAR 584-020-0010 provides, in material part:

The educator demonstrates a commitment to:

(1) Recognize the worth and dignity of all persons and respect for each individual;

(5) Use professional judgment[.]

OAR 584-020-0020 provides, in relevant part:

(2) The competent teacher demonstrates:

(d) Skill in the supervision of students[.]

OAR 584-020-0030 provides, in pertinent part:

(2) The competent teacher demonstrates:

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

On the morning of September 22, 2011, Ms. Campbell was standing in the hallway of Meadow View School waiting to greet students as they arrived for class. Ms. Campbell observed EH, an autistic student, walking down the hall towards her. Ms. Campbell observed Respondent say something to EH. Ms. Campbell heard EH reply, "Leave me alone."

Ms. Campbell then observed Respondent grab EH by the arm and spin him around, causing EH's backpack to fall to the ground. Ms. Campbell heard Respondent yell loudly at EH, "Do you know who I am?" Ms. Waters, Ms. Mohr, and Ms. James-Seery also heard Respondent yelling.

I find, that by grabbing the arm of an autistic student and yelling at the student, Respondent failed to use professional judgment, failed to recognize the worth and dignity of all persons and respect for each individual, failed to demonstrate skill in the supervision of students, failed to demonstrate skill in communicating with students, and substantially deviated from the professional standards of competency.

As such, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(n).

Respondent contends that he did not touch EH. However, as indicated in the credibility determination, I did not find Respondent's testimony to be reliable. Consequently, Respondent's argument is unpersuasive.

4. Whether, during the period of February through April 2011, Respondent engaged in gross neglect of duty by making inappropriate comments and sending sexually suggestive emails to a female coworker/supervisor.

OAR 584-020-0040 provides, in pertinent part:

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

(l) Sexual harassment;

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

OAR 584-020-0010 provides, in material part:

The educator demonstrates a commitment to:

(1) Recognize the worth and dignity of all persons and respect for each individual;

(5) Use professional judgment[.]

OAR 584-020-0030 provides, in pertinent part:

(2) The competent teacher demonstrates:

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

OAR 584-020-0005 is titled "Definitions" and provides, in material part:

(6) "Sexual harassment:" Any unwelcome conduct with an individual which includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(c) Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

During the period of February through April 2011, Respondent made inappropriate comments to Ms. Holvey at work like, "You know you want me," and "You know I am good." In addition, Respondent made inappropriate comments to Ms. Holvey and others at work regarding how Ms. Holvey looked, commenting on her clothes, her legs, and her eyes. Moreover, Respondent sent sexually suggestive emails to Ms. Holvey, including:

- Listen, you beautiful blue eyed Babe,

Do you have any idea of the virility, stamina, and down right alpha-stud-maleness it takes to climb 69 floors, fully packed up, on air, in 24 minutes??? Imagine all of that virility unleashed...kinda makes you think, doesn't it? I hope you are

thinking what I am thinking, because you are just too damn HOT for me to just leave alone. Think about it...

On two occasions prior to April 25, 2011, Ms. Holvey told Respondent to stop and that she would never be with him for professional and ethical reasons. Ms. Holvey also reported the behavior to Mr. Flick and Ms. Sink. However, Respondent's inappropriate behavior continued.

Ms. Holvey felt confused, embarrassed, angry, and offended by Respondent's behavior. Ms. Holvey did not "come on" to Respondent. On April 25, 2011, Ms. Holvey filed a sexual harassment complaint with the Bethel School District hoping to put an end to Respondent's inappropriate and offensive behavior.

I find, that by making inappropriate comments to Ms. Holvey at work like, "You know you want me," and by making inappropriate comments to Ms. Holvey and others at work regarding how Ms. Holvey looked (tight jeans, running legs, etc.), and by sending sexually suggestive emails to Ms. Holvey, Respondent engaged in unwelcome conduct of a sexual nature which created an offensive working environment. Thus, Respondent sexually harassed Ms. Holvey.

I further find, that by making inappropriate comments to Ms. Holvey at work like, "You know you want me," and by making inappropriate comments to Ms. Holvey and others at work regarding how Ms. Holvey looked (tight jeans, running legs, etc.), and by sending sexually suggestive emails to Ms. Holvey, Respondent failed to use professional judgment, failed to recognize the worth and dignity of all persons and respect for each individual, failed to demonstrate skill in communicating with staff, and substantially deviated from the professional standards of competency.

Therefore, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(l) and OAR 584-020-0040(4)(n).

Respondent contends that he did not sexually harass Ms. Holvey, that it was mutual banter and/or flirtation, and that Ms. Holvey "came on" to him first at the Christmas party. However, as set forth in the credibility determination, I did not find Respondent's testimony to be reliable. Hence, Respondent's argument is unpersuasive.

5. Whether, during the period of February 2, 2011 through April 22, 2011, Respondent engaged in gross neglect of duty by failing to adhere to directives regarding unwanted physical contact and inappropriate verbal interaction with staff.

OAR 584-020-0040 provides, in pertinent part:

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

(l) Sexual harassment;

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

OAR 584-020-0010 provides, in material part:

The educator demonstrates a commitment to:

(1) Recognize the worth and dignity of all persons and respect for each individual;

(5) Use professional judgment[.]

OAR 584-020-0025 is titled "Management skills" and provides, in material part:

(2) The competent teacher demonstrates skills in:

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

OAR 584-020-0030 provides, in pertinent part:

(2) The competent teacher demonstrates:

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

OAR 584-020-0005 is titled "Definitions" and provides, in material part:

(6) "Sexual harassment:" Any unwelcome conduct with an individual which includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(c) Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

On January 28, 2011, Mr. Bolden met with Mr. Flick to discuss the inappropriate behaviors that he and several other teachers (Natalie Oliver, Sharon Dye, and Erik Wright) had observed of Respondent while at Meadow View School.

Mr. Bolden told Mr. Flick that he and the other teachers had observed Respondent call female staff and students inappropriate names such as "honey" and "sweetie." Mr. Bolden also told Mr. Flick that he and the other teachers had observed Respondent touch female staff and students inappropriately (hugs, headlocks, etc.)

On February 2, 2011, Mr. Flick met with Respondent to discuss the behaviors witnessed by the other teachers. During the meeting, Mr. Flick shared the other teacher's observations and concerns. Mr. Flick also informed Respondent that he expected the inappropriate behaviors towards female staff and students to stop.

During the period of February 2, 2011 through April 22, 2011, Respondent continued to engage in inappropriate conduct towards female staff, including:

- Calling female staff by pet names such as "honey," "sweetie," and "darling."
- Hugging female staff.
- Suggesting that a female staff member should sit on his lap.
- Touching a female staff member's head.
- Making comments like, "Doesn't she look beautiful," and "You're beautiful."
- Resting his head on a female staff member's shoulder.

In addition, during the period of February through April 2011, Respondent made inappropriate comments to Ms. Holvey at work like, "You know you want me," and "You know I am good." Moreover, Respondent made inappropriate comments to Ms. Holvey and others at work regarding how Ms. Holvey looked (tight jeans, running legs, etc.). Furthermore, Respondent sent sexually suggestive and offensive emails to Ms. Holvey. On two occasions prior to April 25, 2011, Ms. Holvey told Respondent to stop and that she would never be with him for professional and ethical reasons but the inappropriate behavior continued.

I find, by a preponderance of the evidence, that during the period of February 2, 2011 through April 22, 2011, Respondent failed to adhere to directives regarding unwanted physical contact and inappropriate verbal interaction with staff.

I further find that by failing to adhere to the directives, Respondent failed to use professional judgment, failed to recognize the worth and dignity of all persons and respect for

each individual, failed to demonstrate skill in communicating with staff, sexually harassed Ms. Holvey, and substantially deviated from professional standards of competency.

Consequently, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(l) and OAR 584-020-0040(4)(n).

Respondent contends that he was never told prior to April 26, 2011 that his behavior towards female staff was inappropriate and must stop. However, on February 2, 2011, Mr. Flick met with Respondent and informed him that the inappropriate behaviors towards female staff and students needed to stop. In addition, on February 24, 2011, Mr. Flick reminded Respondent via email that he needed to work on and improve his inappropriate behaviors towards female staff. Moreover, on April 22, 2011, Mr. Flick met with Respondent again and informed him that the inappropriate behaviors towards female staff and students must stop. Furthermore, on two occasions prior to April 25, 2011, Ms. Holvey told Respondent to stop and that she would never be with him for professional and ethical reasons. Thus, Respondent's argument is unpersuasive.

6. Whether, during the period of March 28, 2011 through April 22, 2011, Respondent engaged in gross neglect of duty by failing to adhere to directives regarding refraining from any physical contact with students and refraining from using pet names with students.

OAR 584-020-0040 provides, in pertinent part:

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

(l) Sexual harassment;

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

OAR 584-020-0010 provides, in material part:

The educator demonstrates a commitment to:

(1) Recognize the worth and dignity of all persons and respect for each individual;

(5) Use professional judgment[.]

OAR 584-020-0020 provides, in relevant part:

(2) The competent teacher demonstrates:

(d) Skill in the supervision of students[.]

OAR 584-020-0025 is titled "Management skills" and provides, in material part:

(2) The competent teacher demonstrates skills in:

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

OAR 584-020-0030 provides, in pertinent part:

(2) The competent teacher demonstrates:

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

On June 7, 2010, Ms. Sink issued a written reprimand to Respondent directing him to refrain from any physical contact with students. On February 2, 2011, Mr. Flick met with Respondent ordering him to stop inappropriate behaviors towards female staff and students.

However, as set forth in the record, during the period of February 2, 2011 through April 22, 2011, Respondent continued to engage in inappropriate conduct towards students, including calling students by pet names such as "honey," "sweetie," and "darling," hugging students, and placing students in headlocks.

I find, by a preponderance of the evidence, that during the period of February 2, 2011 through April 22, 2011, Respondent failed to adhere to directives regarding refraining from any physical contact with students and refraining from using pet names with students.

I further find that by failing to adhere to the directives, Respondent failed to use professional judgment, failed to recognize the worth and dignity of all persons and respect for each individual, failed to demonstrate skill in the supervision of students, failed to demonstrate skill in communicating with students, and substantially deviated from professional standards of competency.

Accordingly, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(n).⁴

Respondent contends that his conduct towards female students was playful, like an older brother, and not offensive. However, on June 7, 2010, Respondent was directed to refrain from any physical contact with students. The evidence in the record establishes that Respondent failed to abide by that directive. As such, Respondent's argument is unpersuasive.

7. Whether the Commission may suspend Respondent's license for six months; place Respondent on probation for four years; and require Respondent to take boundary training.

ORS 342.175 provides, in pertinent part:

(1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator or suspend or revoke the right of any person to apply for a license or registration if the licensee, registrant or applicant has held a license or registration 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[.]

ORS 342.177 provides, in relevant part:

(3) The commission shall render its decision at its next regular meeting following the hearing. If the decision of the commission is that the charge described in ORS 342.175(1) has been proven, the commission may take any or all of the following disciplinary action against the person charged:

(a) Issue a public reprimand.

(b) Place the person on probation for a period not to exceed four years and subject to such conditions as the commission considers necessary.

(c) Suspend the license or registration of the teacher or administrator for a period not to exceed one year.

⁴ The Amended Notice also alleges Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(l). However, the evidence in the record failed to establish that the students were sexually harassed by Respondent.

(d) Revoke the license or registration of the teacher or administrator.

OAR 584-020-0045 is titled "Factors for Imposing Disciplinary Sanctions" and provides:

The Commission may consider one or more of the following factors, as it deems appropriate, in its determination of what sanction or sanctions, if any, should be imposed upon a finding that an educator has violated any standard set forth in OAR 584-020-0040:

- (1) If the misconduct or violation is an isolated occurrence, part of a continuing pattern, or one of a series of incidents;
- (2) The likelihood of a recurrence of the misconduct or violation;
- (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; or
- (10) To deter similar misconduct by the educator or other educators.

As indicated above, the Commission may discipline a teacher for gross neglect of duty by taking any or all of the disciplinary actions set forth in ORS 342.177(3).

After reviewing the record in its entirety, determining that Respondent was given several opportunities to correct his behavior and failed to do so, and determining that there exists a

likelihood of a recurrence of the misconduct or violation, I find that the proposed sanction is completely appropriate in this matter.

Therefore, the Commission may suspend Respondent's license for six months, place Respondent on probation for four years, and require Respondent to take boundary training.

Respondent contends that the sanction is too harsh, he will lose his job, and a reprimand is more appropriate in this case. However, as stated above, after reviewing the record in its entirety, I found that the proposed sanction is completely appropriate in this matter. Thus, Respondent's argument is unpersuasive.

ORDER

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

The Notice of Opportunity for Hearing issued on April 25, 2012 and amended on February 6, 2013 is AFFIRMED.

Dove L. Gutman

Senior Administrative Law Judge
Office of Administrative Hearings

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
250 Division Street NE
Salem OR 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.

CERTIFICATE OF MAILING

On March 28, 2013 I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 1202857.

By: First Class and Certified Mail

Certified Mail Receipt # **7012 1640 0000 6325 6454**

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