

CERTIFICATE OF MAILING

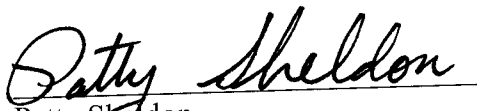
On August 29, 2016 mailed the foregoing Final Order to:

By: U.S. First Class Mail and Certified Mail Return Receipt Requested 7015-0640-0004-7539-7028
Samuel Fakalata Tupou
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Salem, OR 97306

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Hearings Coordinator
Office of Administrative Hearings
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Salem OR 97301


Patty Sheldon
Investigative Assistant

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

IN THE MATTER OF:) **RULING ON MOTION FOR SUMMARY**
) **DETERMINATION AND PROPOSED**
) **ORDER**
)
) OAH Case No. 1504405
) Agency Case No.

SAMUEL F. TUPOU

HISTORY OF THE CASE

On January 28, 2015, the Teacher Standards and Practices Commission (TSPC, or the Commission) issued a Notice of Opportunity for Hearing to Samuel F. Tupou (Licensee). On February 10, 2015, attorney Haley Percell requested a hearing on Licensee's behalf.

On December 19, 2015, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Alison Greene Webster to preside at hearing. Judge Webster convened a prehearing conference on January 26, 2016 during which, among other matters, the parties agreed to a June 1, 2016 hearing date and a schedule for motions for summary determination.

On March 16, 2016, both the Commission and Licensee filed motions for summary determination. On March 29, 2016, Licensee filed a brief Response to the Commission's motion. On that same date, the Commission notified the OAH that it would not be filing a Response, relying on its motion as the response to Licensee's motion. The matter was reassigned to ALJ Rick Barber to rule on the motion.

NATURE OF THE REVIEW

Pursuant to OAR 137-003-0580, a Motion for Summary Determination may be filed by an agency or a party not less than 28 days before the date set for hearing. The rule sets forth the standard by which I review the motion. It states, in pertinent part:

Motion for Summary Determination

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

* * * * *

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

OAR 137-003-0580. In keeping with the rule above, I view the evidence in each motion in a light most favorable to the non-moving party.

DOCUMENTS REVIEWED

I have reviewed the following documents in my consideration of the motion: The Commission's motion, together with Exhibits 1 through 5; Licensee's motion, together with Exhibits R1 through R5; Licensee's Response; the Commission's email indicating it was not filing a Response; and the Notice and hearing request.

ISSUES

The Commission's motion raises the following issues:

1. Whether there are material facts remaining to be decided in determining whether Licensee committed Gross Neglect of Duty.
2. Whether, if there are no material facts remaining to be determined, the Commission is entitled to reprimand him as a matter of law.

Licensee's motion raises the following issues:

3. Whether the Commission lacks evidence of a "serious and material" inattention to or breach of professional responsibilities.
4. Whether the Commission lacks evidence of "substantial deviation" from professional standards of competency.
5. Whether a strong public policy argument prevents a finding of neglect of duty in this case.

FINDINGS OF FACT

1. Licensee has been licensed by the Commission as an educator since March 11, 1994, and currently works as the Superintendent and Principal of the Siletz Valley Schools, comprised of Siletz Valley Charter School and Siletz Valley Early College Academy. (Ex. 1).
2. In 2012, Licensee agreed to a Letter of Informal Reprimand with the Commission after he allowed a teacher, Schriver, to teach for several months without a license during the 2011-2012 school year. Schriver's license expired and the grace period following expiration ended on November 8, 2011. Schriver kept teaching from November 8, 2011 until April 13, 2012, without a license. Licensee mistakenly believed that Schriver's 120-day grace period started, rather than ended, on November 8, 2011. In signing the Letter of Reprimand, Licensee agreed he had committed gross neglect of duty by failing to monitor the licensure of his employee. The Letter of Reprimand included conditions:

1. He will ensure the proper assignment of all educators, including valid and proper licensure or registration and related endorsements, of any and all staff he is responsible for as an administrator.

2. A monitoring period of two (2) years is hereby established.

3. He will comply with the Standards for Competent and Ethical Performance of Oregon Educators under Oregon Administrative Rules Chapter 584, Division 020.

(Ex. 4).

3. In 2013, Licensee recruited and hired teacher Amadedoti for a teaching position in the district. Amadedoti was licensed in two other states, North Carolina and Hawaii, but was not licensed in Oregon. Licensee allowed Amadedoti to teach in the district from the beginning of the 2013-2014 school year until his lack of licensure was discovered on May 6, 2014. Shortly after discovering that Amadedoti was unlicensed in Oregon, Licensee wrote a letter to the Commission that stated in part:

My name is Sam Tupou, Superintendent and Principal of both Siletz Valley Charter School (K-8) and Siletz Valley Early College Academy (9-12). I am writing to report to you and the Commission I believe I may have violated ORS 342.175 for assigning an educator in violation of licensing requirements.

In September, 2013, I recruited and hired Tseshani Amadedoti, a Native American math teacher who is a Highly Qualified Teacher and holds two valid teaching licenses from the State of Hawaii (June 30, 2016) and North Carolina (June 30, 2015). Due to a series of unfortunate misunderstandings between the teacher and my office staff, I was led to believe that his current Hawaii license permits him to teach pending his Oregon license. As it turned out, this was not the case.

It was not until May 6, 2014 it was brought to my attention that his application was never submitted, and therefore his Oregon license has neither been processed nor issued. Even more, my office staff failed to communicate this to me until now. I took immediate action, and removed Mr. Amadedoti from his regular teaching assignment. I also directed him to the TSPC office in Salem that same day, May 6, to report in and submit his application materials.

Vicky, I don't have any reasonable explanations for what happened; there's lots of blame to go around between myself, office support staff and teacher. Nevertheless, I am responsible for my school and staff and I take full responsibility for the oversight and mistake.

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To further complicate things, I was issued a Letter of Informal Repeval in 2012

for a teacher whose charter registry had expired. I know this latest incident does not bode well for me, but as Superintendent and Principal of two schools, and Human Resource Director, I am simply stretched to be able to oversee every detail of our operation. In this case, we failed. This was truly an oversight and an unfortunate mistake. I take my work seriously. I have let go two office assistants, and one is leaving at the end of the year. I am currently advertising to hire a qualified Office Manager as well as a skilled Business Manager with extensive Human Resource background to handle hiring, background checks and licensing requirements. I ask that you please consider not revoking or suspending my license. I need it to do the good work we are doing in Siletz. We are so close to having a huge impact on the kids and community. Once again, I ask for leniency in your decision, and I would gladly accept less severe alternate sanctions including extending my current probation if warranted.

(Ex. 2).

4. On January 28, 2015, the Commission issued a Notice of Opportunity for Hearing to Licensee. The Commission concluded that Licensee had committed gross neglect of duty by failing to verify Amadedoti's licensure before allowing him to teach in Oregon, and further in failing to abide by the terms of the 2012 Letter of Reapproval. (Notice). Licensee requested a hearing on the Commission's Notice. (Request for Hearing). The Commission seeks to impose a public reprimand against Licensee. (Motion at 1).

CONCLUSIONS OF LAW

The Commission's motion raises the following issues:

1. There are no material facts remaining to be decided in determining whether Licensee committed Gross Neglect of Duty.
2. The Commission is entitled to reprimand Licensee as a matter of law.

The Licensee's motion for summary determination is denied.

OPINION

Although both sides filed summary determination motions in this case, Licensee's motion is actually more of a responsive argument to the Commission's motion. I will briefly address why Licensee's motion must be denied.

Licensee's Motion for Summary Determination

As the summary determination rule quoted above indicates, a party may seek relief from the ALJ when there are no material facts left to be decided, and when the moving party is entitled to a ruling in its favor as a matter of law. Here, rather than seeking to establish specific facts, Licensee argues for the *absence* of facts concerning Licensee's "serious and material"

inattention to his duties and a "substantial deviation" from those duties. Additionally, Licensee contends there is a strong public policy interest against finding gross neglect of duty here.

The first two issues must be denied because there is evidence (from Licensee's own letter) admitting to inattention to his duties and deviation from his responsibilities as an administrator.¹ Therefore, the record fails to support Licensee's argument for the *absence* of serious and material inattention and substantial deviation from his duties.

The third issue, concerning public policy reasons for not finding gross neglect of duty, is more capable of review under a summary determination analysis. However, what Licensee terms a public policy "argument" is not, in fact, evidence concerning the material facts of the case. First, argument is not evidence. Second, it is not clear that one side's perception of public policy is actually a material component to what the Commission must prove.

For these reasons, Licensee's motion is denied.

The Commission's Motion for Summary Determination

The crux of the Commission's motion is that it has established gross neglect of duty in two ways: through Licensee's failure to make sure that Amadedoti was licensed in Oregon before allowing him to teach in this state, and second, by violating the terms of the Letter of Repeval.

Factually, there is no question that Licensee violated both standards by his actions involving Amadedoti. In the Letter of Repeval, Licensee agreed that allowing an unlicensed teacher (Schriver) to teach constituted Gross Neglect of Duty, and he assured the Commission that he would only assign validly licensed teachers in the schools. (Ex. 4 at 3). By his error in the Amadedoti matter, he violated the terms of the Letter of Repeval.

Furthermore, Licensee's letter to the Commission after the Amadedoti matter shows that Licensee understood that his failure with Amadedoti was a violation of his responsibilities, even without the Letter of Repeval. Licensee was concerned that the Commission would suspend or revoke his license for the violation, and he cited the statute regarding Gross Neglect of Duty in the letter, indicating he believed he may have violated it. He admitted that, although some staff members were involved in the error concerning Amadedoti's licensure issue, he was ultimately responsible for the failure. There are no material facts showing otherwise.

Licensee's evidence in the case does not address the material facts of the violation. It is evident that Licensee is greatly appreciated in the schools he administers, and even his own self-report of this matter demonstrates that he takes his position, and the Commission's standards, seriously. However, that evidence does not contradict the evidence of the actual violations of those standards.

Thus, the question is whether the Commission is entitled to a ruling in its favor as a

¹ The question whether that evidence meets the summary determination standard in the Commission's motion is addressed below.

matter of law. For the reasons that follow, I find that it is so entitled.

ORS 342.175 states in part:

Grounds for discipline; reinstatement. (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* [.]

(Emphasis added).

OAR 584-020-0040 defines "gross neglect of duty" and cites other administrative rules describing actions constituting gross neglect of duty:

(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:

* * * * *

(i) Assigning an educator in violation of licensure requirements;

* * * * *

(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 [.]

(Emphasis added).

Licensee argues that there was no evidence of serious or material inattention to or a breach of his professional responsibilities, and further contends that he did not substantially deviate from standards of competency or ethics.

However, the undisputed evidence shows that Licensee violated subsection (i) of the administrative rule by failing to assure that Amadedoti was licensed before assigning him to teach in an Oregon school for almost an entire school year. Even if the record shows that Amadedoti is an excellent teacher with sterling credentials in other states, the seriousness of the

violation remains.

Furthermore, the language of the Letter of Reproval as well as Licensee's own letter to the Commission demonstrate that he knew the importance of making sure only licensed teachers taught in his schools. The Commission has established the substantial deviation required by the rule.

For those reasons, the Commission is entitled to a ruling in its favor as a matter of law, the violations are established, and Licensee should be subject to a public reprimand for his actions.

Because this ruling resolves all issues for the upcoming hearing, the June 1, 2016 hearing is hereby canceled.

ORDER

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

The January 28, 2015 Notice of Opportunity for Hearing is AFFIRMED. Licensee shall be publicly reprimanded.

Rick Barber

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 (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 May 11, 2016 I mailed the foregoing RULING ON MOTION FOR SUMMARY DETERMINATION AND PROPOSED ORDER issued on this date in OAH Case No. 1504405.

By: First Class and Certified Mail

Certified Mail Receipt #7015 1520 0001 8037 8118

Haley Percell
Attorney at Law
OSBA
PO Box 1068
Salem OR 97308

By: First Class Mail

Jeff Van Laanen
Teacher Standards & Practices Commission
250 Division Street NE
Salem OR 97301

Raul Ramirez
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Department of Justice
1162 Court St NE
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Alesia Vella
Administrative Specialist
Hearing Coordinator

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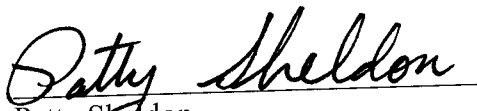
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OAR 137-003-0580. In keeping with the rule above, I view the evidence in each motion in a light most favorable to the non-moving party.

DOCUMENTS REVIEWED

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FINDINGS OF FACT

1. Licensee has been licensed by the Commission as an educator since March 11, 1994, and currently works as the Superintendent and Principal of the Siletz Valley Schools, comprised of Siletz Valley Charter School and Siletz Valley Early College Academy. (Ex. 1).
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4. On January 28, 2015, the Commission issued a Notice of Opportunity for Hearing to Licensee. The Commission concluded that Licensee had committed gross neglect of duty by failing to verify Amadedoti's licensure before allowing him to teach in Oregon, and further in failing to abide by the terms of the 2012 Letter of Reapproval. (Notice). Licensee requested a hearing on the Commission's Notice. (Request for Hearing). The Commission seeks to impose a public reprimand against Licensee. (Motion at 1).

CONCLUSIONS OF LAW

The Commission's motion raises the following issues:

1. There are no material facts remaining to be decided in determining whether Licensee committed Gross Neglect of Duty.
2. The Commission is entitled to reprimand Licensee as a matter of law.

The Licensee's motion for summary determination is denied.

OPINION

Although both sides filed summary determination motions in this case, Licensee's motion is actually more of a responsive argument to the Commission's motion. I will briefly address why Licensee's motion must be denied.

Licensee's Motion for Summary Determination

As the summary determination rule quoted above indicates, a party may seek relief from the ALJ when there are no material facts left to be decided, and when the moving party is entitled to a ruling in its favor as a matter of law. Here, rather than seeking to establish specific facts, Licensee argues for the *absence* of facts concerning Licensee's "serious and material"

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For these reasons, Licensee's motion is denied.

The Commission's Motion for Summary Determination

The crux of the Commission's motion is that it has established gross neglect of duty in two ways: through Licensee's failure to make sure that Amadedoti was licensed in Oregon before allowing him to teach in this state, and second, by violating the terms of the Letter of Reproval.

Factually, there is no question that Licensee violated both standards by his actions involving Amadedoti. In the Letter of Reproval, Licensee agreed that allowing an unlicensed teacher (Schriver) to teach constituted Gross Neglect of Duty, and he assured the Commission that he would only assign validly licensed teachers in the schools. (Ex. 4 at 3). By his error in the Amadedoti matter, he violated the terms of the Letter of Reproval.

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ORS 342.175 states in part:

Grounds for discipline; reinstatement. (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*[:.]

(Emphasis added).

OAR 584-020-0040 defines "gross neglect of duty" and cites other administrative rules describing actions constituting gross neglect of duty:

(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:

* * * * *

(i) Assigning an educator in violation of licensure requirements;

* * * * *

(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[:.]

(Emphasis added).

Licensee argues that there was no evidence of serious or material inattention to or a breach of his professional responsibilities, and further contends that he did not substantially deviate from standards of competency or ethics.

However, the undisputed evidence shows that Licensee violated subsection (i) of the administrative rule by failing to assure that Amadedoti was licensed before assigning him to teach in an Oregon school for almost an entire school year. Even if the record shows that Amadedoti is an excellent teacher with sterling credentials in other states, the seriousness of the

violation remains.

Furthermore, the language of the Letter of Reproval as well as Licensee's own letter to the Commission demonstrate that he knew the importance of making sure only licensed teachers taught in his schools. The Commission has established the substantial deviation required by the rule.

For those reasons, the Commission is entitled to a ruling in its favor as a matter of law, the violations are established, and Licensee should be subject to a public reprimand for his actions.

Because this ruling resolves all issues for the upcoming hearing, the June 1, 2016 hearing is hereby canceled.

ORDER

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

The January 28, 2015 Notice of Opportunity for Hearing is AFFIRMED. Licensee shall be publicly reprimanded.

Rick Barber

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 (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 May 11, 2016 I mailed the foregoing RULING ON MOTION FOR SUMMARY DETERMINATION AND PROPOSED ORDER issued on this date in OAH Case No. 1504405.

By: First Class and Certified Mail

Certified Mail Receipt #7015 1520 0001 8037 8118

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