

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

IN THE MATTER OF:) **FINAL ORDER**
)
ERIKA LEE GLICK, nka ERIKA) OAH Case No.: 1403869
LEE HEATH)

This matter came before the Commission during its meeting of June 20, 2016 to consider a Proposed Order issued by Administrative Law Judge Samantha Fair on March 14, 2015. Respondent did not file exceptions to the Proposed Order. The Commission issued an Amended Proposed Order on September 14, 2016. Respondent did not file exceptions to the Amended Proposed Order. The Commission now therefore enters the following Final Order, which adopted the ALJ's Findings of Fact and Conclusions of Law.

HISTORY OF THE CASE

On May 21, 2013, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing (Notice) to Erika Lee Glick, nka Erika Lee Heath (Heath), proposing to impose discipline against her license. On May 28, 2013, Heath requested a hearing.

On September 26, 2014, the Commission referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Samantha Fair to preside at hearing. On November 3, 2014, ALJ Fair convened a telephone prehearing conference. Heath's attorney Thomas Doyle appeared. The Commission appeared and was represented by Assistant Attorney General Tyler Anderson. ALJ Fair scheduled the hearing for March 10 through March 12, 2015, and set deadlines for submission of witness lists, motions and exhibits.

On January 8, 2015, the Commission filed a Motion for Summary Determination. On January 26, 2015, Heath filed a Memorandum in Opposition to Motion for Summary Determination.¹ Subsequently, the OAH assigned the ruling on the motion to ALJ Dove Gutman. On February 3, 2015, ALJ Gutman issued a Ruling on Motion for Summary Determination, denying the Commission's motion.

A hearing was held on March 10 and 11, 2015, in Salem, Oregon. Heath appeared, was represented by Mr. Doyle, and testified. Testifying on her behalf were Peter Calvo, a licensed clinical psychologist; Bill Reinhard, assistant track coach for Mazama High School (Mazama); Stephany Stanton, kindergarten teacher for Seven Peaks School; and Meghan Stock, assistant track coach for Henley High School. The Commission appeared and was represented by Mr. Anderson. Jeff VanLaanen, the Commission's legal liaison, also appeared. The Commission

¹ ALJ Fair had granted Heath's request to extend the filing deadline for her response to January 26, 2015.

called Heath and Mark Greif, director of human resources for the Klamath County School District (District), to testify. The record closed on March 11, 2015 at the conclusion of the hearing.

On March 14, 2015, ALJ Fair issued a Proposed Order in this case.

ISSUES

1. Whether Heath engaged in gross neglect of duty by engaging in sexual conduct with a student. ORS 342.175(1)(b) and *former*² OAR 584-020-0040(4)(f).
2. Whether Heath engaged in gross neglect of duty by substantially deviating from professional standards of competency by failing to exercise professional judgment. ORS 342.175(1)(b), *former* OAR 584-020-0040(4)(n) and OAR 584-020-0010(5).
3. Whether Heath engaged in gross neglect of duty by substantially deviating from professional standards of ethics by failing to fulfill her obligations to a student. ORS 342.175(1)(b), *former* OAR 584-020-0040(4)(o) and OAR 584-020-0035.
4. If any violations are proved, what sanctions should the Commission impose on Heath. ORS 342.175.

EVIDENTIARY RULING

Exhibits A1 through A6 and A9 through A14, offered by the Commission, were admitted into the record without objection. ALJ Fair sustained Heath's objection to Exhibit A7 as irrelevant, and it was excluded from the record. ALJ Fair overruled Heath's objection to Exhibit A8 as hearsay, and it was admitted into the record. Exhibits R1 through R15, offered by Heath, were admitted into the record without objection.

FINDINGS OF FACT

1. Heath obtained a bachelor's degree in kinesiology with an emphasis in physical education from Idaho's Lewis-Clark State College. In 2012, she obtained a master's degree in education with an emphasis in environmental education from Concordia College. (Exs. A4 at 1; R1 at 1.) She has a coaching certificate from the National Federation of State High School Associations. (Ex. R1 at 1.) She also engaged in a minimum of three sports throughout her four years of college. Her college classes did not include any courses on establishing boundaries with students. (Test. of Heath.)

2. The Commission issued an initial teaching license to Heath on August 12, 2008, authorizing her for employment in the areas of physical education at all levels, health education

² This is the administrative rule that was in effect at the time of the alleged violations and the issuance of the Commission's notice. The Commission amended the administrative rule in 2014. The amendments to the rule did not impact the sections applicable to this proceeding.

at the middle and high school levels, and multiple subjects at the middle school level. (Ex. A1 at 1.) The Commission issued an initial 2 teaching license to Heath on July 9, 2012, effective until July 8, 2015, which included the same authorizations as her initial teaching license. (Exs. A1 at 1; A2 at 1.)

3. The District hired Heath as an elementary physical education teacher in the school year of 2008-2009. She remained in that position through the 2012-2013 school year. (Ex. A4 at 1.)

4. The District provided an Employee Handbook (Handbook) to its staff, including Heath. (Ex. A14; test. of Greif.) The Handbook advised all licensed staff to comply with the standards for competent and ethical performance for Oregon educators as required by the Oregon administrative rules, including the commitment to use professional judgment. (Ex. A14 at 28, 30.) The Handbook included a section titled "Personal Communication Devices," which provided, in part:

Staff possession or use of personal communication devices * * * may be permitted subject to the limitations in Board policy * * *.

* * * * *

* * *. If communicating with students electronically, staff should use District e-mail using mailing lists to a group of students rather than an individual student. Texting students is discouraged.

* * * * *

Staff are subject to disciplinary action * * * for using a personal communication device in any manner that * * * violates the terms of policy. (The * * * sharing of * * * pornographic, lewd, * * * photographs, * * * commonly called * * * sexting * * * may constitute a crime[.]

(*Id.* at 23.)

5. Beginning in 2008, Heath worked as a track and cross country coach for the District's high schools. She originally worked as a volunteer coach until becoming a paid coach in the 2011-2012 school year. (Ex. A4 at 1.) Beginning in 2011, she was part of a four-person coaching team for the District's Mazama's track team. She primarily coached the sprinters and hurdlers but also helped in other areas when needed. (*Id.* at 2.) The track team provided the student-athletes a handbook at the beginning of the season that included conduct expectations for the students, a list of the coaches, the coaches' qualifications and their personal cell phone numbers. (Ex. A4 at 7; test. of Heath.)

6. It is a common practice among coaches to provide team members with personal cell phone numbers so that student-athletes may text coaches. Coaches must be careful and ensure

that texting is limited to sports- and school-related subjects, such as confirming practice schedules or a student-athlete's inability to make practices. Discussions regarding colleges and students seeking job references are common between coaches and student-athletes. (Test. of Heath, Reinhard and Stock.)

7. Teachers must exercise professional judgment in relation to their interactions with students, school staff and members of the community. The burden is solely on the teacher to establish appropriate boundaries with students. Teachers need to be cognizant of the disparate levels of power in their relationships with students and student-athletes. Exercising professional judgment requires a teacher to avoid actions that would cause concern to students, district staff, or the community, including parents. (Test. of Heath.) Engaging in a sexual relationship with a recent graduate violates the professional judgment expected of teachers.³ (Test. of Heath and Stock.)⁴

8. At the end of the 2012 track season, a couple of student-athletes from the track team, including JC,⁵ asked Heath for her address so they could send her their graduation announcements. (Ex. A4 at 2.) JC was an 18-year-old male of average maturity. (Ex. A4 at 8; test. of Heath, Reinhard and Stock.) Using her personal cellphone, Heath texted her address to JC. (Ex. A4 at 2.) Subsequently, JC texted Heath to ask her questions about college life, life of a student-athlete, and the costs of college. Heath texted JC responses to his questions, such as suggesting that he work for the forest service during the summer to earn money for college. (Ex. A4 at 2-3; test. of Heath.)

9. Shortly before his graduation ceremony, JC texted Heath that he expected her at his graduation. When she responded that she would be out of town on that date, he asked to meet with her. Believing that JC wanted to meet with her for romantic reasons, Heath texted JC that she could not meet with him because he had not yet graduated from school and was still a student. (Exs. A4 at 5; A8 at 5; test of Heath.) JC graduated on June 10, 2012. (Test. of Greif.)

10. After the graduation ceremony, JC's texts to Heath changed. His texts increased in frequency, the content became flirty, and he asked to meet with her. (Exs. A4 at 3; A8 at 1-2, 4.)

³ It was generally acknowledged that there would be a time when developing an intimate relationship with a prior student would not violate a teacher's professional judgment. However, with the exception of Stanton, it was acknowledged that a teacher having a sexual relationship with a student within three weeks of graduation was inappropriate. (Test. of Heath, Stock, Reinhard, and Greif.)

⁴ Stanton's testimony contradicted Heath's and Stock's testimony. Stanton testified that it was strictly a private matter as long as the sex was consensual and the recent graduate was at least 18 years of age. However, Stanton's testimony in this matter was delivered hesitantly as if she was uncertain about her conclusions (unlike her testimony regarding Heath's school behavior, which she delivered with no hesitation). Additionally, she acknowledged that it was a "gray area" and there were issues with ensuring the consensual nature of the sexual interaction while protecting students. (Test. of Stanton.) Because of her demeanor, her apparent lack of certainty, and the irrationality of her conclusion that a teacher having sexual intercourse with a student immediately upon graduation was acceptable conduct, I did not find her testimony regarding teachers' standards for professional judgment credible.

⁵ In order to protect his privacy, the student-athlete's initials are used in this Proposed Order.

When they first began exchanging the flirty texts, Heath was nervous about the too familiar nature of the texts because JC was a recent graduate, and she realized that the community would find the development of such a relationship with a recent graduate unsavory. (Test. of Heath.) The texts between JC and Heath continued, and they discussed kissing, sex, how JC tasted, and exchanged nude photos of each other. (Exs. A4 at 5; A8 at 1, 6; test. of Greif and Heath.)

11. On June 29, 2012, JC texted Heath that he wanted to meet with her. She invited him to her apartment. After his arrival, Heath and JC engaged in sexual intercourse. This day was the only time Heath and JC met after his graduation. (Ex. A4 at 3-4; test. of Heath.) Heath and JC continued to exchange texts with sexual content until July 8, 2012. (Test. of Heath.) On July 8, 2012, Heath's boyfriend confronted Heath about her texts with JC that he found on her cell phone. (Ex. A8 at 2.) After the confrontation, Heath texted JC that she could not continue the relationship. (Exs. A4 at 3; A8 at 2.) They ceased texting each other until the end of the 2012 summer, when JC texted Heath about his inability to forget the relationship and how he had no one to talk to about the relationship. Heath reiterated that the relationship was ended. (Ex. A4 at 3; test. of Heath.)

12. In July 2012, Heath began attending counseling sessions, focusing on relationship issues and learning to set appropriate boundaries. (Exs. A4 at 6; A5 at 1.) She met with a professional counselor on July 18 and August 10, 2012, during her summer visit in central Oregon. (Ex. A5 at 1; test. of Heath.) On February 19, 2013, she met with Dr. Calvo, who diagnosed her with adjustment issues. (Ex. A6 at 1.) With him, she learned skills to cope with stress, increased her self-esteem so that she could be more confident in herself, improved her decision-making skills, and developed assertion skills to set boundaries with others. (Exs. A4 at 6-7; A6 at 1.) Heath openly discussed her interactions with JC, demonstrated remorse for these actions, and acknowledged her mistake in engaging in this relationship with JC. Heath and Dr. Calvo discussed sexual mores and the development of appropriate health interpersonal sexual relationships. Their final session was on April 17, 2013, when they reached a mutual conclusion that Heath's adjustment difficulties had improved and the counseling relationship could be terminated. Dr. Calvo recommended Heath seek ongoing education on boundary issues. (Test. of Calvo.)

13. Based upon her statements to the psychologist, which included discussions of her interactions with JC, Dr. Calvo concluded that Heath was not a sex offender and had no interest in grooming children for sexual relationships. (Ex. A6 at 1; test. of Calvo.) Dr. Calvo believed there was a low probability that Heath would engage in such interactions again, but he could not rule out the possibility of a reoccurrence. Dr. Calvo did not perform a psycho-sexual evaluation on Heath and has no experience in such evaluations. (Test. of Calvo.)

14. In September 2012, Heath's now-ex-boyfriend informed the District of her relationship with JC. Heath tried to convince the ex-boyfriend not to report the conduct. (Ex. A4 at 3, 6.) Heath informed JC of the investigation and her concerns that their prior relationship could damage her career.⁶ (Test. of Heath.) Heath's conduct did not gain any notoriety in the District and was not the subject of District gossip. (Test. of Stock.)

⁶ The District concluded its investigation against Heath without taking any further action other than restricting her from coaching. (Ex. A8 at 7; test. of Heath.)

15. Heath has an extensive history of involvement in community and school projects and has received several awards for her contributions. (Ex. R1 at 1-2.) During her years at the District, she consistently received satisfactory evaluations of her teaching performance. (Exs. R2 - R13 and R15.) After the completion of her first year with the District, her supervisor noted that Heath “has brought a tremendous amount of energy and enthusiasm for health and fitness to the school community. * * * I appreciate the many great qualities and positive attitude Heath brings[.]” (Ex. R3 at 1.) Her supervisor noted Heath’s need to develop greater skills in classroom management to control disruptive students, and her supervisor later observed improvements in this area. (Exs. R4, R9 - R13.) Her supervisor “appreciate[d] [Heath’s] efforts and hard work.” (Ex. R9 at 1.) At the end of the 2011-2012 coaching season, Heath received a satisfactory performance evaluation with the majority of her marks as “excellent” for her work on the Mazama track team. (Ex. R14 at 1.) The head coach indicated that Heath “brings a positive attitude to the coaching staff that greatly contributes to positive motivation among athletes. * * * [Heath] is a valuable member of this staff[.]” (*Id.*)

16. Heath works hard to achieve her teaching goals and is devoted to and passionate about her work as a teacher and as a coach. (Test. of Heath, Stanton, and Stock.) She takes on extra duties at school, cares about her students’ needs, and engages in appropriate interactions with her classroom students and their parents. (Test. of Stanton.) As a coach, she was accomplished at teaching the sport and the student-athletes responded well to her. She maintained professional interactions with the student-athletes while on the field and in practices. (Test. of Reinhard.)

17. As a licensed educator, Heath believed that she would be legally obligated to report any teacher who engaged in the same relationship she had with JC. (Ex. A4 at 4.) She understands that her conduct was wrong and there was a risk to the District to let her resume coaching duties. (*Id.* at 9.)

CONCLUSIONS OF LAW

1. Heath did not engage in gross neglect of duty by engaging in sexual conduct with a student.
2. Heath engaged in gross neglect of duty by substantially deviating from professional standards of competency by failing to exercise professional judgment.
3. Heath did not engage in gross neglect of duty by substantially deviating from professional standards of ethics by failing to fulfill her obligations to a student.
4. The Commission should sanction Heath with a Public Reprimand and probation.

OPINION

The Commission seeks to revoke Heath’s teaching license based on allegations that she engaged in gross neglect of duty regarding her conduct with JC. As the proponent of the

allegations, the Commission has the burden to establish, by a preponderance of the evidence, that the allegations are established. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position). 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 342.175 is titled "Grounds for discipline; reinstatement" and provides, in part:

(1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator or suspend or revoke the right of any person to apply for a license or registration if the 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[.]

Pursuant to ORS 342.165 and ORS 342.175(6), the Commission promulgated administrative rules that define gross neglect of duty. *Former OAR 584-020-0040*, titled "Grounds for Disciplinary Action," provided, in part:

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

* * * * *

(f) Any sexual conduct with a student;

* * * * *

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

(o) Substantial deviation from professional standards of ethics set forth in OAR 584-020-0035[.]

Sexual Conduct with a Student

The Commission promulgated OAR 584-020-0005(5) to define "sexual conduct." It

provides:

“Sexual conduct:” Any conduct with a student which includes but is not limited to:

- (a) The intentional touching of the breast or sexual or other intimate parts of a student;
- (b) Causing, encouraging, or permitting a student to touch the breast or sexual or other intimate parts of the educator;
- (c) Sexual advances or requests for sexual favors directed towards a student;
- (d) Verbal or physical conduct of a sexual nature when directed toward a student or when such conduct has the effect of unreasonably interfering with a student’s educational performance or creates an intimidating, hostile or offensive educational environment; or
- (e) Verbal or physical conduct which has the effect of unreasonably interfering with a student’s educational performance or creates an intimidating, hostile or offensive educational environment.

ORS 339.379(9)(a) provides an additional definition for “sexual conduct” between a school employee and a student. It provides:

- (9)(a) “Sexual conduct” means any verbal or physical conduct by a school employee that:
 - (A) Is sexual in nature;
 - (B) Is directed toward a kindergarten through grade 12 student;
 - (C) Has the effect of unreasonably interfering with a student’s educational performance; and
 - (D) Creates an intimidating, hostile or offensive educational environment.

Although OAR 584-020-0005 defines several terms, including “teacher,”⁷ it does not define “student.” Similarly, ORS 339.379 fails to provide a definition for “student.” *Webster’s Third New Int’l Dictionary* (unabridged ed 2002) defines “student” as “one enrolled in a class or course in a school.” *Webster’s* at 2268.

⁷ “Teacher:” Any person who holds a teacher's license as provided in ORS 342.125. OAR 584-020-0005(7). OAR 584-005-0005 provides additional definitions but also does not define a “student.” ORS 342.120 provides definitions but fails to include a definition for “student.”

The evidence failed to demonstrate that Heath engaged in any sexual advances or other forms of sexual conduct towards JC prior to his graduation from high school. All the texts that included sexual content, both written and photographs, were exchanged after JC's graduation. The only instance of physical sexual interaction also occurred after JC's graduation. Because the sexual interactions between Heath and JC all occurred after his graduation when JC was no longer a student, Heath did not engage in sexual conduct with a student. Heath did not violate former OAR 584-020-0040(4)(f).

Exercise of Professional Judgment

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

The educator demonstrates a commitment to:

* * * * *

(5) Use professional judgment[.]

Heath's attorney argued that the Commission failed to present evidence regarding the teaching profession's standards for professional judgment. Heath's argument raises questions regarding the Commission's interpretation of its own rules. Where an agency's plausible interpretation of its own rule cannot be shown either to be inconsistent with the wording of the rule itself, or with the rule's context, or with any other source of law, there is no basis by which a court can assert that an agency has interpreted the rule erroneously. *Don't Waste Oregon Committee v. Energy Facility Siting Council*, 320 OR 132 (1994). Here, the Commission can reasonably interpret its rule to determine that Heath's conduct constituted gross neglect of duty by failing to exercise professional judgment.

In any event, the record did include evidence regarding the use of professional judgment. Heath testified how her interactions with JC violated her personal beliefs and moral code, but violations of one's personal ethics is not a violation of OAR 584-020-0010(5). However, Heath also provided testimony, as did another teaching professional Ms. Stock, regarding the teaching profession's standards for professional judgment. Those standards require teachers to avoid actions that would cause concern to students, district staff, or the community, including parents. For a teacher to engage in sexual interactions with a prior student immediately upon graduation would cause considerable concern among district staff and the community. Heath acknowledged having these concerns while she engaged in the interactions with JC. The evidence also clearly established that texting sexually explicit statements and photographs and engaging in sexual intercourse with a recent graduate violated the teaching profession's standards for professional judgment. Finally, unlike sexual conduct with a current student or the ethical educator's interactions with a current student, OAR 584-020-0010 does not require professional judgment to only be exercised in regards to a current student.

Heath's attorney also argued that there was a lack of nexus between Heath's conduct and the teaching profession as required by *Teacher Standards and Practices Commission v.*

Bergerson, 342 Or 301 (2007). In *Bergerson*, the Oregon Supreme Court concluded that “professional duties are specific to a profession and are distinct from the moral and civic obligations of all citizens to behave ethically * * *.” *Bergerson* at 312. The Court further noted that “there may be some areas where professional responsibilities and universally applicable moral and civic obligations may overlap, but the TSPC’s position that teachers have a professional obligation to behave ethically and lawfully “at all times” eradicates the boundary between private and professional obligations altogether.” *Id.* However, *Bergerson* is easily distinguishable from Heath’s case. In *Bergerson*, the teacher’s conduct concerned the disintegration of her marriage, in particular an incident following an argument in which the teacher overdosed on medications, drove her vehicle into the back end of her husband’s unoccupied truck, committed herself to a psychiatric ward, and pled no contest to a charge of criminal mischief. The Court concluded that this conduct had no relationship to her profession and she had not engaged in gross neglect of duty. In Heath’s case, Heath’s pre-graduation texting with a student-athlete, which was directly related to her professional duties, evolved into the sexually inappropriate texting immediately after JC’s graduation and culminated in sexual intercourse less than three weeks after his graduation. Therefore, the nexus is established by Heath’s use of her professionally-established contacts and relationship with JC to immediately develop a sexual relationship with him after his graduation.

Heath’s texting of sexual content with JC immediately after his graduation and engaging in sexual intercourse with JC within three weeks of his graduation violated the teaching profession’s standard for professional judgment. Heath’s conduct violated OAR 584-020-0010(5).

Fulfilling Obligations to a Student

OAR 584-020-0035 is titled “The Ethical Educator” and provides, in part:

The ethical educator is a person who accepts the requirements of membership in the teaching profession and acts at all times in ethical ways. In so doing the ethical educator considers the needs of the students, the district, and the profession.

(1) The ethical educator, in fulfilling obligations to the student, will:

* * * * *

(b) Refrain from exploiting professional relationships with any student for personal gain, or in support of persons or issues; and

(c) Maintain an appropriate professional student-teacher relationship by:

(A) Not demonstrating or expressing professionally inappropriate interest in a student’s personal life;

(B) Not accepting or giving or exchanging romantic or overly personal

gifts or notes with a student;

* * * * *

(D) Honoring appropriate adult boundaries with students in conduct and conversations at all times.

OAR 584-020-0035(1) involves the educator's interactions with any student. As previously explained, the sexual interactions between Heath and JC occurred after his graduation when he was no longer a student. The interactions prior to JC's graduation involved discussions about student-related subjects, such as college expectations and costs. The manner of the communications, the rather casual and private nature of texting, was only discouraged by the District, not prohibited, and was actively utilized by the track team coaches. Texting as a form of communication tends to be casual, quick and private. As such, it may lead to inappropriate communications, such as the communications between Heath and JC after his graduation. However, because the content of Heath's communications with JC prior to graduation focused on student-related subjects, advice on college life and dealing with the costs of college, and declining his invitation to meet, Heath did not violate OAR 584-020-0035(1).⁸

Imposition of Sanctions

Pursuant to ORS 342.175(1), because Heath engaged in gross neglect of duty, the Commission has the statutory authority to revoke or suspend her teaching license or impose some other form of discipline. The Commission promulgated an administrative rule to assist in the determination of the appropriate sanction against a licensee. OAR 584-020-0045 provides:

The Commission may consider one or more of the following factors, as it deems appropriate, in its determination of what sanction or sanctions, if any, should be imposed upon a finding that an educator has violated any standard set forth in OAR 584-020-0040:

- (1) If the misconduct or violation is an isolated occurrence, part of a continuing pattern, or one of a series of incidents;
- (2) The likelihood of a recurrence of the misconduct or violation;
- (3) The educator's past performance;
- (4) The extent, severity, and imminence of any danger to students, other educators, or the public;

⁸ OAR 584-020-0035 provides for additional requirements of an ethical educator including, "Maintain the dignity of the profession by * * * exemplifying personal integrity[.]" OAR 584-020-0035(3)(a). However, the Commission's Notice failed to cite OAR 584-020-0035(3)(a) as a ground for discipline. ORS 183.415(3)(c) requires any notice of agency action to include reference to the particular sections of the rules involved. Because the Notice failed to include reference to OAR 584-020-0035(3)(a), it cannot be the basis of a possible ground for discipline in this proceeding.

- (5) If the misconduct was open and notorious or had negative effects on the public image of the school;
- (6) The educator's state of mind at the time of the misconduct and afterwards;
- (7) The danger that students will imitate the educator's behavior or use it as a model;
- (8) The age and level of maturity of the students served by the educator;
- (9) Any extenuating circumstances or other factors bearing on the appropriate nature of a disciplinary sanction; or
- (10) To deter similar misconduct by the educator or other educators.

Although there were repeated acts of sexting during the three weeks following JC's graduation, these acts comprised the isolated occurrence of Heath's gross neglect of duty, her professionally inappropriate interactions with JC. There was no evidence that Heath engaged in similar conduct with other students; therefore, there was no continuing pattern of inappropriate conduct with recent graduates. Dr. Calvo does not have experience in psycho-sexual evaluations; however, he is a licensed psychologist and his testimony is afforded some weight based upon his education and interactions with Heath. His conclusion that there is a low probability of recurrence of Heath's conduct is supported by her expression of genuine remorse for her conduct. Heath's prior employment evaluations and feedback from her colleagues demonstrate that she is an enthusiastic teacher, capable of learning and improving her performance, liked by her students, and provides any needed assistance to her colleagues. Her past performance, her passion for the teaching profession, her remorse for her conduct with JC, her commencement of counseling immediately after the relationship, and her candidness with Dr. Calvo further supports not revoking her license.

Although the Commission has elected not to revoke in this case, Heath's conduct was of a serious nature as it involved inappropriate sexual interactions with a recent student. This conduct also supports a finding that she has not reached a level of maturity that would aid in preventing such behavior. She also engaged in very troubling behaviors during the course of the District's investigation. First, she attempted to convince her ex-boyfriend not to report her conduct. Then, she contacted JC about the investigation and how it could ruin her career, which was a wholly inappropriate attempt to manipulate JC in the hopes that he would not cooperate with the investigation or minimize the conduct. Finally, as recognized by Dr. Calvo, Heath needs education in developing and maintaining appropriate boundaries.

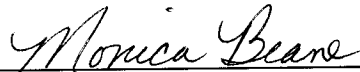
FINAL ORDER

The Teacher Standards and Practices Commission issues the following order:

Erika Lee Glick, nka Erika Lee Heath, receives a Public Reprimand for violation of OAR 584-020-0010(5) and is placed on three years of probation with the following conditions:

- In addition to any professional development units required for renewal of licensure under OAR 584-090-0115, Heath must complete a minimum of 16 hours of Commission-approved boundary and ethical behavior education courses;
- Heath will not teach or coach high school students, grades 9 through 12, for the duration of the probation period; and
- Heath will complete a psycho-sexual evaluation within six months of issuance of the order to be performed by a Commission-approved psychologist or psychiatrist, and she will complete any recommended treatment. Heath must provide a signed release to the selected psychologist or psychiatrist to allow disclosure of information and documentation to the Commission.

It is so Ordered this 14th day of December, 2016



Monica Beane, Executive Director
Teacher Standards and Practices Commission

NOTICE OF APPEAL OR RIGHTS

YOU ARE ENTITLED TO JUDICIAL REVIEW OF THIS ORDER. JUDICIAL REVIEW MAY BE OBTAINED BY FILING A PETITION FOR REVIEW WITHIN 60 DAYS FROM THE SERVICE OF THIS ORDER. JUDICIAL REVIEW IS PURSUANT TO THE PROVISIONS OF ORS 183.482 TO THE OREGON COURT OF APPEALS.

CERTIFICATE OF MAILING

On December 16, 2016, I mailed the foregoing Final Order in OAH Case No. 1403869 to:


By: U.S. First Class Mail and Certified Mail Return Receipt Requested 7016 0750 0000 2419 0563

Erika Lee Heath
66474 Jericho RD
Bend, OR 97701

By: U.S. First Class Mail
Thomas K. Doyle, Attorney at Law
Bennett, Hartman, Morris & Kaplan, LLP
210 SW Morrison St., Ste. 500
Portland, OR 97204-3149

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
7995 SW Mohawk St.
Tualatin, OR 97062


Patty Sheldon
Investigative Assistant

CERTIFICATE OF MAILING

On December 21, 2016, I mailed the foregoing Final Order in OAH Case No. 1403869 to:


By: U.S. First Class Mail and Certified Mail Return Receipt Requested 7016 0750 0000 2419 0570

Erika Lee Heath
108 Ord St
Silverton, OR 97381

- The Final Order was previously sent by first class and certified mail on December 16, 2016, to the address on file with the Commission:

Erika Lee Heath
66474 Jericho Rd
Bend, OR 97701

Both first class and certified mail were returned to TSPC with a new address and marked "Forward Time Expired Return to Sender"


Patty Sheldon
Investigative Assistant