



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

IN THE MATTER OF:

) **RULING ON MOTION FOR SUMMARY  
) DETERMINATION, AND PROPOSED  
) ORDER**

**ANNE J. IVANS,  
Respondent**

)  
) OAH Case No.: 1604571  
) Agency Case No.:

**HISTORY OF THE CASE**

On December 29, 2015, the Teacher Standards and Practices Commission (TSPC or the Commission) issued a Notice of Opportunity for Hearing to Anne J. Ivans (Licensee or Respondent). On January 5, 2016, Respondent, through counsel, requested a contested case hearing.

On May 12, 2016, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Dove L. Gutman to preside at hearing.

On June 23, 2016, ALJ Gutman convened a prehearing telephone conference. Thomas Doyle, Attorney at Law, represented Respondent. Senior Assistant Attorney General Raul Ramirez represented the Commission. Jeff VanLaanen appeared on behalf of the Commission. During the telephone conference, ALJ Gutman set dates for the Commission to file its Motion for Summary Determination (July 29, 2016), Respondent to file her Response (August 19, 2016), and the Commission to file its Reply (August 26, 2016). ALJ Gutman also scheduled the contested case hearing for October 11, 2016.

On July 29, 2016, Mr. Ramirez filed the Commission's Motion for Summary Determination (MSD).

On August 19, 2016, Mr. Doyle requested a four day extension in which to file Respondent's Response. That same day, Mr. Ramirez indicated he had no objection to the request. On August 19, 2016, Presiding ALJ John Mann granted Mr. Doyle's request, allowing Respondent to file her Response on August 23, 2016, and the Commission to file its Reply on August 30, 2016.

On August 23, 2016, Mr. Doyle filed Respondent's Response. On August 30, 2016, Mr. Ramirez filed the Commission's Reply.

On August 31, 2016, ALJ Gutman closed the record and took the matter under

advisement.

### ISSUES

1. Whether there are genuine issues as to any material fact, and if not, whether the Commission is entitled to a ruling as a matter of law. OAR 137-003-0580.
2. Whether, on or about December 8, 2014, Respondent engaged in gross neglect of duty. ORS 342.175(1), OAR 584-020-0040(4)(n).
3. If so, whether Respondent should receive a sanction of 60 days of suspension, four years of probation, and additional conditions for reinstatement including evidence of sobriety.

### DOCUMENTS CONSIDERED

The following documents were reviewed and considered: The Commission's MSD, Exhibits 1 through 7,<sup>1</sup> Respondent's Response and attachments, the Commission's Reply and attachments, and the pleadings.

### LEGAL STANDARD FOR SUMMARY DETERMINATION

Motions for Summary Determination are governed by OAR 137-003-0580, which provides, in pertinent part:

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

\*\*\*\*\*

(6) The administrative law judge shall grant the motion for a

---

<sup>1</sup> The Commission's exhibits included a corrected Exhibit 4 submitted on August 25, 2016.

summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with OAR 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

## FINDINGS OF FACT

### Background

1. Respondent has been licensed by the Commission since August 12, 2014. (Ex. 1.) Respondent currently holds an Initial I Teaching License with endorsements in Basic Mathematics, Biology and Chemistry, valid through August 5, 2018. (*Id.*)

2. In December 2014, Respondent was employed as the mathematics teacher at Chehalem Valley Middle School (CVMS) through Newburg Public School District. (Exs. 2, 3, 4.)

### Behavior

3. On the morning of December 8, 2014, Respondent drank two vodka tonics prior to going to CVMS to teach math class. During first period, while teaching Pre-Calculus (Grade 8 Math), Respondent was observed (by students) slurring her speech, making multiple mistakes in her mathematical calculations, and writing unintelligible figures on the board during the lesson. When students in the class pointed out Respondent's mistakes, Respondent became frustrated, stopped the lesson and stated, "I am done." Respondent then left the classroom unattended and left school grounds without notifying her supervisor.

At 8:10 am, three students from Respondent's class reported her behavior to Principal Karen Pugsley. Ms. Pugsley went to Respondent's unattended classroom and questioned the other students regarding what they had observed. After finding another teacher to cover Respondent's class, Ms. Pugsley attempted to contact Respondent by calling her home and cell phone. Ms. Pugsley left messages but Respondent did not return her calls. (Exs. 2, 3, 4.)

4. On December 12, 2014, Respondent met with Ms. Pugsley and Dave Parker, superintendent of the school district. During the meeting, Respondent admitted that she was intoxicated on the morning of December 8, 2014. (Ex. 4.)

5. On December 15, 2014, Respondent resigned from her position as mathematics teacher at CVMS. (Ex. 5.)

6. On July 10, 2015, Respondent met with Cristina Edgar, Investigator with the Commission. During the recorded interview, Respondent admitted to drinking two vodka tonics on the morning of December 8, 2014, prior to going to work. Respondent also admitted to drinking alcohol on two other occasions prior to going to work at CVMS. (Ex. 6.)

7. Newburg Public School District has a drug-free workplace policy, adopted January 14, 1991 and readopted September 24, 2007, requiring that no district employee shall possess and/or use alcohol or illegal drugs or controlled substances in the workplace. The policy also requires that all district employees must abstain from the use or possession of illegal drugs and controlled substances, including alcohol. (Ex. 7.)

## CONCLUSIONS OF LAW

1. There are no genuine issues as to any material fact and the Commission is entitled to a ruling as a matter of law.
2. Respondent engaged in gross neglect of duty.
3. Respondent should receive a sanction of 60 days of suspension, four years of probation, and additional conditions for reinstatement including evidence of sobriety.

## OPINION

The Commission contends that there are no genuine issues as to any material fact and it is entitled to a ruling as a matter of law. Respondent contends to the contrary. I agree with the Commission.

### *Violation*

ORS 342.175 is titled "Grounds for discipline; reinstatement" and provides, in pertinent part:

(1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator, or suspend or revoke the right of any person to apply for a license or registration, if the 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 is titled "Grounds for Disciplinary Action" and provides, 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:

\*\*\*\*\*

(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[.]

As indicated above, gross neglect of duty includes appearing on duty while under the influence of alcohol or any controlled substance, and any serious and material inattention to or breach of professional responsibilities, including substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030.

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

The educator demonstrates a commitment to:

\*\*\*\*\*

(5) Use professional judgment[.]

OAR 584-020-0025 is titled "Management Skills" and provides, in relevant part:

(2) The competent teacher demonstrates skills in:

\*\*\*\*\*

(e) Using district lawful and reasonable rules and regulations.

As stated above, the competent educator demonstrates a commitment to use professional judgment. In addition, the competent educator demonstrates skills in using district rules and regulations.

On December 8, 2014, Respondent attempted to teach a math class to 8<sup>th</sup> graders at CVMS while visibly under the influence of intoxicants (alcohol), in violation of district policy. In addition, when students in the class pointed out Respondent's mistakes in her mathematical calculations, Respondent became frustrated, stopped the lesson, left the classroom and did not return. Respondent left the students unsupervised and left school grounds without permission from her supervisor.

I find that by appearing on duty at CVMS while intoxicated, Respondent failed to use professional judgment, breached her professional responsibilities, and violated the district's drug-free workplace policy. I further find that Respondent's actions involved a substantial deviation from professional standards of competency.

Therefore, the evidence in the record establishes that on December 8, 2014, Respondent engaged in gross neglect of duty, in violation of OAR 584-020-0040(4)(g), (4)(n), and ORS 342.175(1)(b).

*Sanction*

ORS 342.175 further provides:

(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 584-020-0045 is titled "Factors for Imposing Disciplinary Sanctions" and 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;
- (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 behaviors 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.

Pursuant to ORS 342.175(1)(b), the Commission may discipline a teacher for gross neglect of duty at any time within five years prior to issuance of the notice of charges. In addition, in imposing disciplinary sanctions upon an educator that violated any standard in OAR 585-020-0040, the Commission *may* consider the factors in OAR 584-020-0045.

As determined previously, Respondent engaged in gross neglect of duty on December 8, 2014. The Commission seeks to impose 60 days of suspension, four years of probation, and additional conditions for reinstatement including evidence of sobriety.

A review of the record establishes that the proposed sanction is appropriate and within the Commission's discretionary authority. As stated previously, on December 8, 2014, Respondent attempted to teach an 8<sup>th</sup> grade math class at CVMS while visibly under the influence of alcohol. When students in the class pointed out her purported drunken mistakes, Respondent became frustrated and left the classroom unsupervised and without permission from her supervisor. In the subsequent investigation, Respondent admitted that she drank alcohol on at least two other occasions before going to work. I find that Respondent's actions warrant the proposed sanction in this matter.

Respondent contends that the Commission failed to establish the propriety of the sanction. Respondent further contends that she should receive a reprimand, attaching prior Commission cases in support of her contention (including *Theoden J. Humphrey, OAH Case No. 1303111, Ruling on Motion for Summary Determination*). I disagree.

First, a public reprimand is the lowest form of discipline that the Commission is authorized to impose under ORS 342.177(3). Respondent's actions in this matter constituted a substantial deviation from professional standards of competency. Respondent attempted to teach a math class to impressionable 8<sup>th</sup> graders while visibly under the influence of intoxicants, in clear violation of district (and state) policy. Moreover, when the children pointed out Respondent's mathematical mistakes, she became frustrated and left the classroom, leaving the children unsupervised without any explanation and without notification to administration. There is no genuine issue of material fact left to be determined. Respondent engaged in gross neglect of duty and should receive the aforementioned sanction for the violation.

Second, the cases that Respondent attached in support of her argument, most of which are stipulations between the parties, are factually different and do not represent the Commission's "appropriate" sanction for violations of OAR 584-020-0040(4)(g). As pointed out in the Commission's Reply (and supported in its attached cases), every case is unique and the Commission has imposed greater sanctions for the same violation, i.e., violating OAR 584-020-0040(4)(g).

With regards to the *Humphrey* case, that case involved multiple allegations of gross neglect of duty, of which questions of fact remained regarding some of the allegations, requiring those allegations to proceed to hearing. *Humphrey* does not stand for the fact that allegations of OAR 584-020-0040(4)(g) must proceed to hearing. Thus, Respondent's argument is unpersuasive.

Respondent also contends that OAR 584-020-0045 requires a factually intensive review. However, the rule is permissive, not mandatory. In other words, the Commission may consider the factors but is not required to do so in determining the appropriate sanction for the violation. Moreover, I find that the evidence in the record supports the proposed sanction. As such, Respondent's argument is unpersuasive.

Accordingly, the Commission's MSD is granted and the hearing scheduled for October 11, 2016 is cancelled.

### **RULING**

The Commission's Motion for Summary Determination is GRANTED.

The hearing scheduled for October 11, 2016 is CANCELLED.

### **ORDER**

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

1. Respondent engaged in gross neglect of duty as alleged in the Notice of Opportunity for Hearing dated December 29, 2015.
2. Respondent should receive a sanction of 60 days of suspension, four years of probation, and additional conditions for reinstatement including evidence of sobriety.

Dove L. Gutman

---

Senior Administrative Law Judge  
Office of Administrative Hearings

### **EXCEPTIONS**

The proposed order is the Administrative Law Judge's recommendation to the Teacher Standards and Practices Commission (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.