

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

IN THE MATTER OF:

) **FINAL ORDER INCORPORATING**
) **PROPOSED ORDER**
)
) OAH Case No.: 1102628

JENNIFER MARIE FERRO

This matter came before the Teacher Standards and Practices Commission during its public meeting on February 8, 2013. The Commission has considered the Proposed Order along with written arguments and exceptions filed by Licensee on November 26, 2012.

The Commission does not find Licensee's exceptions persuasive, and hereby adopts the attached Proposed Order as the Final Order.

Now therefore, Jennifer Ferro's right to apply for licensure in Oregon is suspended for thirty (30) days.

It is so Ordered this 14th day of February 2013.



Victoria Chamberlain, Executive Director,
Teacher Standards and Practices Commission

NOTICE: 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 February 15th, 2013, I mailed the foregoing Final Order Incorporating Proposed Order in OAH Case No.1102628.

By: First Class Mail

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

IN THE MATTER OF:) **PROPOSED ORDER**
)
JENNIFER M. FERRO) OAH Case No. 1102628
)

HISTORY OF THE CASE

On July 7, 2010, the Teacher Standards and Practices Commission (TSPC, or the Commission), issued a Notice of Opportunity for Hearing to Jennifer M. Fero (Respondent). On July 14, 2010, Respondent requested a hearing.

On December 29, 2011, the Commission referred the hearing request to the Office of Administrative Hearings (OAH).¹ Administrative Law Judge (ALJ) Rick Barber was assigned to preside at hearing. A prehearing conference was held on February 16, 2012, and the case was initially set for hearing for July 31, 2012. The case was later moved to September 24 and 25, 2012.

Hearing was held as scheduled on September 24 and 25, 2012, in Salem, Oregon. Respondent appeared and was represented by Attorney Tom Doyle. The Commission was represented by Assistant Attorney General Raul Ramirez. TSPC called the following witnesses: Respondent; former Portland Public Schools (PPS) Legal Counsel Maureen Sloane; and school Principal Brenda Fox. Respondent testified on her own behalf and also called former PPS administrator John Wilhelmi as a witness. The record closed on September 25, 2012.

ISSUES

1. Whether Respondent reported for work under the influence of cocaine, thereby committing gross neglect of duty.
2. Whether Respondent knowingly providing false information to the Commission, thereby committing gross neglect of duty.
3. Whether, if Respondent committed gross neglect of duty, her right to reapply for licensure in Oregon should be suspended for 30 days.

¹ The case had been referred to the OAH in September 2010, and the parties believed they had reached a stipulated settlement in the case. The case was re-referred when the settlement fell through.

EVIDENTIARY RULING

Exhibits A1 through A16, offered by the Commission, and Exhibits 1 through 12, offered by Respondent, were admitted into evidence without objection.²

FINDINGS OF FACT

1. Respondent was licensed as an educator in Oregon from 1997 until her license expired on November 13, 2010. From 2003 to 2006, she was an Assistant Principal at Roosevelt High School in Portland. During the 2006-07 school year, Respondent was on special assignment with Portland Public Schools (PPS). During the 2007-08 school year, she was Assistant Principal at Binnsmead Middle School, also in Portland. (Ex. A11).

2. During Respondent's last year at Roosevelt, there was a bomb threat at the school. The bomber indicated the bomb would be detonated unless Respondent gave up her life instead. There was no explosion and no loss of life, but Respondent suffered emotional trauma and filed a workers' compensation claim as a result of the event. To help her deal with the emotional trauma, PPS reassigned Respondent to a special project for one year. Respondent considered the assignment a demotion and outside her skill set, because she was not allowed to interact with students or other educators. (Ex. A11; Test. of Respondent).

3. Respondent began working at Binnsmead during the summer of 2007, preparatory to the 2007-08 school year. She began a leave of absence (LOA) in September because her mother was ill and needed her care. Respondent returned to school and worked most of the month of October and part of November 2007, but again went on family leave when her mother's condition worsened and her father was diagnosed with pancreatic cancer. (Test. of Respondent).

4. Respondent was living with her boyfriend, a Portland lawyer, and began using cocaine recreationally in August 2006. She obtained the drug from him and, occasionally, from other sources. Her initial use was sporadic, on weekends. Later, in November 2007, her use became regular. At the end of November 2007, Respondent realized she had used cocaine every day of that month. Between August 2006 through November 2007, Respondent did not ingest cocaine while at work or before work on school days. When her cocaine use increased to every day in November 2007, she would ingest the cocaine in the early evening, after work, so that she would have time to "come down" before working the next day. Ingesting cocaine at school, or coming to school under the influence was "a line I did not cross." Respondent noted that the drug addiction was growing in influence, but (due to her personality) she was "very controlled in how I lost control." (Test. of Respondent).

5. At the end of November 2007, when Respondent realized that her cocaine use had increased dramatically, she checked herself into the Hazelden facility to address her cocaine addiction. On December 12, 2007, Respondent left Hazelden early because her mother had only days to live. Respondent's grandmother died on December 21, 2007, and her mother died two

² Respondent initially objected to Exhibit A2 unless the author was going to attend the hearing. Because the author, Ms. Fox, testified, I considered the objection withdrawn.

days later. Respondent used cocaine one more time, on December 15, 2007. She did some research to find a rehabilitation facility that was away from her boyfriend and others, and chose the Narconon program in Atlanta, Georgia. She graduated from the program in May 2008. In the early part of the program, Respondent's father also passed away. (Ex. A11).

6. In late December 2007 or early January 2008, Respondent advised the school district that she would not be returning to school that year, and switched her leave from family medical leave to personal leave due to drug addiction. (Ex. A11). On January 9, 2008, PPS contacted the Commission and stated in part:

Based on information we have received, we believe that Jennifer Fero has violated the standards expected of an Assistant Principal by reporting to work under the influence of cocaine.

(Ex. A7). PPS was already aware of Respondent's drug use because she had told an examining doctor in her workers' compensation case that she had begun using cocaine in August 2006. (Ex. A6).

7. PPS based its conclusion that Respondent had reported to work under the influence of cocaine based upon her behaviors at work. Brenda Fox, the Principal at Binnsmead, kept notes concerning her observations of Respondent. Fox observed the following behaviors, among others, by Respondent:

- On August 10, 2007, Respondent was late for an AYP meeting, and was not prepared for it.
- On August 15, 2007, Respondent left the PPS Leadership Academy meetings at lunchtime, complaining of sinus pain, and did not return that day.
- On August 16, 2007, Respondent complained to Fox that the dentist she had seen the day before would not prescribe Vicodin for her. Respondent told Fox (over the phone during a session of the Leadership Academy), that she was in the parking lot "fighting demons."
- Respondent fell asleep during a meeting on August 22, 2007.
- On September 5 through 7, 2007, Respondent was frustrated when another employee's flower bouquet was larger than hers, and she was vocal about it;
- One of Respondent's coworkers asked Fox if Respondent was on drugs;
- On November 8, 2007, Respondent called Fox and said she was "f'ed up" and was wondering what her life would be like if the problem with the student at Roosevelt had never happened.

(Ex. A2). Some of the notes were written contemporaneously, and some of them were written after the fact. (Test. of Fox). When Fox and others with PPS later heard that Respondent was addicted to cocaine, they formed the belief that Respondent's observed behaviors were due to cocaine use. (Test. of Sloane).

8. Respondent was born in Korea, and was abandoned at birth by her biological parents in Korea. Her American parents adopted her at about four months and brought her to the

United States. She has psychological residuals from her abandonment as an infant, and they were worsened with the illnesses and subsequent deaths of her adoptive parents. She had an overwhelming desire to succeed as an educator. (Ex. A6). The preexisting psychological issues were made worse by the results of the bomb incident at Roosevelt. (Ex. A6; Test. of Respondent).

9. Respondent entered the Narconon Program in Georgia in January 2008. Shortly thereafter, her father died. Respondent left Narconon briefly to attend to his passing, then returned to Georgia and completed the program. She has been abstinent of cocaine since December 15, 2007. (Test. of Respondent).

10. Respondent began working as an administrator in Georgia in 2008, and has been successfully employed since that time. (Test. of Respondent).

11. On October 15, 2008, Respondent was interviewed by the Commission's investigator. Asked when she had begun consuming cocaine, Respondent replied: "That was last year in the Fall, during that leave of absence." (Ex. A11). The investigator asked Respondent for a written statement, which she provided on November 20, 2008. In that statement, Respondent wrote:

I used cocaine while on a Leave of Absence from my employer, Portland Public Schools. I was on Leave many times in 2007[.]

* * * * *

I take full responsibility for the temporary misjudgment of using cocaine in 2007.

(Ex. A12). Respondent knew at the time she spoke to the investigator and provided the written statement that her cocaine use had started earlier than she admitted. (Test. of Respondent).

CONCLUSIONS OF LAW

1. Respondent did not report for work under the influence of cocaine.
2. Respondent knowingly providing false information to the Commission, thereby committing gross neglect of duty.
3. Respondent's right to reapply for licensure in Oregon should be suspended for 30 days.

OPINION

The Commission contends that Respondent's right to reapply for licensure should be suspended for 30 days because she committed gross neglect of duty. TSPC has the burden to establish that Respondent committed gross neglect of duty. ORS 183.450(2). It must prove its case by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379

(1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

The Commission's Allegations. TSPC contends that Respondent committed gross neglect of duty in two instances: coming to work under the influence of cocaine, and providing knowingly false information to TSPC concerning her cocaine use.

ORS 342.175 states in part:

Grounds for discipline; reinstatement. (1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator or suspend or revoke the right of any person to apply for a license or registration if the licensee, registrant or applicant has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176 based on the following:

* * * * *

(b) Gross neglect of duty[.]

OAR 584-020-0040(4) further defines gross neglect of duty. The rule states in pertinent part:

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

* * * * *

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

* * * * *

(g) Appearing on duty or at any district-sponsored activity while under the influence of alcohol or any controlled substance;

* * * * *

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

Working under the influence of cocaine. The Commission contends that Respondent reported to work under the influence of cocaine and that she was guilty of gross neglect of duty as a result. The Commission has failed to prove its case.

The evidence to establish that Respondent came to work under the influence of cocaine is circumstantial at best. Principal Fox kept notes of some of Respondent's behaviors during the summer and fall of 2007. Some of the notes were contemporaneous of the events reported; others were written after the fact. Respondent demonstrated some inconsistent behaviors during 2007, and ultimately admitted she had been using cocaine since August 2006 and was going into drug rehabilitation. PPS believed the behaviors and the cocaine use were connected and therefore apprised the Commission that Respondent may have been working under the influence of cocaine.

However, the Commission has not presented any direct evidence of cocaine use at work or of behaviors at work that can be attributed to cocaine use on a more probable than not basis. There is no expert medical evidence to show what being under the influence of cocaine at work would entail.³ There are no tests showing that cocaine was in Respondent's blood stream while at work. No expert evidence was presented to show how long the effects of cocaine (taken the night before) would impair the user, or whether it would impair the user at all. The Commission has not shown that Respondent was under the influence of cocaine while at work.

Respondent's evidence on this issue also bears some comment. Respondent testified that she began using cocaine recreationally in August 2006 and progressed to the point where, by the end of November 2007, she had used every day that month. Respondent testified that she would consume cocaine early in the evening, after her work was done, so that she could "come down" from the drug in time to go to work the next day. She categorically denied ever using cocaine at school, or on breaks or lunches during the school day, on or off premises.

Thus, the evidence shows a worsening addiction to cocaine over a period of 15 months, but also shows that Respondent was trying to control the addiction. In her words, she was "very controlled in how I lost control." (Test. of Respondent). As she began to see herself losing control of the cocaine use, she sought treatment by her own choice. Claimant's testimony, which I consider credible, does not establish that she was not under the influence of cocaine while at work. It does establish that she intended to keep her cocaine use as far from the school and her work as possible.

Thus, although I accept Respondent's testimony that she did not use at school or before school, it is not clear whether she was "under the influence" at school. However, remembering the Commission's burden of proof, the Commission has failed to show that Respondent appeared on duty under the influence of cocaine.

Making a knowingly false statement. Respondent began using the drug in August 2006 and failed to admit that fact to Ms. Tucker. At hearing, Respondent admitted that her comments to Investigator Tucker were false, and the record bears that out.

Respondent testified that she believed Ms. Tucker's questions had to do with when she

³ Exhibits A14 through A16 are Internet articles describing some of the effects of cocaine intoxication. They do not address the question whether Respondent's behaviors, as reported, might have been due to her psychological conditions or the obvious grief she was suffering watching her parents become ill and eventually die. The Internet articles are generally helpful but, without expert evidence to show their application to this case, they do not address the specific issues in this case.

became "addicted" to cocaine, and she was not sure she was addicted before she found herself using every day in November 2007. However, at one point in the interview Ms. Tucker asked Respondent when she began "consuming" cocaine, and Respondent replied: "That was last year in the Fall, during that leave of absence." (Ex. A11). That statement, as Respondent admitted, was knowingly false.

Based upon Respondent's admission, the Commission has shown that she made a knowingly false statement to the investigator. Respondent's actions violated the Commission's rules, and constituted gross neglect of duty.

The appropriate sanction. Respondent is no longer licensed in the State of Oregon, having let her license lapse in 2010 because of her intent to stay in her current career in Georgia. Therefore, what the Commission seeks in this case is a 30-day suspension of the right to reapply for licensure in Oregon.

Although admitting that she violated the Commission's rules in one instance, Respondent seeks leniency from the Commission presumably because of the potential effect of Oregon discipline on her licensure in Georgia. Respondent seeks a Letter of Reproval, a less formal means of discipline that might not have an impact on her Georgia licensure.

The Commission responds that the Office of Administrative Hearings does not have the authority to compel a Letter of Reproval as the appropriate sanction in the case. The Commission further contends that the importance of the decision in Oregon is to deter not just Respondent but others from giving false information to the Commission. I agree with the Commission.

Respondent made choices in 2006 and 2007 that led to a cocaine addiction. She additionally suffered the horrendous loss of two parents and a grandparent while she was grappling with her addiction, and has also had to overcome the trauma of her experiences at Roosevelt High School. In spite of all of those things, Respondent has sought out the help she needed and has become, by all reports at hearing, an excellent administrator in her Georgia school district.

However, the Commission also has the responsibility to deter other educators from making the same error that Respondent made in this case. Therefore, although it is sincerely hoped that the discipline in Oregon will not impact an excellent career in Georgia, the suspension is appropriate.

ORDER

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

That the July 7, 2010 Notice of Opportunity for Hearing, as modified to find that the Commission failed to prove that Respondent was under the influence of cocaine at work, be **AFFIRMED AS MODIFIED**.

Rick Barber

Administrative Law Judge
Office of Administrative Hearings

EXCEPTIONS

The proposed order is the Administrative Law Judge's recommendation to the Teacher Standards and Practices Commission. If you disagree with any part of this proposed order, you may file written objections, called "exceptions," to the proposed order and present written argument in support of your exceptions. Written argument and exceptions must be filed **within fourteen (14) days after mailing of the proposed order** with the:

Teacher Standards and Practices Commission
250 Division Street NE
Salem OR 97301

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

CERTIFICATE OF MAILING

On November 8, 2012, I mailed the foregoing Proposed Order issued on this date in OAH Case No. 1102628.

By: First Class and Certified Mail

Certified Mail Receipt # 7011 0470 0002 8827 8733

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