

1                   BEFORE THE TEACHER STANDARDS AND PRACTICES COMMISSION  
2   OF THE STATE OF OREGON  
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6   In the Matter of the   )  
7   Teaching License of    )           FINAL ORDER  
8   )  
9   JUDE EDWIN LEHNER    )           Case No. 1102249  
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12               On August 16, 2012, Senior Administrative Law Judge (ALJ) Ken L. Betterton issued a  
13 Proposed Order in this case. The Commission considered the Proposed Order along with the  
14 written exceptions filed by Licensee on August 31, 2012.  
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16               The Commission does not find Licensee's exceptions persuasive, and hereby adopts the  
17 Findings of Fact, Conclusion of Law and Order contained in the attached Proposed Order as the  
18 Final Order.  
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20  
21   ORDER  
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23               The Commission adopts the Proposed Order in its entirety and revokes the teaching  
24 license of Jude Edwin Lehner.  
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27               Dated this 21<sup>st</sup> day of November 2012.  
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29   TEACHER STANDARD AND PRACTICES COMMISSION  
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32   By:   
33   Victoria Chamberlain, Executive Director  
34   Teacher Standards and Practices Commission  
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41 **NOTICE:** You are entitled to judicial review of this order. Judicial review may be obtained by  
42 filing a petition for review within 60 days of the service of this order. Judicial review is pursuant  
43 to the provision of ORS 183.482 to the Oregon Court of Appeal.

## CERTIFICATE OF MAILING

On December 18<sup>th</sup>, 2012, I mailed the foregoing Final Order and Proposed Order in OAH Case No. 1102249 to:

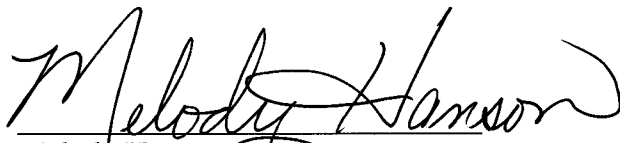
By: U.S. First Class Mail

Ralph E. Wiser  
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Lake Oswego OR 97035

By: Shuttle

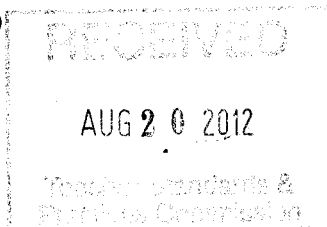
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Salem OR 97301

  
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 THE TEACHING ) **PROPOSED ORDER**  
LICENSE OF: )  
 ) OAH Case No.: 1102249  
**JUDE E. LEHNER** )



**HISTORY OF THE CASE**

On August 14, 2009, the Teacher Standard and Practices Commission (TSPC) issued a Notice of Opportunity for Hearing to Jude E. Lehner (Licensee), seeking to discipline him for violating laws regarding his license. Licensee filed a request for hearing on August 21, 2009.

TSPC referred the case to the Office of Administrative Hearings (OAH) on September 22, 2009. The case (OAH Case No. 901283) was assigned to Senior Administrative Law Judge (ALJ) Ken L. Betterton. After a final pre-hearing conference on February 26, 2010, the case was scheduled for hearing in December 2010. Shortly before the hearing, TSPC withdrew the case from the OAH.

On March 7, 2011, TSPC filed an Amended Notice of Opportunity for Hearing to Licensee. The Amended Notice included allegations set forth in the original Notice, but added allegations against Licensee.

TSPC referred the Amended Notice to the OAH on March 14, 2011. The case (OAH Case No. 1102249) was assigned to Senior ALJ Betterton.

A telephone pre-hearing conference was held on May 24, 2011. Attorney Ralph E. Wisner represented Licensee. Senior Assistant Attorney General (AAG) Raul Ramirez represented TSPC. The telephone pre-hearing conference was continued to June 21, 2011, for the parties to research a procedural issue. Attorney Wisner represented Licensee. Senior AAG Ramirez represented TSPC. The case was scheduled for a contested case hearing to start on December 8, 2011.

On July 6, 2011, Licensee filed a Motion to Dismiss the Amended Notice. TSPC filed a Response to the Motion on July 22, 2011. Licensee filed a Reply to the Response on July 29, 2011. On August 19, 2011, Senior ALJ Betterton issued a Ruling Denying Motion to Dismiss.

A hearing was held in Salem, Oregon on December 8, 9 and 12, 2011. Attorney Wisner represented Licensee. Senior AAG Ramirez represented TSPC.

The following witnesses testified for TSPC: Licensee; Trish Everson, parent of a former Union-Baker Education Service District (UBESD) student; Nancy Campbell, former UBESD fiscal manager; Janie Radinovich-Brose, former UBESD employee; Donna Valentine, former UBESD employee; and Sherry Diane Cole, former UBESD teacher and home program coordinator. The following witnesses testified for Licensee: Sandy Bushek, former teachers' union official; Jack Adams, Ph.D., former UBESD superintendent; Arnold Coe, former school district superintendent; and Sherry Diane Cole. Licensee also testified in his own behalf.

A telephone status conference was held on December 13, 2011 to schedule closing arguments. Attorney Wisner represented Licensee. Senior AAG Ramirez represented TSPC. TSPC filed its written closing argument on February 1, 2012. Licensee filed his written closing argument on February 14, 2012.

A telephone conference was held on March 9, 2012, for the parties to present oral argument. Attorney Wisner represented Licensee. Senior AAG Ramirez represented TSPC. The record closed on March 9, 2012 and the matter was taken under advisement.

The proposed order was not issued until after the record closed on August 3, 2012 in a companion case, *In the Matter of Sherry Diane Cole*, OAH Case No. 1102248.

## ISSUES

(1) Whether, by reporting false and/or erroneous student attendance data in order for the UBESD to receive money the UBESD was not entitled to receive, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); OAR 584-020-0040(4)(o), as it incorporates OAR 584-020-0035(2)(b) (conduct professional business through established lawful and reasonable procedures); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

(2) Whether, by submitting improper claims for travel reimbursement, or in the alternative, by failing to share expenses with another employee traveling to the same site, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b), OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

(3) Whether, by using travel reimbursement forms to be reimbursed for goods purchased at retail stores, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); OAR 584-020-0040(4)(o), as it incorporates OAR 584-020-0035(2)(b) (conduct professional business through established lawful and reasonable procedures); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

(4) Whether, by submitting a false reimbursement request for a set of glass bowls (cost \$29.99), Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(c) (knowing falsification/misrepresentation related to employment, licensure or professional duties); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); and OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0010(5) (use of professional judgment).

(5) Whether, by purchasing a vehicle for the UBESD and profiting from the transaction, Licensee engaged in gross neglect of duty under ORS 342.175(1)(b); OAR 584-020-0040(4)(o) (substantial deviation from professional standards of ethics), as it incorporates OAR 584-020-0035(3)(a) (maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty); OAR 584-020-0040(4)(n) (substantial deviation from professional standards of competency), as it incorporates OAR 584-020-0035(2)(b) (conduct professional business through established lawful and reasonable procedures); and OAR 584-020-0010(5) (use of professional judgment).

(6) If Licensee committed one or more of the above violations, what discipline should be imposed?

### **EVIDENTIARY RULING**

Exhibits A1 through A10, A12 through A16, A20 and A21, offered by TSPC, were admitted into evidence without objection. Exhibit A22, offered by TSPC, was admitted into evidence over Licensee's objection as to relevance. Exhibits A17, A18 and A19, were excluded from evidence based on Licensee's objections as to relevance and that their prejudicial effect outweighed their probative value. Exhibit A11, a duplicate of Exhibit A19, was also excluded from evidence.

The following exhibits, offered by Licensee, were admitted into evidence without objection: R1 through R14; R16 through R25; R28; R29; R31 through R33; R35 through R37; R39 through R47; R49 through R51; R55 through R61; and R64 through R71

(except for R68, which is left blank). Licensee withdrew the following exhibits marked for identification: R15; R26; R27; R30; R34; R48; R52 through R54; R62; and R63. Exhibit R38 was excluded from evidence based on TSPC's objection as to relevance.

Pleadings P1 through P21 were also made a part of the record.

## FINDINGS OF FACT

### *Factual background.*

(1) Licensee started his teaching career in Oregon in 1979 as a high school teacher, shortly after graduating from college. He taught in public school for several years. He then taught and worked in Oregon for several years for the federal bureau of prisons. (Licensee's testimony.)

(2) A school district near La Grande, Oregon hired Licensee as a teacher in the early 1990s. The Union-Baker Education Service District (UBESD) hired Licensee as a teacher in 1997. (Licensee's testimony.) The UBESD is an education service district (ESD) based in La Grande, Oregon. An ESD is a district created by statute to provide regional educational services to constituent school districts.<sup>1</sup> (Dr. Jack Adams's (Adams's) testimony.)

(3) In the early 1990s, the UBESD was a relatively small education service district that contracted with a handful of school districts in northeastern Oregon near La Grande to provide educational services to those districts. (Licensee's testimony.) The UBESD was and is governed by a seven-person board that is elected by the citizens of the UBESD district. Board members are unpaid, but can be reimbursed for expenses associated with their board duties. (Dr. Adams's testimony.)

(4) The UBESD hired Ed Schumacher (Schumacher) as superintendent in 1997, about the same time that Licensee started working for the UBESD. Lyle Mann (Mann) was UBESD's director of alternative education in 1997. He had been a long-time UBESD employee. As director of alternative education, Mann reported to Schumacher. (Licensee's testimony.) Nancy Campbell (Campbell) started working for the UBESD in August 2000. She soon became the fiscal manager for the alternative education program. In that position, she reported to Mann and worked with him until the investigations concluded that led to many individuals leaving the UBESD. (Campbell's testimony; Licensee's testimony.)

(5) Alternative education, programs designed to serve students not served by the traditional school setting, such as students who have dropped out of school, are incarcerated, or are pregnant, as well as home school programs, programs for children

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<sup>1</sup> "There is created in each region a district to be known as the education service district to consist of counties and the area of the common school districts as listed in ORS 334.020, with a governing body thereof to be known as the education service district board." ORS 334.010.

whose parents wish to educate them at home, were relatively new in Oregon in the early 1990s. (Licensee's testimony.)

(6) Alternative education and home school programs began to expand significantly in Oregon after the early 1990s. Schumacher and Mann saw an opportunity to expand UBESD's size and scope and influence by aggressively courting school districts over a large area of eastern Oregon to contract with UBESD to provide services to those school districts. By 2004, when the investigations began that led to the notice of discipline being filed against Licensee, UBESD had contracts with approximately 41 school districts in eastern Oregon. (Ex. A12 at 1.) Those school districts ranged from The Dalles in the west, to Enterprise in the northeast, to Malheur County in the southeast, and covered hundreds of square miles over a large area of eastern Oregon. (Licensee's testimony; Dr. Adams's testimony.)

(7) In approximately 1997, Licensee accepted an offer from Schumacher and Mann to become an alternative education coordinator for the UBESD. During the times relevant to this matter, the UBESD had one or two other alternative education coordinators in addition to Licensee. (Licensee's testimony.)

(8) Licensee had no prior experience in alternative education when he accepted the position as coordinator. As an alternative education coordinator, he had responsibility for alternative education programs for approximately 15 sites in Baker, Union, Wallowa, Grant and Malheur Counties. His area covered hundreds of square miles over a large part of eastern and northeastern Oregon. (Licensee's testimony.)

(9) Licensee's home office was in a UBESD office in Island City, a town just northeast of La Grande. His job duties included meeting and coordinating with school district superintendents, working with resource teachers and parents regarding alternative education programs; helping to locate sites for alternative education schools and making certain the sites were properly equipped and supplied; making certain that incarcerated students had GED (General Equivalency Diploma) programs and materials; and overseeing the federal lunch program for the alternative education sites under his responsibility. Licensee's job required a great deal of travel. He earned a monthly salary and was not paid overtime. Although his standard work week was Monday through Friday, 8:00 a.m. to 5:00 p.m., he sometimes worked extra hours during the week. He also sometimes worked on weekends. (Licensee's testimony.)

(10) Sherry Diane Cole (Cole) started working for the UBESD in 1995 as a teacher. Her duties gradually expanded to other areas. By approximately 1999 or 2000, she had become a coordinator for UBESD's home school, school-to-work, and youth corrections programs with the various contracted school districts. Her job duties included developing curriculums for her programs; working with parents and teachers regarding instructional materials; making certain school districts and parents had the materials and supplies they needed; and organizing and presenting in-service training. Cole's job required her to travel extensively. Her territory also covered much of northeastern and

parts of eastern Oregon, and took her to many of the same school districts and towns where Licensee traveled. Her office was also in Island City. (Cole's testimony.)

(11) Cole and Licensee became acquainted at work in the mid-1990s. They started living together in approximately 2001, as Licensee was going through a divorce from his wife. Cole and Licensee have never married, although they have lived together as husband and wife since they first started living together. (Licensee's testimony; Cole's testimony.)

(12) In approximately 2001, a female UBESD employee accused Mann of sexual misconduct. A number of employees, including Licensee and Cole, were interviewed by investigators about their knowledge of the complaint. Licensee and Cole provided information about the matter that was unfavorable to Mann. The UBESD eventually settled the civil action brought by the female employee for a substantial but undisclosed sum of money. Licensee, as well as other employees and individuals connected with the UBESD, noted that Mann's attitude toward Licensee changed after Licensee provided the information and the matter was settled. (Sandy Bushek's (Bushek's) testimony; Licensee's testimony.) Mann acted less friendly toward Licensee and had less contact with him after the sexual misconduct case settled. Mann started excluding Licensee from some meetings that Licensee had attended in the past. (Licensee's testimony.)

(13) In late 2003 or early 2004, a citizen watchdog group in the La Grande area began to look into the UBESD's operations for alleged wasteful spending and mismanagement after Mann purchased an airplane for the UBESD's use for travel. About the same time, for financial reasons, Oregon's governor was selling an airplane owned by the state that the governor and other state officials used for travel. Actions by the watchdog group led to a number of articles in local and regional newspapers that drew attention to the UBESD over alleged wasteful spending and mismanagement. (Dr. Adams's testimony.)

(14) The investigation by the watchdog group and the attendant publicity of alleged wasteful spending and mismanagement led to investigations in 2004 and 2005 of the UBESD by numerous federal agencies, including the Internal Revenue Service, the U.S. Department of Education, and the U.S. Attorney's Office. The watchdog group's efforts also led to investigations by State of Oregon agencies, including the Department of Education, the State Police, the Secretary of State's Office, TSPC, and the Department of Justice. Some UBESD administrators and employees resigned or were terminated as a result of the investigations. Some UBESD board members resigned. Schumacher and Mann were terminated from employment in approximately September 2004 for alleged misconduct. (Dr. Adams's testimony.) UBESD administrators met with Licensee in September 2004 to review his mileage reimbursement records. The administrators told Licensee that they had found nothing wrong with the way he reported his mileage reimbursement requests. (Bushek's testimony; Licensee's testimony.)

(15) A grand jury was convened to look into possible criminal conduct by number of former and current UBESD employees. Licensee testified before the grand



jury in the spring of 2005. He was not indicted for any crime in connection with his involvement with the UBESD. (Licensee's testimony.) Several individuals employed by the UBESD were indicted and prosecuted, including Schumacher and Mann. Both Schumacher and Mann were acquitted after a jury trial. Only one UBESD employee, Matt Combe, was convicted of any crime in connection with the numerous investigations into the UBESD's operations. (Dr. Adams's testimony.)

(16) After Schumacher's discharge, the UBESD hired an interim superintendent, Boyd Swent, who served less than a year. In approximately July 2005, the UBESD hired Jack Adams, Ph.D., as superintendent to restructure the UBESD and put it on a sound financial footing. Dr. Adams had retired in 2003 after approximately 33 years of experience as a school superintendent for a number of school districts in Washington state. (Dr. Adams's testimony.)

(17) The UBESD placed Licensee on administrative leave in September 2004. (Licensee's testimony.) He remained on administrative leave until September 2005, when Dr. Adams brought him back to work for the UBESD. (Dr. Adams's testimony; Licensee's testimony.) Licensee continued to work for the UBESD until he retired in late 2009. (Licensee's testimony.)

(18) Dr. Adams reviewed boxes of UBESD records, talked to current and former employees, talked to UBESD board members, and talked to superintendents of school districts that contracted with the UBESD, in order to grasp the magnitude of the problems facing the UBESD. Dr. Adams sold the UBESD's airplane and many of its vehicles. As a result of the investigations, federal and state funding that the UBESD had received in the past was substantially reduced, which forced the UBESD to reduce its staff. Dr. Adams had to lay off a number of employees for budgetary reasons, including Campbell, the UBESD's fiscal manager for alternative education. Campbell was upset over losing her job and tried to persuade Dr. Adams to keep her on and let employees with more seniority go. Dr. Adams had to follow lay-off protocol in accordance with the collective bargaining agreement and could not accommodate Campbell's request. Campbell left the UBESD. (Dr. Adams's testimony.) She eventually went to work for a local hospital. (Campbell's testimony.)

(19) Dr. Adams spent much of the year following his hiring as superintendent assembling documents to respond to requests and subpoenas from the numerous agencies investigating the UBESD. He filled the back of his personal pickup several times with boxes of records to deliver them to Salem for the various investigations. (Dr. Adams's testimony.)

(20) In the course of examining the UBESD's records, Dr. Adams found a Travel Reimbursement Procedures policy for the UBESD that was last updated in March 1996. (Ex. R17.) The policy stated, in part, that employees would be reimbursed for mileage, for the "most direct and common route," for use of a personal vehicle, meals and lodging, for UBESD travel. (*Id.*) In talking to employees, Dr. Adams learned that the policy was not consistently followed. The policy did not require or expect UBESD employees to

share rides, either in UBESD vehicles or in their personal vehicles, when traveling on UBESD business. In reviewing records and talking to UBESD employees, Dr. Adams learned that it was common practice for UBESD employees traveling to the same town on the same day, to drive separate personal vehicles, and for each to claim reimbursement for mileage from the UBESD. Employees traveling on the same day to the same building in other towns were not required or expected by the UBESD's administration to share rides. (Dr. Adams's testimony.)

(21) Dr. Adams learned that it was a common and acceptable practice for UBESD board members, who often traveled to other cities for conferences or meetings, each to drive his or her own personal vehicle, and each claim reimbursement for mileage from the UBESD. There was no practice of board members car pooling to meetings or conferences to save the UBESD money. Dr. Adams learned that UBESD board members traveled to meetings and conference in other parts of the country, stayed in expensive hotels and spent lavishly on meals, and got reimbursed in full for their expenses. Dr. Adams learned that one UBESD employee from the La Grande area owned a vacation home in the San Juan Islands in Washington state and often drove there. The employee would drive to the Costco store in the Tri-Cities area of Washington state [Kennewick, Pasco and Richland], on his way to the San Juan Islands, purchase a small item at Costco for the UBESD, such as a box of paper towels, drive on to his vacation home and spend time there, return to La Grande through the Tri-Cities, and claim reimbursement from the UBESD for mileage from La Grande to the Tri-Cities and back. The employee's practice was never challenged by the UBESD's administration, and the UBESD paid the employee's mileage reimbursement requests. (Dr. Adams's testimony.)

(22) In 2004, the UBESD board hired Dickey and Tremper, LLP (Dickey and Tremper), certified public accountants and business advisors, in Pendleton, Oregon, to investigate allegations of misappropriation of assets, violation of the UBESD policies and procedures, violation of state and federal laws, and fraudulent reporting, for fiscal years ended June 30, 2002, 2003 and 2004. (Dr. Adams's testimony; Ex. A5.)

(23) Dickey and Tremper issued a 62-page report dated August 22, 2004 (Ex. A5), which concluded, in part, as follows: The UBESD had an enormous amount of travel, with some employees each claiming between 30,000 and 45,000 miles per year (*Id.* at 4.); there was a lack of internal controls regarding district policies; long-time practices conflicted with some written policies; current business managers did not have the power to question expenditures approved by administrators; Superintendent Schumacher did not have complete control of the organization, and that he had particular difficulty controlling the actions of Mann and Williams [another UBESD administrator]. (*Id.* at 5.) Dickey and Tremper recommended, among other things, that the UBESD require that purchases of materials, supplies and equipment be made through the district's normal purchasing procedures; and that reimbursement to employees for purchases of materials, supplies and equipment by employees not be made on travel reimbursement forms. (*Id.* at 12.)

(24) Licensee has been licensed as a teacher with TSPC for approximately 34 years. (Licensee's testimony.)

*(1) Reporting false and/or misleading student attendance data.*

(25) A primary mission of the UBESD was to provide alternative education services to school districts where the school districts did not provide those services to students in those individual districts. The UBESD contracted with individual school districts to provide those services. School districts would receive money from the Oregon Department of Education (ODE) based on the student attendance that was reported to the ODE. Student attendance was based on a concept called the "Average Daily Membership." (Campbell's testimony; Licensee's testimony.) Average Daily Membership (ADM) represented the average number of students in membership on any given day during an attendance reporting period. (Ex. A12 at 2.) The UBESD was responsible for tracking attendance in its alternative education programs on a monthly basis. School districts reported their student attendance to the ODE. The ODE, in turn, paid each school district for all its students, students in regular school and students in the alternative education programs. School districts, pursuant to their contracts with the UBESD, would then pay the UBESD money for the alternative education students. The higher the ADM numbers that the school districts reported to the ODE for the UBESD's alternative education programs, the more money the UBESD would receive from the school districts with whom the UBESD contracted. (Campbell's testimony; Licensee's testimony.)

(26) Teachers at each UBESD alternative education site were responsible for tracking and recording student attendance. As an alternative education coordinator, Licensee was responsible for monitoring and reviewing ADM attendance data from each of the alternative education sites for which he had coordination responsibilities. He denied that he had a responsibility to independently verify student attendance reported to him by the teachers. Licensee simply forwarded the ADM data he received from teachers to Binnie Kast (Kast), an UBESD employee. Kast would then input the data into a computer spreadsheet. She would then send the spreadsheet data to Mann and Campbell. Mann and Campbell would prepare the ADM monthly reports. Licensee also denied that he participated in preparation of the ADM reports or that he falsified or misreported ADM data. (Licensee's testimony.)

(27) Kast worked for the UBESD from approximately 1997 until she retired in 2005. (Ex. R28 at 1.) She first started working for the UBESD grading student papers. She later moved into food service positions, worked in the athletic department and drove students to facilities, and finally moved in a clerical position. In the clerical position, she worked, in part, as Licensee's secretary. As Licensee's secretary, she had responsibility to enter into a Quattro Pro spreadsheet the ADM data submitted by teachers from the alternative education sites that Licensee oversaw. After she entered the ADM data into the spreadsheet in her computer, she would "lock" the computer and forward the data to Mann and his assistant, Campbell, who would prepare the ADM reports to be sent to the school districts and to the ODE. (Ex. R28 at 2.) Kast denied any knowledge as to how

ADM reports were prepared. She denied that she was ever told to alter the ADM data she received. (*Id.*) Mann would tell her from time to time that the UBESD “needed students for the numbers.” (*Id.*)

(28) On February 21, 2009, Kast signed a declaration about her work at the UBESD. (Ex. R27 at 2.) In her declaration, she stated that Mann was her supervisor and boss; that she sent the ADM data she entered into her work computer to Mann and Campbell; that Mann and Campbell would review the ADM data and prepare the student attendance reports that the UBESD would send to the ODE; and that to her knowledge, Licensee did not participate in or influence the ADM figures that were reported to the ODE. (*Id.*) Kast died later in 2009. (Licensee’s testimony.)

(29) Campbell regularly sent ADM reports to school districts over her name. (Exs. R38 and R51.) In at least one report, she informed the district that if district had any questions, the district could contact her. (Ex. R38 at 1.)

(30) Arnold Coe (Coe) was superintendent of the Cove School District near La Grande from 1999 until 2003. In that capacity, he had regular dealings with Mann and Licensee about alternative education issues. He found that Mann’s focus was primarily on the UBESD getting as much money as possible from the school districts for students in the alternative education programs. (Ex. R66 at 2; Coe’s testimony.) This led to instances where Coe believed the UBESD was counting students from his district in the alternative programs when those students should not have been included in the programs. He raised his concerns with Mann. Mann told Coe that he should not worry so long as the district received the ADM money for the students enrolled. Coe found it difficult and frustrating to get Mann to correct ADM and alternative education attendance data. In contrast, Coe found that Licensee’s primary focus was providing services to alternative education students, as opposed to dealing with matters involving payments from the ODE or reimbursements to the UBESD for alternative education students. (Coe’s testimony; Ex. R66 at 2.) Coe reported his concerns to the ODE about errors in ADM data for his district before the investigations into the UBESD’s activities began in 2004. In his opinion, before the investigations began, ODE seemed disinterested in looking into his concerns about the accuracy of ADM data. (Coe’s testimony.)

(31) Sandy Bushek (Bushek) worked as a union representative for ESDs, including the UBESD, and for school districts in eastern Oregon, starting in the early 1990s. In working with the UBESD, she worked with and knew Schumacher, Mann, Campbell, Licensee, and Cole. She also knew how the UBESD functioned and operated. She has a good understanding of ADM and the funding relationship between the ODE, school districts and ESDs. In her opinion, it is not uncommon for school districts to deliberately over or under report ADM data. Under-reporting ADM data is used by school districts in the budgeting process as a tool to gain an advantage in contract negotiations with teachers’ unions by showing that the district has less money than it actually has or will have. Districts often later go back and revise their ADM data after contract negotiations have concluded to show the actual ADM numbers. The ODE understands and accepts that ADM data is often later revised. (Bushek’s testimony.)

District administrators, and ultimately the superintendent, are responsible for reporting ADM data. Teachers are not responsible for reporting ADM data. (Bushek's testimony; Dr. Adams's testimony.)

(32) Bushek had a great deal of contact with UBESD employees and administrators in 2004 and 2005 during the various investigations. She retired in 2006. Investigators arrived at the UBESD main office one day to ask questions about the UBESD's ADM data and reporting procedures. Mann, Schumacher and Campbell were not unavailable to talk to the investigators. An administration staff person directed Licensee to talk to the investigators about the ADM process on behalf of the UBESD. Licensee had Bushek accompany him to the meeting with investigators. Licensee told the investigators he knew about the ADM process. Licensee's name then appeared in one or more investigative report as the spokesman for the UBESD regarding ADM reporting procedures. (Bushek's testimony; Licensee's testimony.)

(33) After the publicity about the problems at the UBESD, and various investigations were conducted, the Oregon Secretary of State's office conducted an audit of the UBESD's alternative education program for the periods 1999-2000 and 2003-2004, and issued a report in June 2007. (Ex. A12.) The Secretary of State's office found that the UBESD was responsible for tracking and reporting ADM to the districts for alternative education services. The districts, in turn, were responsible for reporting the ADM to the ODE. The Secretary of State's office found multiple instances of the UBESD misreporting ADM data; instances of the UBESD inappropriately claiming ADM for students who were not residents of their school district; instances of the UBESD claiming ADM for students who were either younger or older than allowed by state rules; and instances of the UBESD submitting duplicate claims for ADM for the same student. (*Id.* at 1.) As a result of the errors in reporting ADM attendance data, the ODE distributed approximately \$3.4 million in state funds to school districts that contracted with the UBESD to which the districts were not entitled. (*Id.*)

*(2) Submitting false or improper mileage reimbursement claims.*

(34) Between August 2001 and June 2004, Licensee claimed mileage reimbursement from the UBESD for 95,527 miles of travel. (Ex. A16 at 30.) Between August 2001 and June 2004, Cole claimed mileage reimbursement from the UBESD for 90,171 miles of travel. (*Id.* at 60.) During this time period, the UBESD reimbursed employees at the rate of 30 cents per mile. During this time period, the UBESD reimbursed employees for meals at the per diem rate of \$5.75 for breakfast, \$8.75 for lunch, and \$14.35 for dinner. (Exs. A1, A2.) An amount claimed for meals that exceeded the per diem rate needed to be supported by a receipt. (Licensee's testimony.)

(35) Licensee and Cole submitted their mileage and travel reimbursement requests to Campbell. Campbell reviewed the requests, organized them and forwarded them to Mann for his approval and signature. After Mann approved the requests, the requests were sent to the UBESD's accounting office for payment. (Campbell's testimony.)