

CERTIFICATE OF MAILING

On February 17, 2011, I mailed the foregoing Final Order in OAH Case No. 1001765 to:

By: First Class Mail and email


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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**
)
ANTHONY VILLANUEVA,) OAH Case No.: 1001765
Licensee)

HISTORY OF THE CASE

On May 5, 2010, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing to Anthony Villanueva (Licensee), proposing to discipline Licensee. On May 11, 2010, Licensee requested a hearing. On June 22, 2010, 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 24, 2010, a pre-hearing telephone conference was held. ALJ Gutman presided. Ralph Wisner, Attorney at Law, represented Licensee. Assistant Attorney General Raul Ramirez represented the Commission. On August 24, 2010, ALJ Gutman issued a Pre-Hearing Order.

On August 26, 2010, Licensee filed a Motion to Dismiss Charges for Lack of Adequate Notice and/or To Make Charges More Definite and Certain, and To Provide Information and Documents Requested by Villanueva (Motion to Dismiss and/or Make More Definite and Certain). On September 7, 2010, the Commission notified the OAH that it would be issuing an amended notice in response to the Motion to Dismiss and/or Make More Definite and Certain. On September 10, 2010, the Commission issued an Amended Notice of Opportunity for Hearing to Licensee.

On October 1, 2010, Licensee filed a Motion to Compel Production of Information (Motion to Compel). On October 5, 2010, ALJ Gutman issued a Ruling, denying Licensee's Motion to Dismiss and/or Make More Definite and Certain. On October 14, 2010, the Commission filed a Response to the Motion to Compel. On October 20, 2010, ALJ Gutman issued a Ruling, denying Licensee's Motion to Compel.

On November 8, 2010, an in-person hearing was held in Salem, Oregon. ALJ Gutman presided. Mr. Wisner represented Licensee. Mr. Ramirez represented the Commission. George Finch appeared on behalf of the Commission. Licensee, Jean Wilson, TLL, Cameron Lane, Dianna Veleke, Heidi Sipe, Paul Cimino, and Mike Pells all provided testimony.

On December 9, 2010, the hearing continued in Salem, Oregon. ALJ Gutman presided. Mr. Wisner represented Licensee. Mr. Ramirez represented the Commission. Jeff Van Laanen

appeared on behalf of the Commission. Heather Villanueva, Licensee, Chris Sak, TLL, and Mr. Pells all provided testimony. The record closed on December 9, 2010.

ISSUES

1. Whether between 1988 and 1992, Licensee engaged in a sexual relationship with a student, TLL, which constitutes gross neglect of duty in violation of ORS 342.175(1)(b), OAR 584-020-0040(4)(f), and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5).
2. Whether on January 28, 2008, during an interview with a Commission investigator, Licensee denied knowing TLL, having any direct dealing with her, or knowing her name, which constitutes gross neglect of duty in violation of ORS 342.175(1)(b), OAR 584-020-0040(4)(c), and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5).
3. Whether Licensee's license should be revoked. ORS 342.177.

EVIDENTIARY RULING

On November 8, 2010, the Commission's Exhibits A1 through A5 were admitted into the record without objection. Licensee's Exhibit R1 was admitted into the record without objection.¹ On December 9, 2010, the Commission's Exhibits A6 through A7 were admitted into the record without objection.

PRELIMINARY MOTIONS

On November 8, 2010, at the start of the hearing, the Commission made a Motion to Exclude Witnesses and Members of the Public. The Motion was granted. Licensee made a Motion to Dismiss Charges for Lack of Adequate Notice and/or To Make Charges More Definite and Certain, and To Provide Information and Documents Requested by Villanueva. The Motion was denied.

MOTION TO REVIEW THE COMMISSION'S FILE

On November 8, 2010, during the hearing, Licensee made a Motion to Review the Commission's File. The Commission objected to the Motion on the basis that the file contained confidential and protected information. At Licensee's request, ALJ Gutman conducted an in-camera review of the Commission's File. Following the review, ALJ Gutman denied Licensee's Motion and sustained the Commission's objection.²

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:

¹ Exhibit R1 is the cover page of Mr. Cimino's investigative report. It was prepared by an investigative assistant. It was not prepared by Mr. Cimino. (Test. of Cimino.)

² Throughout the hearing, Licensee asserted that the Commission had failed to provide him with all of its discoverable material. I found absolutely no evidence of Licensee's assertion.

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 TLL, Licensee, and Mr. Pells

TLL testified that she moved into Licensee's home while she was still attending high school because her mother moved out of the area. TLL's testimony was logical, credible, and corroborated by the testimony of Ms. Sak; by the prior statement that Mrs. Villanueva made to Mr. Ramirez, admitting that TLL moved into her household before she graduated from high school; and by Exhibit A7, TLL's signature card from the Schools Plus Credit Union, establishing that TLL resided in Licensee's home prior to graduation.

Licensee, on the other hand, testified that TLL moved into his home after she graduated from high school. However, Licensee's testimony was not logical and was contradicted by the testimony of Ms. Sak, the prior statement that Mrs. Villanueva made to Mr. Ramirez, and Exhibit A7.³

Mr. Pells testified that he helped TLL move into Licensee's home after she graduated from high school. However, Mr. Pells testimony was contradicted by the testimony of Ms. Sak, the prior statement that Mrs. Villanueva made to Mr. Ramirez, and Exhibit A7.

I find, more likely than not, that TLL moved into Licensee's household while she was still attending high school. I further find that the testimony of Licensee and Mr. Pells will not be relied upon when it contradicts the evidence presented by the Commission.

Testimony of Mrs. Villanueva

Mrs. Villanueva testified that she could not recall when TLL moved into her household. However, Mrs. Villanueva's testimony was contradicted by the prior statement she made to Mr. Ramirez, admitting that TLL moved into her household before she graduated from high school.

In addition, on cross-examination, Mrs. Villanueva admitted that after she spoke with Mr. Ramirez and before she was scheduled to testify, Licensee came to her house and discussed the case with her, including the testimony already given. Mrs. Villanueva also admitted that on the advice of Mr. Wiser, she spoke with Mr. Pells about the case before she was scheduled to testify.

³ When confronted with Exhibit A7, Licensee testified that TLL opened the account at Schools Plus Credit Union prior to moving into his home, despite the fact that the document establishes that TLL was already residing in Licensee's home when she opened the account. (Test. of Licensee; Ex. A7.)

I find, more likely than not, that Mrs. Villanueva's testimony was tainted by Licensee and Mr. Pells. Therefore, except for the initial statement that Mrs. Villanueva made to Mr. Ramirez and the testimony regarding when she was married to Licensee, Mrs. Villanueva's testimony will be disregarded in its entirety.

Testimony of Mrs. Sipe

Mrs. Sipe testified that she had many conversations with TLL about Licensee. However, Mrs. Sipe's testimony was contradicted by Exhibit A3 at 1, the prior statement Mrs. Sipe gave to Ms. Wilson and Ms. Veleke about the "conversation" that she had with TLL about the sexual relationship.

TLL, on the other hand, testified that she told her friend, Mrs. Sipe, one time about the sexual relationship that she had with Licensee because she was uncomfortable talking about the situation. TLL's testimony was logical and was corroborated by the testimony of Ms. Wilson, and Exhibit A3 at 1.

I find, more likely than not, that TLL told Mrs. Sipe one time about the sexual relationship that she had with Licensee. I further find that the testimony of Ms. Sipe will not be relied upon when it contradicts the testimony of TLL or the other evidence presented by the Commission.

Testimony of Cameron Lane

Mr. Lane testified that he interviewed Licensee by telephone on January 28, 2008, regarding the allegations, and that immediately following the phone interview, he prepared his investigative report. Mr. Lane also testified that during the interview, Licensee denied knowing the student or who the student was, and denied having any direct dealing with her. Mr. Lane further testified that if Licensee had admitted to knowing the student or having sex with the student after graduation, he would have asked Licensee additional questions. Mr. Lane's testimony was logical, credible, and corroborated by Exhibit A5 at 2, the investigative report attributed to Mr. Lane.

Licensee, on the other hand, testified that Mr. Lane asked him five questions: (1) Do you know [TLL]; (2) What kind of student was she; (3) Did you have sexual relations with [TLL]; (4) Did you have sexual relations with her as a student; and (5) Do you want to admit. Licensee testified that in response to the questions posed, he told Mr. Lane that TLL was a student of his; that she was a normal student; that he did not have sexual relations with TLL; that he did not have sexual relations with her as a student; and that he did not want to admit.

However, Licensee's testimony was not logical and was contradicted by Exhibit A5 at 2. Moreover, even if I accept Licensee's version of the questions posed, by his own admission, Licensee lied to Mr. Lane when he said that he did not have sexual relations with TLL.⁴

⁴ In the hearing, Licensee admitted that he had a sexual relationship with TLL. However, Licensee claimed that it began in August 1992, after TLL turned 18 and graduated from high school. (Test. of Licensee.)

I find, more likely than not, that on January 28, 2008, during an interview with a Commission Investigator, Licensee denied knowing TLL or who she was, and denied having any direct dealing with her. I further find, as stated previously, that the testimony of Licensee will not be relied upon when it contradicts the evidence presented by the Commission.

FINDINGS OF FACT

Background

1. Licensee has been teaching at Umatilla High School (UHS) since 1980. He has taught career education, economics, personal finance and U.S. history. He has also been the head football coach, Athletic Director, and Principal at UHS. (Test. of Licensee, Pells; Exs. A5 at 1, R1 at 2.)

2. Licensee holds a license in basic health education, basic social studies and standard physical education. He is currently the Dean of Students at the Clara Brownell Middle School. (Test. of Licensee; Exs. A5 at 1, R1 at 2.)

3. Licensee was married to Heather Villanueva from 1980 to 2002. They had two children. During the relevant time period, Licensee and his family resided at 702 Chinook in Umatilla, Oregon. Licensee and his wife were members of the Schools Plus Federal Credit Union. (Test. of Licensee, Mrs. Villanueva, TLL.)

4. TLL was born in April of 1974. She attended UHS from 1988 through 1992. TLL babysat Licensee's children during high school, beginning in her sophomore year and continuing through her senior year. TLL became close to the Villanueva family and took vacations with them. TLL lived with her mother approximately four blocks from Licensee's home. (Test. of TLL; Ex. A6.)

5. Mike Pells attended UHS during the relevant time period. He took classes from Licensee. Mr. Pells played football and was coached by Licensee. Mr. Pells began dating TLL during her sophomore year. He babysat Licensee's children during high school. He was part of the Villanueva family. Mr. Pells regards Licensee as his mentor. (Test. of Pells.)

Behavior

6. TLL took personal finance from Licensee in her junior year.⁵ During that class, Licensee handed notes to TLL, claiming that she had a secret admirer. The notes contained clues as to the identity of the secret admirer. At the end of the school year, Licensee told TLL that he was her secret admirer. (Test. of TLL.)

7. During the summer of 1991, Licensee acted on his feelings and began kissing and fondling TLL. During TLL's senior year, Licensee began having oral sex with TLL. The sexual conduct continued throughout TLL's senior year. (*Id.*)

⁵ TLL initially testified that she took personal finance in her sophomore year. However, after TLL obtained her high school transcripts from UHS, she corrected her testimony. (Test. of TLL; Ex. A6.)

8. Sometime during TLL's senior year, TLL's mother got remarried and planned to move to Montana. The Villanuevas offered to let TLL live in their home as a nanny and finish high school. TLL's mother agreed to the arrangement. At the Villanueva's request, TLL's mother provided them with a "permission statement" for their homeowner's insurance policy. (*Id.*; Test. of Sipe.)

9. In February 1992, TLL moved into Licensee's home. TLL babysat Licensee's children in exchange for her room and board. (Test. of TLL.)

10. Subsequently, in February or March 1992, Licensee and TLL attended a basketball tournament in Pendleton, Oregon. Licensee rented a motel room. Licensee and TLL had sexual intercourse for the first time. (*Id.*)

11. Licensee told TLL that if anyone found out about their sexual relationship, he would get in trouble because he was a teacher. The sexual relationship continued throughout TLL's senior year. (*Id.*)

12. Ms. Sak is TLL's aunt. She lives in Hermiston, Oregon, and has for many years. Sometime prior to TLL's graduation, Ms. Sak visited TLL in Licensee's home. TLL was residing in Licensee's home at that time. TLL showed Ms. Sak her bedroom. (Test. of Sak.)

13. On May 12, 1992, TLL opened up an account at the Schools Plus Federal Credit Union. TLL had to provide a driver license or a piece of mail with her current address. On the signature card, TLL wrote her home address as 702 Chinook, Umatilla, Oregon. TLL also wrote that her membership eligibility was through "Heather Villanueva" and her relationship to Mrs. Villanueva was "living at home." (Test. of TLL; Ex. A7.)

14. TLL graduated from UHS on May 20, 1992. Ms. Sak attended TLL's graduation. The Villanueva's threw a graduation party for TLL. Mr. Pells attended the party. (Test. of Pells, TLL, Sak.)

After graduation

15. Following graduation, TLL continued to reside in Licensee's home and watch his children. In Fall 1992, TLL began attending Blue Mountain Community College (BMCC) in Pendleton, Oregon. She attended BMCC for three years. Licensee and TLL continued their sexual relationship. (Test. of TLL.)

16. On November 12, 1992, Licensee and Mrs. Villanueva added their names to TLL's account at the Schools Plus Federal Credit Union. (Ex. A7 at 4.)

17. In October of her junior year at BMCC, TLL moved to Pendleton and ended the relationship with Licensee. TLL had a new boyfriend. TLL got pregnant and contacted Licensee for help. TLL had no money. Licensee took TLL to an abortion clinic and paid for the abortion. (Test. of TLL.)

18. TLL subsequently refused to pay Licensee back for the abortion. Mrs. Villanueva overheard the conversation and closed TLL's account at the Schools Plus Federal Credit Union. (*Id.*; Ex. A7 at 3.)

19. Sometime after the abortion, Licensee contacted Ms. Sak and told her that his wife had found out that he had given TLL some money and he needed to get the money back. Licensee demanded that Ms. Sak pay him the money in cash. Ms. Sak went to her bank and withdrew the cash. Licensee then showed up at Ms. Sak's home and picked up the cash. (Test. of Sak.)

Investigation

20. Sometime in 2001 or 2002, TLL disclosed to Heidi Sipe, that she had been in a sexual relationship with Licensee when she was a student at UHS. TLL was unaware of Mrs. Sipe's position or title with the Umatilla School District. TLL had no idea that Mrs. Sipe would report the information to anyone. TLL believed the disclosure was confidential. (Test. of Sipe, TLL; Exs. A3 at 1, A4 at 1.)

21. Mrs. Sipe subsequently reported the disclosure to Brian Say, then Superintendent of the Umatilla School District. In follow-up conversations, Mr. Say assured Mrs. Sipe that the matter had been dealt with. (Test. of Sipe; Exs. A3 at 1-2, A4 at 1, A5 at 2-4.)

22. On November 19, 2007, Mrs. Sipe became Interim Superintendent of the Umatilla School District. After determining that an investigation had not been done by the previous Superintendent, Mrs. Sipe initiated an investigation into TLL's disclosure. Dianna Veleke, Principal of Clara Brownell Middle School, and Jean Wilson, Business Manager of the Umatilla School District, were assigned the investigation. (Test. of Sipe, Wilson, Veleke; Ex. A3.)

23. On November 20, 2007, Mrs. Sipe met with the investigation team and provided them with the following relevant background information:

- In approximately 2002, in a previous conversation, TLL disclosed to Mrs. Sipe that she had been in a relationship with Licensee when she was a student at UHS.
- TLL made the disclosure to Mrs. Sipe during a personal conversation.
- Mrs. Sipe reported the conversation to Mr. Say.
- Mr. Say later assured Mrs. Sipe that the matter had been dealt with.

(Test. of Sipe, Wilson, Veleke; Ex. A3 at 1.)

24. Sometime prior to November 26, 2007, Mrs. Sipe contacted TLL and informed her that after the Thanksgiving holiday she would need to speak with the investigation team regarding the disclosure. (Ex. A3 at 2.)

25. On November 26, 2007, Ms. Wilson and Ms. Veleke interviewed TLL. Prior to being asked any question, TLL made it clear that the disclosure had been made in confidence

with no intention of it going any further. TLL also stated that she did not want her children exposed to the information. Ms. Wilson asked TLL the following question:

The purpose of this meeting is to inform you that your name has been brought up in connection with an alleged incident or workplace / student conduct that the District considers a serious issue worthy of further investigation. We are interested in whether you can provide us information. It has come to our attention that you may have been involved in an incident with one of our employees during your high school career. Is there any information you wish to share with us regarding this alleged incident?

(Exs. A1 at 1-9, A3 at 2.) TLL responded "No." Ms. Veleke wrote down TLL's response. (Ex. A1 at 3.)

26. On November 26, 2007, Ms. Wilson and Ms. Veleke interviewed Licensee. Ms. Wilson asked the questions, and Ms. Veleke wrote down Licensee's responses. Ms. Wilson asked Licensee the following questions, in relevant part:

(1) Have there been any incidents of romantic relationships with students during your career with Umatilla School District?

(4) If no, "Have you ever had a romantic relationship with [TLL] while she was a student and you were her teacher?"

(Ex. A2 at 1-6, A3 at 3.) To question number one, Licensee responded "Nope." To question number four, Licensee responded "No." (Ex. A2 at 3-4.)

27. On November 27, 2007, Ms. Veleke prepared an Investigation Findings Report. Ms. Veleke noted a "strong suspicion" that TLL had more of a story to tell than her response of "no." Ms. Veleke concluded there was not enough information to "substantiate a definitive wrongdoing." (Ex. A3 at 1-3.)

28. On November 30, 2007, Mrs. Sipe wrote a letter to the Commission, stating, in pertinent part:

Dear Ms. Chamberlain:

I am acting Superintendent of the Umatilla School District. I have most recently been employed by the District as Assistant Superintendent, but was named acting Superintendent effective November 21, 2007. I am writing pursuant to OAR 584-020-0041(3) to notify the Commission that a licensed teacher of the District may have engaged in behavior that violates OAR 584-020-0040(4)(f).

The District teacher in question is Tony Villanueva. Mr. Villanueva has been employed by the District since 1980. Several years ago (approximately 2002), when I was employed by the District in another capacity, it was reported to me that Mr. Villanueva had engaged in a romantic relationship with a female when she was a student at the District, many years ago. At the time I learned this information, I made no report to TSPC, but did report the information to District administration. I am unaware as to whether any report was made to the Commission at that time. Now that I have been placed in the position of acting Superintendent, I believe it is my responsibility to ensure that a report is made, despite the fact that the alleged incident would have taken place more than thirteen years ago.

The District has endeavored to conduct an investigation into this matter, at my direction. The former student, now employed by the District, is, however, unwilling to make any statement related to a possible relationship with Mr. Villanueva, and he denies that any such relationship occurred. Accordingly, I do not believe that the District is in a position to initiate disciplinary action at this time.

(Ex. A4.)

29. Sometime after the interviews took place, Licensee spoke with TLL and asked about the interview. TLL told Licensee that she had said nothing. Licensee replied "Good. I am glad." (Test. of TLL.)

30. On December 18, 2007, the Commission initiated an investigation and assigned the case to Cameron Lane, Commission Investigator. Mr. Lane called TLL three times to get her statement. TLL failed to return the phone calls. (Ex. A5 at 2.)

31. On January 28, 2008, Cameron Lane, Commission Investigator, interviewed Licensee by telephone. Mr. Lane conducted the interview in Mr. Wisner's office. Mr. Wisner was present. Licensee was on the telephone.⁶ Following the interview, Mr. Lane immediately prepared his investigative report, which stated:

"On direct questioning, Villanueva denied knowing the student and had no recollection of the student, only knowing her name because of the district's investigation. Villanueva did not recall the student from the alleged date and states that to this date he does not recall who she was. He said he now knows her only in passing as she works in the district, he said he is not friends with her and only

⁶ Although Mr. Lane advised Licensee that he was recording the conversation, he does not recall if he actually recorded the interview or not. (Test. of Lane.) Paul Cimino, Commission Investigator, did not find any evidence of a recording in the Commission's files and computer. (Test. of Cimino.)

knows who she is. He states he has not had any direct dealing with her.”

“He denies every [sic] having a sexual relationship with any student.”

(Test. of Lane; Ex. A5 at 2.)

32. In June 2009, the Commission assigned the case to Paul Cimino, Commission Investigator. On June 2, 2009, Mr. Cimino interviewed Mrs. Sipe, who stated the following, in pertinent part:

- In 2002, the victim disclosed the information during a personal conversation.
- She reported the information to Superintendent Brian Say. Mr. Say already knew about it because he was friends with the victim’s husband.
- She and the victim had a social relationship but not since she reported the allegations.
- She believes the victim will not talk.
- She does not know the timeline. She does not know if the relationship started when the victim was still a student or not.
- The victim was definitely under 18 when she moved in with the Villanueva family.

(Ex. A5 at 1-4.) Mr. Cimino was unable to locate TLL for interview. (*Id.* at 1.)

33. In November 2010, prior to speaking to Licensee and Mr. Pells regarding the case, Mrs. Villanueva admitted to Mr. Ramirez that TLL had moved into the Villanueva household before she graduated from high school. (Test. of Mrs. Villanueva.)

CONCLUSIONS OF LAW

1. Between 1988 and 1992, Licensee engaged in a sexual relationship with a student, TLL, which constitutes gross neglect of duty in violation of ORS 342.175(1)(b), OAR 584-020-0040(4)(f), and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5).

2. On January 28, 2008, during an interview with a Commission investigator, Licensee denied knowing TLL, having any direct dealing with her, or knowing her name, which constitutes gross neglect of duty in violation of ORS 342.175(1)(b), OAR 584-020-0040(4)(c), and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5).

3. Licensee’s license should be revoked.

OPINION

The Commission contends that Licensee engaged in gross neglect of duty and should have his license revoked. 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).

Gross neglect of duty – sex with a student

OAR 584-020-0040 is titled “Grounds for Disciplinary Action” and provides, in relevant 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:

(f) Any sexual conduct with a student;

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

OAR 584-020-0010 is titled “The Competent Educator” and provides, in material part:

The educator demonstrates a commitment to:

(5) Use professional judgment[.]

TLL attended UHS from 1988 through 1992. During her junior year at UHS, TLL took personal finance from Licensee. In that class, Licensee handed notes to TLL, claiming that she had a secret admirer. At the end of the school year, Licensee told TLL that he was her secret admirer. During the summer of 1991, Licensee acted on his feelings and began kissing and fondling TLL.

During TLL’s senior year at UHS, Licensee began having oral sex with TLL. In February 1992, TLL moved into Licensee’s household. Shortly thereafter, in February or March 1992, Licensee and TLL attended a basketball tournament in Pendleton, Oregon, and engaged in sexual intercourse for the first time. The sexual relationship continued throughout TLL’s senior year at UHS.

Accordingly, I find, by a preponderance of the evidence that between 1988 and 1992, Licensee engaged in sexual conduct with a student, TLL, which constitutes gross neglect of duty in violation of OAR 584-020-0040(4)(f), and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5).

Licensee argued that TLL's testimony was not credible. As set forth in the credibility finding, I found to the contrary. Thus, Licensee's argument is unpersuasive.

Gross neglect of duty – lying to an investigator

OAR 584-020-0040 provides, in relevant 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:

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

(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:

(5) Use professional judgment[.]

On January 28, 2008, Mr. Lane, Commission Investigator, interviewed Licensee regarding the allegations involving TLL. During the interview, Licensee denied knowing TLL, denied knowing who TLL was, and denied having any direct dealing with TLL.

By denying any knowledge of or dealing with his former student, TLL, Licensee failed to use professional judgment, substantially deviated from professional standards of competency, and engaged in a knowing misrepresentation directly related to licensure, employment, and professional duties.

Therefore, I find by a preponderance of the evidence that Licensee engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(c), and OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5).

Licensee argued that Mr. Lane's testimony was not credible. However, as set forth in the credibility finding, I found to the contrary. As such, Licensee's argument is unpersuasive.

Discipline

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 license, 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.

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

As indicated above, the Commission may discipline a teacher for gross neglect of duty. After reviewing the record in its entirety, I propose that Licensee should have his license revoked.

ORDER

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

The Amended Notice issued on September 10, 2010 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
465 Commercial Street, NE
Salem, Oregon 97301

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

CERTIFICATE OF MAILING

On January 7, 2011 I mailed the foregoing Proposed Order issued on this date in OAH Case No. 1001765.

By: First Class and Certified Mail

Certified Mail Receipt # 7009 0820 0001 6777 2716

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