

**BEFORE THE
TEACHER STANDARDS AND PRACTICES COMMISSION
STATE OF OREGON**

IN THE MATTER OF:) **FINAL ORDER**
)
)
)
NANCY BAKER-KROFFT) OAH Case No.: 1303166

This matter came before the Commission during its regularly scheduled meeting of August 1, 2014, to consider the Proposed Order issued by Senior Administrative Law Judge (ALJ) Samantha Fair on November 15, 2013. Respondent filed exceptions to the Proposed Order on December 2, 2013.

The Commission previously considered the Proposed Order on March 7, 2014. On March 18, 2014 the Commission entered a Final Order adopting the ALJ's proposed order as the final order. Due to inadvertence, the Commission did not review the exceptions filed by Respondent.

The Commission reviewed the Proposed Order and Respondent's exceptions on August 1, 2014. Respondent's exceptions repeat arguments that Respondent has made before. The Commission does not find any of the exceptions persuasive and therefore orders as follows:

1. The Final Order entered on March 18, 2014 is hereby withdrawn.
2. The Proposed Order that is attached and incorporated by reference is adopted as the Final Order.

///

///

///

///

///

///

///

///

Based on the foregoing, the Commission hereby denies Nancy Baker-Krofft's application for reinstatement of her Basic Teaching License.

It is so Ordered, this 6th day of August 2014.



Victoria Chamberlain, Executive Director
Teacher Standards and Practices Commission

NOTICE OF APPEAL RIGHTS

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provision of ORS 183.482 to the Oregon Court of Appeals.

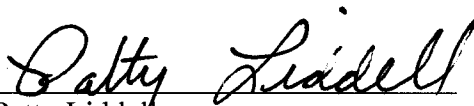
CERTIFICATE OF MAILING

On September 18, 2014, I mailed the foregoing Final Order and Proposed Order in OAH Case No. 1303166 to:

By: U.S. First Class Mail and Certified Mail Return Receipt Requested 7012 1010 0003 2804 4852
Nancy June Baker-Krofft
676 Catterlin St NE
Salem OR 97301-2743

By: Shuttle
Raul Ramirez
Senior Assistant Attorney General
Department of Justice
1162 Court Street NE
Salem OR 97301-4096

Hearings Coordinator
Office of Administrative Hearings
4600 25th Avenue NE, Suite 140
Salem OR 97301

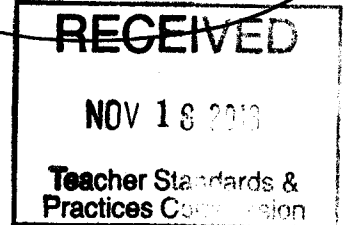

Patty Liddell
Investigative Assistant

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

IN THE MATTER OF:

NANCY BAKER-KROFFT

) **PROPOSED ORDER**
)
) OAH Case No.: 1303166
)



HISTORY OF THE CASE

On October 3, 2012, the Teacher Standards and Practices Commission (Commission or TSPC) issued a Notice of Denial of License Reinstatement and Opportunity for Hearing (Notice) to Nancy Baker-Krofft (Baker-Krofft or Licensee)¹. On December 3, 2012, Baker-Krofft requested a hearing.

On February 25, 2013, the Commission referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Dove Gutman to preside at hearing. On April 24, 2013, ALJ Gutman convened a telephone prehearing conference and scheduled a hearing for September 12, 2013, and set deadlines for submission of witness lists and exhibits.

On June 18, 2013, the Commission filed a Motion for Summary Determination. On July 1, 2013, Baker-Krofft filed a Motion to Deny Summary Determination. On July 26, 2013, the OAH issued a Ruling on Motion for Summary Determination, denying the Commission's Motion for Summary Determination.

On September 6, 2013, the OAH reassigned the matter to Senior ALJ Samantha Fair.

A hearing was held on September 12, 2013, in Salem, Oregon, with Senior ALJ Fair presiding. Baker-Krofft appeared without counsel and testified. She waived her rights for a private hearing and requested the hearing be public pursuant to ORS 342.177(1)(b). The Commission appeared, represented by Senior Assistant Attorney General (AAG) Raul Ramirez. The Commission's Legal Liaison, Jeff VanLaanen, appeared. The Commission called Baker-Krofft as a witness. Baker-Krofft called as additional witnesses: Reverend Paul LaRue, Bobbie Cade, Reverend Jon Langenwalter, Leslie Polson, Sue Westby, Sheryl McBiryd, Jeff VanLaanen, and Helen Voorhees.

The evidentiary record closed at the conclusion of the hearing. The record was left open through September 26, 2013 for the filing of written closing arguments. On September 26, 2013,

¹ Baker-Krofft does not currently hold a teaching license. However, she is also referred to as "Licensee" because a prior proceeding involving her is quoted in this Proposed Order. In that prior proceeding, she is referred to as "Licensee."

Baker-Krofft filed her Closing Argument. On September 27, 2013, Senior ALJ Fair granted the Commission's request for a 14-day extension to file its closing argument. On October 11, 2013, the Commission filed its Closing Brief.

ISSUES

1. Whether Nancy Baker-Krofft established her fitness to serve as an educator. ORS 342.143(2).
2. Whether Nancy Baker-Krofft's application for reinstatement of her basic teaching license should be denied. ORS 342.175(4).

EVIDENTIARY RULINGS

Exhibits A1 through A13 and A15 through A18, offered by the Commission, were admitted into the record without objection. The Commission withdrew Exhibit A14. Exhibits R2, R4 through R9, and R10 through R19, offered by Baker-Krofft, were admitted into the record without objection. Exhibit R1, offered by Baker-Krofft, was admitted into the record over the Commission's objection. Baker-Krofft withdrew Exhibits R3 and R10. The Commission's objection to Exhibit R20, an email from Ramirez to the Commission offered by Baker-Krofft, was upheld and the exhibit was excluded from the record because it was a privileged attorney-client communication.

FINDINGS OF FACT

1. The Commission issued a basic teaching license to Baker-Krofft in 1989. The Commission renewed her license every three years until 2008. (Test. of Baker-Krofft.) The Commission received no complaints from students, parents, school districts or other teachers during Baker-Krofft's tenure as a teacher. (Test. of VanLaanen.)

2. On November 1, 2006, Salem police officers arrested and charged Baker-Krofft with criminal mistreatment. (Ex. A6 at 1.) On May 2, 2007, a jury convicted Baker-Krofft of criminal mistreatment in the second degree. (Ex. A8 at 1.) Baker-Krofft appealed her conviction. On September 2, 2009, the Oregon Court of Appeals affirmed her conviction. (Ex. A17 at 1.) Baker-Krofft filed a petition for review with the Oregon Supreme Court. On August 19, 2010, the Supreme Court issued its decision, reversing the decision of the Court of Appeals and the judgment of the trial court. (Ex. A18 at 1, 7.) The Supreme Court found that Baker-Krofft was arrested for "withhold[ing] necessary and adequate physical care" from her dependent child based upon the condition of the family home. (*Id.* at 1.) The Supreme Court found that the Baker-Krofft home "posed specific fire hazards (such as a space heater sitting on a pile of straw in a chicken coop in the backyard), did not contain working fire alarms, and was so full of clutter that it would have been difficult to escape from any fire." (*Id.* at 1-2.) Based upon its interpretation of the statutory text and legislative history for the statutes that defined criminal mistreatment, the Supreme Court found that, because the child was in good health and that the fire dangers posed only a risk of future harm, Baker-Krofft had not "withheld from her child some physical service necessary to provide for the child's bodily needs, nor was there any

evidence that [she] failed to protect her child from an immediate harm.” (*Id.* at 6.) Therefore, the Supreme Court concluded that she was not subject to any criminal liability under the criminal mistreatment statutes. (*Id.* at 7.) In *dicta*, the Supreme Court noted that the conditions of Baker-Krofft’s home could have supported the juvenile court taking jurisdiction of her child to protect him until the unsafe conditions of her home were corrected. (*Id.* at 6.)

3. On May 14, 2008, Baker-Krofft filed an Application for Renewal of her license with the Commission, which was scheduled to expire on May 23, 2008. (Exs. A9 at 1-4; A13 at 2.) In the renewal application, she noted her conviction and provided a Letter of Explanation (Letter) regarding the circumstances surrounding her conviction. (Exs. A9 at 4; A10 at 1-3.)

4. On August 13, 2008, the Commission issued a Notice of Denial of Renewal of Basic Teaching License to Baker-Krofft. On August 15, 2008, Baker-Krofft requested a hearing. On March 6, 2009, the Commission issued an Amended Notice of Denial of Basic Teaching License. A hearing was held before ALJ Rick Barber of the OAH on March 25, 2009 and April 8, 2009. Baker-Krofft appeared, testified, and was represented by her attorney, Peter James. The Commission was represented by AAG Ramirez. Baker-Krofft called an additional three witnesses to testify. The Commission called an additional two witnesses. The Commission’s 12 exhibits were admitted into evidence. Baker-Krofft’s eight exhibits were admitted into evidence. As a result of the hearing, ALJ Barber issued a Proposed Order. Baker-Krofft filed exceptions to the Proposed Order. On November 15, 2010, the Commission issued a Final Order, which was 24 pages in length, including 4.5 pages of findings of fact. In the Final Order, the Commission found that the burden of proof was on the Commission to demonstrate that Baker-Krofft was unfit to hold a license. In the Final Order for the case *Baker-Krofft I*,² the Commission adopted the Findings of Fact, Conclusions of Law and proposed penalty of the Proposed Order but added additional reasoning regarding the application of OAR 584-020-0035(3)(a) and withdrew one of the issues raised in its notices. (Ex. A13 at 1-2, 7.)

5. The legal issues raised in *Baker-Krofft I* were the following:

- Whether Baker-Krofft’s conviction for Criminal Mistreatment II constituted gross unfitness pursuant to ORS 342.175(1)(c);
- Whether Baker-Krofft’s conviction for Criminal Mistreatment II constituted gross neglect of duty pursuant to ORS 342.175(1)(a);
- Whether Baker-Krofft’s statements in her Letter of Explanation, submitted with her license renewal application, constituted gross neglect of duty under ORS 342.175(1)(b), OAR 584-020-0040(4)(c) and OAR 584-020-0040(4)(o) as it incorporated OAR 584-020-0035(3)(a);
- Whether the statements in the Letter of Explanation constituted gross unfitness under ORS 342.175(1)(c); and

² The 2008 renewal application case is called *Baker-Krofft I* in this Proposed Order to distinguish it from the current proceeding.

- Whether, if any of the above allegations were true, Baker-Krofft's renewal application for a Basic Teaching License should be denied.

(Ex. A13 at 2.)

6. In the Final Order, the Commission concluded that Baker-Krofft's conviction for Criminal Mistreatment did not constitute either gross unfitness or gross neglect of duty.³ It withdrew from consideration the issue involving whether her statements in the Letter constituted gross unfitness. (Ex. A13 at 7, 24.)

7. In the Final Order, the Commission denied Baker-Krofft's renewal application based upon its conclusion that Baker-Krofft, in the Letter, knowingly misrepresented her circumstances to the Commission and that these misrepresentations constituted gross neglect of duty. (Ex. A13 at 18-19.) In the Final Order, the Commission explained:

Licensee claimed in her Letter that she was the victim of her ex-husband's scam, strongly suggesting that her husband intentionally did not clean the house and allowed the police to view the home while it was unusually dirty. * * * She also explained that, for various reasons, neither she nor her son had cleaned the home in two weeks, implying that her home was normally safe and did not present any health hazards. In fact, when an officer escorted her son home * * *, the officer inquired about any reports to CSD, which Licensee ascribed in her Letter to the "in-the-middle-of-cleaning-and-dropped-it-to-deal-with-[her]-son state of [her] living room." Licensee also emphasizes her lack of responsibility, placing the blame squarely on her ex-husband and his business: "His business as a junk dealer was always filling our home and yard with his 'inventory' for sale, and neighbors complained so Code Enforcement ticketed us, and said all of it had to be indoors."

In short, in her Letter of Explanation, Licensee paints a picture of herself as a hapless victim to her ex-husband's "junk business" - a business she actually jointly shared with her ex-husband - and to an over zealous prosecutor. Through her Letter, she also created the impression that the condition of her home was nothing more than a little messy, since she had simply gotten a week or two behind in her cleaning, and that there was no possibility of fire danger.

The objective evidence of the state of Licensee's home, however, belies her characterization of the home. * * * the front room of the home was full of stacks of various items, including clothing, bags of debris, paperwork, recyclables, broken appliances, baskets and bags full of

³ By the time the Commission issued the Final Order, Baker-Krofft's conviction had been reversed. Although that reversal rendered these issues moot, the Commission's Final Order did not modify the Proposed Order's reasoning or legal conclusions on these issues. (Ex. A13.) The Commission noted in its Final Order that Baker-Krofft's conviction was overturned on appeal. (*Id.* at 22.)

various items, jars with liquid, and miscellaneous furniture. The stacks in the front room were approximately three feet high and covered all but a narrow path of carpet through the room and into the dining room. The carpet on the path was very dirty. The fireplace was covered with piles of debris as well, and the room smelled of mold and mildew.

The path through the front room led to the dining room, and the path narrowed as it approached that room. The dining room was full of the same type of items, and stacks were placed on the table, the chairs, and the piano in the room.

From the dining room, a path led into the kitchen where the odor of mold and mildew was stronger. The floor was filthy and covered with stacked boxes. The sink and countertops were full of dishes and debris, as well as open containers of perishable food, and there were flammable paper products sitting on top of the stove. The refrigerator contained food, but smelled of mold and mildew.

Behind the kitchen, a hallway led to an upstairs area adjacent to or in the garage area. That hallway had a narrow path, with items stacked against the wall on both sides of the hall. At times, the officers had to walk on the top of boxes and bags in order to get to the back staircase.

Apparently, no one had been up there in over a year. The stairs to the back bedroom were covered with canned goods, clothing, shoes, bags of debris, and a broken window frame. In the event of a fire, no one trying to get past this collection of debris would be able to exit the house in a timely fashion.

In the back bedroom, several electric cords were plugged into power strips and extending into the back yard. The plugs and power strips were warm to the touch and many were resting on either paper or clothing in the bedroom. In the back of the house, Licensee was using the electricity to raise chickens.

In short, contrary to Licensee's characterization in her Letter of Explanation, the state of her home was not that of merely being the "in-the-middle-of-cleaning-and-dropped-it-to-deal-with-[her]-son," nor was the fire hazard merely "so called." Rather, the objective evidence in the record demonstrates that the state of her home was far more serious than that portrayed in her Letter. And it had been that way for quite some time – not just the two weekends she had spent with her son doing scouting activities.

Yet almost a year before writing the Letter of Explanation, Licensee realized that she had "missed the boat" and, once she learned of the hazards, she rectified them. Rather than acknowledging those facts, and

explaining to the Commission the changes she had made to her home, Licensee considerably downplayed the severity of the situation and blamed the state of the house on her husband's "scam" and the fact that she had to work to support the family. Indeed, despite the clear evidence and her stated awareness, Licensee could only write about the "so called possibility of fire danger" and the "clutter of [her ex-husband's] business."

In short, the Commission concludes that, at the time she wrote her Letter of Explanation, Licensee was aware of the facts and circumstances leading to her arrest and conviction, yet she misrepresented those facts in her Letter. And, while the act or acts leading to the conviction are not * * * connected to her professional duties as an educator, the fact that she would make the misrepresentations in this letter in an effort to obtain a license *is* connected to her profession. The Commission has shown that Licensee grossly neglected her duty when she misrepresented the status of her arrest and conviction in the Letter of Explanation.

* * * * *

At a minimum, the Commission expects licensees to be forthright in their communications with the Commission, particularly when directly related to the licensing process. * * *

In this case, the Letter submitted by Licensee demonstrated that she lacked honesty or integrity because she continued to minimize her conduct and deflect responsibility for her acts leading [to] her conviction. To be sure, Licensee's Letter of Explanation gives the reader some idea of what occurred at the time of the arrest and subsequent conviction, but completely underplays her own involvement in the events. At no point in her Letter does Licensee accept any personal responsibility for the condition of her home.

Rather, she strongly implied that the condition of the home was not nearly as bad as others implied. And, to the extent there was a problem, she placed the blame on everyone from her son and her ex-husband, to the various law enforcement officers who worked on her criminal case. The objective evidence * * * contradicts Licensee's description of the circumstances and of her own involvement.

To be clear, the fact that Licensee was – or was not – *criminally* responsible for the condition of her home is not the point. Indeed, Licensee was ultimately successful in having her conviction overturned on appeal. * * * But the fact that Licensee's conduct did not amount to a crime does not negate the impact that conduct had on herself and others around her. The Commission expects an honest rendition of what

occurred and what steps she had taken to resolve the situation, thus demonstrating her character and integrity – as well as her ability to take responsibility for her actions and surroundings, including the safety of others, as would be expected of any teacher.

In short, when a licensee or applicant – during the licensing process – is unwilling to exemplify honesty and integrity with respect to past conduct, the Commission can properly determine, as it does here, that the person engages in gross neglect of duty under OAR 584-020-0035(3)(a). In the present case, the Commission finds that Licensee's minimizing of the conduct leading to her conviction and blaming others in her letter to the Commission also established that Licensee failed to maintain honesty and integrity in her communications to the Commission seeking renewal of her license.

(*Id.* at 20-23.) (Emphasis in original.)

8. Baker-Krofft appealed the Final Order to the Oregon Court of Appeals. On February 28, 2012, the Court of Appeals affirmed the Final Order. (Ex. A15 at 1.)

9. On October 26, 2010, Baker-Krofft emailed the Commission. In the email, she stated:

I was waiting for [the Commission] to drop my case that is in the Oregon Court of Appeals. I have waited 4 years for justice, and after all this time saw my name cleared of a so-called crime * * * the Commission chose to refuse to renew my license * * * the Commission is looking silly for trying in the courts to fight a case they no longer have grounds for? I appealed the Administrative Decision, which boils down to concern that I was angry at injustice done to me, and the cessation of my ability to earn a living for my son. After having gone through foreclosure and bankruptcy at the hand of the Commission since 2008, who have since held my license prisoner * * * [the Commission is] wasting valuable state monies * * * as [the Commission] continue to fight in the courts to censure me for a crime it was later found I was not guilty of. * * * [the Commission has] hobbled me needlessly for the letter of explanation presented to them along with my application for renewal on May 15th, 2008. Every word of it was and is true. * * *. Can someone talk sense to the Commission before I am homeless, along with my 15 year old son? * * *. It flies in the face of good judgement and reason to pursue a case of suspension of licensure when the basis is dismissed by the courts.

(Ex. R8 at 1.)

10. On April 25, 2012, Baker-Krofft submitted an application to the Commission, seeking to have her expired basic teaching license reinstated. (Ex. A12 at 6-8.) With the

application, she submitted a memo (Memo) to support her fitness to teach. In the Memo, she stated the following:

- Due to the case of Baker-Krofft v. State of Oregon being unanimously overturned by the Supreme Court of the State of Oregon
- Due to expungement from same in May of 2011
- Due to the active parenting of her son by Ms. Baker-Krofft since the decision to not renew her license in May of 2008
- Since two certification renewals have been not yet granted by the Board since five years ago this May
- Since all litigation by the licensee has stopped due to her having no funds to take this administrative matter to the next step, and have it before the Oregon Supreme Court, where it should have been heard as a related matter.
- Owing to the regrettable refusal of TSPC to relicense licensee immediately after the decision of the court that she had committed no crime
- Due to the protections of our U.S. constitution that one's right to be proven innocent in a court of law is a bedrock of our democracy
- For the reason that she is granted freedom from double jeopardy by same
- Due to her commitment to her innocence being questioned as making her "unfit" to teach, when in fact she was found so by the state's highest court, which has become prevailing law in the State of Oregon, overturning other lower court decisions.
- Because TSPC has faulted her in briefs before the Court of Appeals as not "taking responsibility for her actions" when the facts were she was the only one to remedy the leavings of her ex-husband's business, has been forced to bankruptcy and foreclosure⁴ by her inability to provide for her minor son due to lack of teaching income for the 2008-2012 school years, and still has managed to home school her son to pass the state High School Equivalency Exam in the top 5%. And exceed state standards on Oaks Testing.
- Due to her continued commitment to education, taking classes in Juvenile Law and Behavior Management at Portland Community College
- For her commitment to schools during the intervening time by serving on Salem's North High School site council a two year term

(*Id.* at 2.)

11. Baker-Krofft adamantly believes that the Commission wanted her to admit to harming her son and to admit her guilt to the Criminal Mistreatment charge in the Letter. She

⁴ She ceased residing in the original family home in March 2010. (Test. of Baker-Krofft.)

still insists that her statements in the Letter are all truthful and that she is "not dishonest for telling it as it was." (Test. of Baker-Krofft.) She blames the police for arresting her instead of providing support and assistance in cleaning her house. She feels victimized by the Department of Human Services (DHS), which took custody of her son upon her arrest. She understood from DHS that her son would be returned once the house was cleaned up. She then spent several weeks cleaning the home with the help of friends, but DHS retained custody of her son for several weeks after the house was cleaned. She blames her attorney for the Criminal Mistreatment conviction because she accepted his advice to not testify during the jury trial. She remains angry with her ex-husband for his refusal to provide financial support for her and their son, blaming him for the threat of foreclosure issued by the mortgage company on the family home just before her arrest. A few days before the arrest, her son wanted to spend the night at his friend's home. Baker-Krofft believes that her refusal to let her son spend the night, followed by her call to the police when he refused to return home and his subsequent return in handcuffs, led to "all of this." (*Id.*) She believes the home looked worse than it was because she was deep-cleaning it. She acknowledges that items were packed six feet high in the home but insists that the conditions were not dangerous. She was aware that there were stacks of newspapers but believed that such stacks were not hazardous and that she was simply "behind in her reading." (*Id.*) She continues to assert that the house's conditions were not as bad as described by the officers and were a result of her "steady cleaning schedule" being interrupted because her son was an active child and she was working more hours. (*Id.*) She blames the city's code enforcement officer for the mess in the house because the officer indicated that all the items stored in the driveway and the dilapidated minivan had to be removed. She then moved all the driveway items into the house and emptied the contents of the minivan into the home. She blames the Commission for relying on the police reports, not discounting her ex-husband's statements, and not dropping the license issue when her conviction was reversed. She believes the conviction reversal should have been "good enough" for the Commission. (*Id.*) Her son is now an adult and no longer lives at home. (*Id.*)

12. For many years, Baker-Krofft has been active in her church community. She has attended rallies and church camps. (Test. of LaRue.) She volunteers with Oregon Peaceworks, attending peace lectures and assisting in preparing its mailings. (Test. of Cade.) Her friends in the church community and Oregon Peaceworks find her to be thoughtful, caring and forthright. These individuals have not encountered any issues with Baker-Krofft's reliability and honesty in their interactions with her. When she indicates that she will perform a specific task, she completes the task, such as bringing a dish to a potluck or performing other volunteer activities. (Test. of LaRue, Cade, Westby, Langenwalter, Voorhees, McBiryd.) She was a finalist for a Sunday school teaching position with her church. The pastor of her church believed that she would have been a fine Sunday school teacher. (Test. of Langenwalter.)

CONCLUSIONS OF LAW

1. Nancy Baker-Krofft failed to establish her fitness as an educator.
2. Nancy Baker-Krofft's application for reinstatement of her basic teaching license should be denied.

OPINION

Baker-Krofft seeks reinstatement of her basic teaching license, which the Commission has denied. In *Baker-Krofft I*, the Commission denied Ms. Baker-Krofft's application for reinstatement of her expired teaching license. At the current hearing for regarding her 2012 license reinstatement application, Ms. Baker-Krofft focused her case and legal argument on why the Commission reached the wrong conclusion in *Baker-Krofft I* and why the Commission should have reinstated her license following the reversal of her criminal conviction. These arguments, and whether Baker-Krofft has established her fitness as an educator, are addressed in turn.

The Application of Issue Preclusion

Baker-Krofft spent the majority of her case arguing why the Commission reached the wrong conclusion in *Baker-Krofft I*. If the doctrine of issue preclusion applies, Baker-Krofft cannot re-litigate the issues raised in *Baker-Krofft I* in the current proceeding.

The doctrine of issue preclusion promotes economy of resources in the adjudicatory process by preventing unnecessary re-litigation of issues. See *North Clackamas School District v. White*, 305 Or 48, 50-52 (1988). Issue preclusion applies to findings of fact as well as conclusions of law, in both judicial and administrative proceedings. *Drews v. EBI Companies*, 310 Or 134, 140, 142 (1990); *Kaib v. Employment Dept.*, 161 Or App 290, 295 (1999).

The Oregon Supreme Court has held that one tribunal's determination on an issue may preclude re-litigation of the issue in another proceeding, if the following five requirements are met:

The issue in the two proceedings is identical. * * *

The issue was actually litigated and was essential to a final decision on the merits in the prior proceeding. * * *

The party sought to be precluded has had a full and fair opportunity to be heard on that issue. * * *

The party sought to be precluded was a party or was in privity with a party to the prior proceeding. * * *

The prior proceeding was the type of proceeding to which this court will give preclusive effect. * * *

Nelson v. Emerald People's Utility Dist., 318 Or 99, 104 (1993). Each of the *Nelson* requirements is met in this matter.

The Final Order in *Baker Krofft I*, issued by the Commission and affirmed by the Court of Appeals, found that Baker-Krofft made knowing misrepresentations in the Letter, and, by

submitting that Letter to the Commission in an effort to renew her license, she engaged in conduct that constituted gross neglect of duty. The Commission further found that Baker-Krofft's Letter, in which she minimized her conduct and the conditions of her home that led to her arrest and blamed others for the conditions in her home, established that Baker-Krofft failed to maintain honesty and integrity in her communications with the Commission when seeking renewal of her license and that such conduct constituted gross neglect of duty justifying its denial of her license renewal. In the current proceeding, Baker-Krofft argued that she did not make knowing misrepresentations in the Letter and that her conduct in drafting and submitting the Letter to the Commission did not constitute gross neglect of duty. To review that issue in this proceeding would result in identical issues for the two proceedings.

In *Baker-Krofft I*, the ALJ had to determine whether Baker-Krofft's statements in the Letter, submitted with her license renewal application, constituted gross neglect of duty. The issue regarding whether her statements in the Letter constituted gross neglect of duty was actually litigated and was essential to a final decision on the merits in *Baker-Krofft I*.

Baker-Krofft, as the Licensee, was a party in *Baker-Krofft I*. The proceeding involved a two-day hearing which resulted in a Final Order, which was upheld by the Court of Appeals. Additionally, Baker-Krofft was represented by an attorney in the prior proceeding, submitted multiple exhibits, and called multiple witnesses to testify. Baker-Krofft had a full and fair opportunity to be heard on the issue in *Baker-Krofft I*.

In determining whether the prior proceeding was the type of proceeding to which a court will give preclusive effect, the *Nelson* court noted that consideration must be given to the following:

- (1) whether the administrative forum maintains procedures that are "sufficiently formal and comprehensive";
- (2) whether the proceedings are "trustworthy";
- (3) whether the application of issue preclusion would "facilitate prompt, orderly and fair problem resolution"; and
- (4) whether the "same quality of proceedings and the opportunity to litigate is present in both proceedings."

Id. at 104 n 4.

In *Baker-Krofft I*, a Final Order was issued, subject to review by the Court of Appeals. In *Baker-Krofft I*, the burden of proof was on the Commission to prove the facts alleged by it in support of its decision to deny Baker-Krofft's application for renewal of her license. In administrative hearings, the standard of proof is by a preponderance of evidence. *See Cook v. Employment Div.*, 47 Or App 437, 441 (1980) (Administrative Procedures Act provides that the burden of proof is by a preponderance of the evidence.). The prior administrative hearing was conducted by an ALJ and included the admission of exhibits and witness testimony. These circumstances support that *Baker-Krofft I* was equivalently formal, comprehensive, trustworthy and of similar quality to the current proceeding. Finally, the application of issue preclusion would facilitate fair problem resolution in the pending proceeding because the issue of whether her representations in the Letter constituted gross neglect of duty should not be re-litigated.

Therefore, the prior proceeding was the type of proceeding to which a court will give preclusive effect.

Because issue preclusion applies in this proceeding, Baker-Krofft is bound by the findings and conclusions determined in *Baker-Krofft I*. She is precluded from re-litigating the underlying facts of the events leading to her arrest and the nature of her representations in the Letter as determined in the Final Order. Therefore, the Commission established that Baker-Krofft engaged in conduct that constituted gross neglect of duty because the Letter she submitted with her 2008 renewal application contained knowing misrepresentations and she failed to maintain honesty and integrity in her communications with the Commission.

Effect of the Reversal of Baker-Krofft's Conviction

Baker-Krofft asserted that the Commission should have reinstated her license following the reversal of her criminal conviction.

ORS 342.175(5) provides:

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

Baker-Krofft argued that the Commission should have immediately withdrawn its objections to the renewal of her license when her Criminal Mistreatment conviction was reversed on appeal. However, the criminal conviction was not the basis for the prior denial of her renewal application. As stated in the Final Order from *Baker-Krofft I*, the Commission concluded that the conviction did not constitute either gross unfitness or gross neglect of duty. Instead, it found in *Baker-Krofft I* that her statements in the Letter constituted gross neglect of duty when she knowingly made misrepresentations regarding the circumstances that led to the arrest. Additionally, it concluded that her lack of honesty and integrity in her communications with the Commission constituted gross neglect of duty.

Because her conviction was not the basis for the prior denial of her renewal application, the Commission was not required to reconsider her licensing situation following the reversal of the conviction.

Fitness to Serve as a Teacher and Status of Licensure

The Commission proposes to deny Baker-Krofft's application for reinstatement of her basic teaching license based on allegations that she failed to establish her fitness as an educator. Pursuant to OAR 584-050-0018(3), Baker-Krofft has the burden to establish, by a preponderance of the evidence, that she is fit for reinstatement of her license. Proof by a preponderance of the

evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

ORS 342.143(2) provides:

The Teacher Standards and Practices Commission may require an applicant for a teaching, personnel service or administrative license or for registration as a public charter school teacher or administrator to furnish evidence satisfactory to the commission of good moral character, mental and physical health, and such other evidence as it may deem necessary to establish the applicant's fitness to serve as a teacher or administrator.

ORS 342.175(4) provides:

Except for convictions for crimes listed in ORS 342.143 (3) and subject to subsection (5) of this section, any person whose license or registration has been suspended or revoked or whose privilege to apply for a license or registration has been revoked may apply to the commission for reinstatement of the license or registration after one year from the date of the suspension or revocation. The commission may require an applicant for reinstatement to furnish evidence satisfactory to the commission of good moral character, mental and physical health and such other evidence as the commission may consider necessary to establish the applicant's fitness. The commission may impose a probationary period and such conditions as it considers necessary upon approving an application for reinstatement.

Pursuant to the authority granted the Commission by ORS 342.143(2), the Commission requires applicants for reinstatement of licenses to provide evidence of their fitness to serve as an educator. OAR 584-050-0005 lists the necessary criteria for the granting of licenses. It provides, in part:

(1) The Executive Director may issue licenses or registrations, grant reinstatements, and renew licenses or registrations when each of the following conditions exists:

* * * * *

(a) All requirements established by law and rules have been met;

* * * * *

(b) The applicant has attained at least eighteen years of age and has furnished evidence satisfactory to TSPC of fitness to serve as an educator[.]