



1424746

Mark Zima (89769)  
Discipline Order

1                   BEFORE THE TEACHER STANDARDS AND PRACTICES COMMISSION  
2    OF THE STATE OF OREGON  
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6   In the Matter of the                     )  
7   Teaching License of                 )     FINAL ORDER  
8   )  
9   MARK S. ZIMA                         )     Case No. 1202857  
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12                 On March 28, 2013, Senior Administrative Law Judge (ALJ) Dove L. Gutman issued a  
13   Proposed Order in this case. The Commission considered the Proposed Order along with written  
14   exceptions filed by Licensee at their regularly scheduled meeting on April 26, 2013.  
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16                 The Commission does not find Licensee’s exceptions persuasive, and hereby adopts the  
17   Findings of Fact, Conclusion of Law and Order contained in the attached Proposed Order as the  
18   Final Order.  
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20   ORDER  
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22                 The Commission adopts the Proposed Order in its entirety and suspends Mark Zima’s  
23   Initial II Teaching License for six (6) months. To reinstate, Mark Zima must complete sexual  
24   harassment and boundaries training. Upon reinstatement of licensure, Mark Zima shall be placed  
25   on probation for four (4) years.  
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27                 Dated this 21<sup>st</sup> day of May 2013.  
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29  
30   TEACHER STANDARD AND PRACTICES COMMISSION  
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34   Victoria Chamberlain  
35   By:   Victoria Chamberlain, Executive Director  
36   Teacher Standards and Practices Commission  
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41   **NOTICE:** You are entitled to judicial review of this order. Judicial review may be obtained by  
42   filing a petition for review within 60 days of the service of this order. Judicial review is pursuant  
43   to the provision of ORS 183.482 to the Oregon Court of Appeal.

## CERTIFICATE OF MAILING

On May 21<sup>st</sup>, 2013, I mailed the foregoing Final Order and Proposed Order in OAH Case No. 1202857 to:

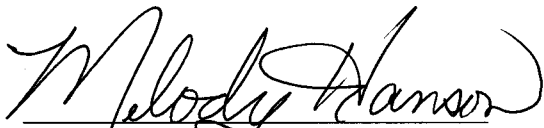
By: U.S. First Class Mail

Elizabeth McKanna  
Attorney at Law  
| McKanna | Bishop | Joffe | & Arms | LLP  
1635 NW Johnson Street  
Portland OR 97209

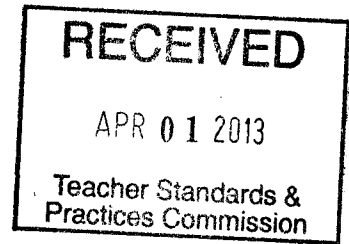
By: Shuttle

Judith Anderson  
Assistant Attorney General  
Department of Justice  
1162 Court Street NE  
Salem OR 97301-4096

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

  
Melody Hanson  
Director of Professional Practices

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



IN THE MATTER OF: ) **PROPOSED ORDER**  
 )  
**MARK S. ZIMA,** ) OAH Case No.: 1202857  
**Respondent** ) Agency Case No.:

**HISTORY OF THE CASE**

On April 25, 2012, the Teacher Standards and Practices Commission (TSPC or the Commission) issued a Notice of Opportunity for Hearing to Mark S. Zima (Respondent). On May 3, 2012, Respondent requested a hearing.

On July 3, 2012, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). Senior Administrative Law Judge (ALJ) Dove L. Gutman was assigned to preside at hearing.

On August 30, 2012, a prehearing telephone conference was conducted by ALJ Gutman. Assistant Attorney General Judith Anderson represented the Commission. Elizabeth McKanna, Attorney at Law, represented Respondent. On August 30, 2012, ALJ Gutman issued a Pre-Hearing Order, which, among other things, set forth the dates of hearing.

On February 5, 2012, a hearing was held in Eugene, Oregon. ALJ Gutman presided. Ms. Anderson represented the Commission. Jeff Van Laanen appeared on behalf of the Commission. Ms. McKanna represented Respondent. Testifying on behalf of the Commission were the following: Larry Williams, former Assistant Principal at Meadow View School (MVS); Amy James-Seery, teacher at MVS; Sarah Campbell, teacher at MVS; Carly Waters, teacher at MVS; Linda Mohr, teacher at MVS; Reagan Weaver, teacher at MVS; Kathi Holvey, former Assistant Principal at MVS; Jennifer Sink, former Assistant Principal at MVS; Sebastian Bolden, teacher at MVS; Christina Parra, Assistant Superintendent of Bethel schools; and Brian Flick, Principal at MVS. Testifying on behalf of Respondent was Natalie Oliver, former teacher at MVS.

The hearing continued on February 6, 2012. ALJ Gutman presided. Ms. Anderson represented the Commission. Jeff Van Laanen appeared on behalf of the Commission. Ms. McKanna represented Respondent. Testifying on behalf of Respondent were the following: DB, former student at MVS; and Respondent. The record closed at the conclusion of the hearing.

**ISSUES**

1. Whether, on or about May 31, 2007, Respondent engaged in gross neglect of duty by telling a student to question a teacher about her personal life.

2. Whether, on or about June 4, 2010, Respondent engaged in gross neglect of duty by yelling at two students.

3. Whether, on or about September 22, 2011, Respondent engaged in gross neglect of duty by grabbing the arm of an autistic student and yelling at the student.

4. Whether, during the period of February through April 2011, Respondent engaged in gross neglect of duty by making inappropriate comments and sending sexually suggestive emails to a female coworker/supervisor.

5. Whether, during the period of February 2, 2011 through April 22, 2011, Respondent engaged in gross neglect of duty by failing to adhere to directives regarding unwanted physical contact and inappropriate verbal interaction with staff.

6. Whether, during the period of March 28, 2011 through April 22, 2011, Respondent engaged in gross neglect of duty by failing to adhere to directives regarding refraining from any physical contact with students and refraining from using pet names with students.

7. Whether, if the violations are proven, the Commission may suspend Respondent's license for six months; place Respondent on probation for four years; and require Respondent to take boundary training.

#### **EVIDENTIARY RULING**

Exhibits A1 through A18, offered by the Commission, were admitted into the record without objection. Exhibits R1 through R5, R7 through R15, and R17, offered by Respondent, were admitted into the record without objection. The Commission objected to Exhibits R6 and R16 on the basis of reliability. The objections were overruled and Exhibits R6 and R16 were admitted into evidence.<sup>1</sup>

#### **AMENDED NOTICE**

OAR 137-003-0530 is titled "Late Filing and Amendment of Documents" and provides, in part:

(4) Notwithstanding any other provision of these rules, after the notice required by ORS 183.415 is issued:

(a) An agency may issue an amended notice:

(A) Before the hearing; or,

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<sup>1</sup> Exhibit R16 is a letter written by Polly H. Jamison, Ph.D. It was admitted to show Respondent sought treatment with Dr. Jamison to address the difficulties he faced in his work environment.

(B) During the hearing, but before the evidentiary record closes, if the administrative law judge determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties.

On February 6, 2013, Ms. Anderson, on behalf of the Commission, moved to amend its Notice, changing the date of the first email that is quoted under allegation number five from February 6, 2011 to February 16, 2011. Ms. McKanna, on behalf of Respondent, objected on the basis of prejudice.

On February 6, 2013, ALJ Gutman overruled Ms. McKanna's objection, granting the motion and finding no prejudice as Respondent had been provided a copy of the email with the correct date as part of the Commission's exhibits prior to hearing.

### **OFFER OF PROOF**

OAR 137-003-0610 is titled, "Evidentiary Rules" and provides, in part:

(5) The administrative law judge shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the reviewing agency or court to determine whether the evidence was properly excluded. The administrative law judge shall have discretion to decide whether the offer of proof is to be oral or written and at what stage in the proceeding it will be made. The administrative law judge may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer.

On February 6, 2013, Ms. McKanna, on behalf of Respondent, made an offer of proof about Respondent saving Sharon Dye's life.

### **CREDIBILITY DETERMINATION**

A witness testifying under oath or affirmation is presumed to be truthful unless it can be demonstrated otherwise. ORS 44.370 provides, in relevant part:

A witness is presumed to speak the truth. This presumption, however, may be overcome by the manner in which the witness testified, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence.

A determination of a witness' credibility can be based on a number of factors other than the manner of testifying, including the inherent probability of the evidence, internal inconsistencies, whether or not the evidence is corroborated, and whether human experience

demonstrates that the evidence is logically incredible. *Tew v. DMV*, 179 Or App 443 (2002).

### **Testimony of Jennifer Sink and Respondent**

Jennifer Sink, then Assistant Principal at MVP, testified that on June 4, 2010, she was in her office (located in the front office) when she heard Respondent in the front office yelling at two students to sit down. Ms. Sink testified that she approached Respondent and told him he could not yell at students. Ms. Sink further testified that she informed Brian Flick, Principal at MVP, about Respondent's behavior. Ms. Sink's testimony was logical, consistent and reliable. In addition, Ms. Sink's testimony was corroborated the testimony of Mr. Flick and by the Letter of Reprimand that Ms. Sink prepared and issued to Respondent on June 7, 2010. (Exhibit A2.)

Respondent, on the other hand, testified that he did not yell at the students but spoke loudly and directly to them. Respondent's testimony was not logical or reliable, and was contradicted by the investigation completed by Ms. Sink. (Exhibit A4.)

I find, more likely than not, that on June 4, 2010, Respondent yelled at two students in the front office to sit down. I further find that the testimony of Respondent will not be relied upon when it contradicts the evidence presented by the Commission.

### **Testimony of Sarah Campbell and Respondent**

Sarah Campbell, a sixth grade teacher at MVP, testified that on September 22, 2011, she was standing in the hallway to greet students as they began to arrive for class. Ms. Campbell testified that she observed EH, an autistic student, walking down the hall. Ms. Campbell testified that Respondent said something to EH and EH said, "Leave me alone." Ms. Campbell testified that she observed Respondent grab EH by the arm and spin him around, causing the student's backpack to fall to the ground. Ms. Campbell testified that Respondent yelled at EH, "Do you know who I am." Ms. Campbell's testimony was logical, consistent and reliable. In addition, Ms. Campbell's testimony was corroborated by the statements she gave to Mr. Flick on September 22, 2011 and to Christina Parra on September 26, 2011. (Exhibits A17, A18.) Moreover, Ms. Campbell's testimony regarding Respondent yelling at EH was corroborated by the testimony of Amy James-Seery, Carly Waters, and Linda Mohr.

Respondent, on the other hand, testified that he did not touch EH and he did not yell at EH. Respondent's testimony was not logical or reliable, and was contradicted by the investigations completed by Mr. Flick and Ms. Parra. (Exhibits A17, A18.)

I find, more likely than not, that on September 22, 2011, Respondent grabbed EH by the arm, spun him around, and yelled at him. I further find that the testimony of Respondent will not be relied upon when it contradicts the evidence presented by the Commission.

### **Testimony of Kathi Holvey and Respondent**

Kathi Holvey, then Assistant Principal at MVS, testified that Respondent sexually harassed her during the period of February through April 2011. Ms. Holvey testified that

Respondent made inappropriate comments to her at work like, “You know you want me,” and “You know I am good.” Ms. Holvey testified that Respondent sent her sexually suggestive emails including:

Listen, you beautiful blue eyed Babe, Do you have any idea of the virility, stamina, and down right alpha-stud-maleness it takes to climb 69 floors, fully packed up, on air, in 24 minutes???. Imagine all of that virility unleashed...kinda makes you think, doesn't it? I hope you are thinking what I am thinking, because you are just too damn HOT for me to just leave alone. Think about it...

Ms. Holvey testified that she did not “come on” to Respondent and that on two occasions she told Respondent to stop and that she would never be with him for professional and ethical reasons, but the behavior continued. Ms. Holvey testified that she felt confused, embarrassed, angry, and offended by Respondent’s behavior. Ms. Holvey testified that she told Mr. Flick and Ms. Sink about Respondent’s behavior. Ms. Holvey testified that she filed a sexual harassment complaint on April 25, 2011 when the behavior continued. Ms. Holvey’s testimony was logical, consistent and reliable. In addition, Ms. Holvey’s testimony was corroborated by the complaint she filed, the statement she prepared regarding her interactions with Respondent, the complaint findings by Christine Parra, the emails from Respondent, and the testimony of Mr. Flick and Ms. Sink. (Exhibits A14, A15.)

Respondent, on the other hand, testified that he did not sexually harass Ms. Holvey, that she “came on” to him first, that he was flirting with her, that she was a co-participant, and that he stopped when she told him she had a “sweetie.” Respondent’s testimony was not logical or reliable, and was contradicted by the sexual harassment complaint filed by Ms. Holvey on April 25, 2011, Ms. Holvey’s notes, Mr. Flick’s notes, the complaint findings by Ms. Parra, and the emails Ms. Holvey received from Respondent. (Exhibits A8, A14, A15.)

I find, more likely than not, that Respondent sexually harassed Ms. Holvey by making inappropriate comments and sending sexually suggestive emails. I further find that the testimony of Respondent will not be relied upon when it contradicts the evidence presented by the Commission.

## **FINDINGS OF FACT**

### **Background**

1. Respondent is employed by the Bethel School District and has been since the fall of 1999. Respondent is a teacher at Meadow View School. He has worked there for approximately eight years. (Test. of Respondent.)

2. Respondent has an Initial II Teaching License (teaching license) with endorsements in Basic Math, Language Arts and Multiple Subjects. The teaching license is effective August 13, 2009 through April 9, 2013. (*Id.*; Ex. R1 at 1.)



3. Respondent has been married for approximately ten (10) years. (Test. of Respondent.)

4. Respondent is a volunteer firefighter. He teaches classes on safety, including CPR and Safety Skills. (*Id.*)

5. Respondent is an alcoholic. He is a binge drinker. He has been sober since September 23, 2012. (*Id.*)

#### **Incident of May 31, 2007**

6. Larry A. Williams is the current Principal of Edgewood Community Elementary School. In May 2007, Mr. Williams was the Assistant Principal at Meadow View School. Mr. Williams was also Respondent's supervisor. (Test. of Williams.)

7. Reagan Weaver is a teacher at Meadow View School. Her current position is Middle School Room Resource Teacher. She has held that position for 11 years. Ms. Weaver teaches students that are on IEPs. Ms. Weaver has a Special Education license and an Elementary license. She has been teaching for approximately 13 years. (Test. of Weaver.)

8. On May 31, 2007, Respondent, while teaching a mathology class at Meadow View School, called on a student who had raised his hand. The student asked Respondent if Ms. Weaver was an alcoholic. Respondent told the student the question was inappropriate. Respondent also told the student, "If you think that is funny, why don't you ask her." Respondent sent the student out into the hall as a disciplinary action. The student was supposed to wait in the hall until Respondent came out to speak to him about his conduct.

The student did not wait in the hall. The student went to Ms. Weaver's classroom to ask the question. A substitute teacher was teaching Ms. Weaver's class. The student entered Ms. Weaver's classroom and asked the question.

Respondent did not intend for the student to go to Ms. Weaver's classroom and ask the question.

Ms. Weaver found out about the incident and was hurt by the behavior. Ms. Weaver complained to Nancy McCullum, the Principal of Meadow View School. (Test. of Respondent, Williams, Weaver.)

9. On June 1, 2007, Mr. Williams spoke with Respondent regarding the matter. (Test. of Williams; Ex. A1 at 1.)

10. On June 5, 2007, Mr. Williams issued a Letter of Reprimand to Respondent, which stated, in pertinent part:

You have violated expectations of our school district and Oregon  
Administrative Rule 584-020-0030, under TSPC Human Relations

and Communications, in your manner of communicating with a student in your classroom on May 31, 2007.

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On Thursday, May 31, 2007, one of your colleagues reported to Nancy McCullum that you recommended to a student that the student question a teacher colleague about her personal life during your mathology class. Mrs. McCullum phoned your classroom that afternoon to speak with you about this but you had left for the day. When you came to my office on the morning of June 1, 2007, you shared with me the incident from your perspective. I did speak with the other teacher about her feelings regarding this incident and she expressed hurt and disappointment in your lack of judgment. Allowing the student to leave your classroom and gain access to the other teacher, who has a classroom located next door to yours, was a lapse in professional judgment.

I do recognize your frustration with this student but I can not excuse you from your professional duty to communicate effectively and use sound judgment in educational matters. This is a serious incident, Mark. You are directed to act in a professional and controlled manner with respect to communications with, and in front of students. Failure to do so may result in further discipline, up to and including a recommendation for dismissal.

(Ex. A1 at 1.) Respondent did not grieve the reprimand. (Test. of Respondent.)

#### **June 4, 2010 incident**

11. Brian Flick is the current Principal at Meadow View School and has been for approximately five years. Mr. Flick has been an educator for approximately 26 years. (Test. of Flick.)

12. Jenny Sink is the current Principal at Fairfield Elementary School. In June 2010, Ms. Sink was the Assistant Principal at Meadow View School. She was also Respondent's supervisor. (Test. of Sink.)

13. On June 4, 2010, at approximately 10:25 a.m., two male students (JS and AS) were walking down the hallway of Meadow View School following a morning assembly. JS and AS were messing around and trying to pull each other's hoods over each other's heads. LK, another student, was walking next to JS and AS. Ms. Weaver was following behind JS and AS.

As JS and AS neared the hallway to the 8<sup>th</sup> grade wing, Respondent grabbed the two students, pushed them up against the wall, and yelled at them to, "Get to the office." Respondent followed JS and AS to the office. Upon entering the office, Respondent yelled at the two

students from across the office to, "Sit down." Two secretaries, a grandparent, and another student witnessed the behavior.

Ms. Sink was in her office and heard Respondent yell at the two students to sit down. Ms. Sink approached Respondent and told him that he couldn't yell at the students. Respondent expressed his frustration to Ms. Sink indicating that the two students were out of control. Respondent then began processing incident reports on the two students.

Ms. Sink reported the incident to Mr. Flick.

(Test. of Sink, Weaver, Exs. A2, A3, A4.)

14. On June 4, 2010, Ms. Sink interviewed JS, LK, AS, and Ms. Weaver regarding the incident. Ms. Sink prepared notes detailing the interviews,<sup>2</sup> which stated, in part:

[Student Interview 1]

At 12:25 p.m., two students came to the office wishing to see me, JS and LK. I brought in JS, a 7<sup>th</sup> grade student to talk. JS was visibly upset. He didn't think the way Mr. Zima handled him and the other boy was appropriate. At that point, I stressed to JS that he needed to be absolutely honest in his recall of the incident that took place. JS reported that he and AS were walking back from the assembly. JS b[umped] up in to AS and AS bumped back. AS took JS's hood and pulled it over his face. JS did the same to AS. JS alleged that the next thing he knew the hood was being pulled off his head and Mr. Zima had put his hand on JS's shoulder forcing him against the wall. JS stated that he [hit] his head lightly against the wall. JS said that Mr. Zima pressed him against the wall and yelled at him to go to the office and then let go. He said that Mr. Zima was not holding them very long, maybe a few seconds.

At this point, JS was in tears. JS showed me how Mr. Zima pushed him. Mr. Zima grabbed him at the shoulder and pushed him up against the wall. A diagram was drawn on the white board to pinpoint the location of the incident. I asked JS if anyone else saw it happen. He shared that he thought all of the kids in the hallway at the time would have seen it. He specifically named BM, LK, AG, and Mrs. Weaver, another staff member. JS admitted to horsing around in the hallway but he didn't think that Mr. Zima's reaction was appropriate.

Student Interview 2

Following my visit with JS, I met with LK. I asked LK to tell me what he witnessed in the hallway after the assembly with the boys

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<sup>2</sup> The students' full names have been blacked out. The students' initials are used in this order. (Ex. A4.)

and Mr. Zima. LK shared that he was walking next to JS and AS in the hallway. AS was closest to the wall and JS was in the middle. JS tapped AS on the shoulder and AS started putting JS's hood on over his head. Mr. Zima grabbed both of them by their shirts at their arms. He shoved them in to the wall. He started yelling at them to go to the office. I asked LK where the incident happened and he described the same place that JS did, in the hallway rounding the corner to go to the 8<sup>th</sup> grade wing. LK didn't think that Mr. Zima should have grabbed them nor should he have yelled at them. I asked LK who else saw the alleged incident and he said a lot of kids would have seen it and Mrs. Weaver was in the hallway too.

#### Student Interview 3

AS was called to the office after LK. I asked him to tell me what happened in the hallway with Mr. Zima. He said that they were coming back from the assembly and messing around. He and JS were trying to put the other's hood on over their head. I asked him if he understood how the behavior wasn't safe and he did. He went on to say that Mr. Zima came up to them as they were going around the corner to the 8<sup>th</sup> grade hall. He grabbed AS's right arm at the shirt and pinned him against the wall. He had his other arm on JS. He told them to get to the office and then let go. I asked AS about how long Mr. Zima had hold of them and he said about 3 seconds.

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At approximately 1:25 I visited with Regan Weaver in my office. Regan was the staff member who witnessed the incident in the hall. I asked Regan if she had seen the interaction between Mark Zima and the two boys. She was disturbed at the behavior shown by Mark and said that she intended to talk to either me or Brian. She was walking in the hall behind the boys. She didn't seem to think their behavior was that bad but the boys did have their arms around each other. She said Mr. Zima screamed at the boys, banged them up against the wall, and continued to yell at them to get to the office. She shared that his behavior was very inappropriate. She said that the boys seemed to be intimidated by his behavior. She also stated that if she was a parent of one of the boys, she would be calling a lawyer. I told Regan that Brian and I would probably want to visit with her again.

(Test. of Sink; Ex. A4 at 1-3.)

15. On June 4, 2010, Mr. Flick and Ms. Sink interviewed Respondent regarding the incident. Ms. Sink prepared notes, which stated, in part:

2:35 Zima Interview

Mark was invited to come to the office after school to debrief the incident. Mark mentioned that the kids were crazy coming down the hall following the assembly. One student came running through weaving in and out of students and shoving them. Mark sent that student to the office. I then asked him about the other two students. He said they were stumbling down the hallway and messing around, pulling their hoods over their heads and falling over each other. I told Mark that it was reported by a staff member that he grabbed the two students and shoved them against the wall. Mark was noticeably upset that the staff member came to administration before going to him. Mark admitted to grabbing the boys by their shirts because they were falling down, one was falling one way and one was falling the other. He stated that they were already up against the wall. Mark's position was that he was keeping the boys safe from falling down or falling on someone else. Mark shared that he would never grab a student but that he did grab them by their shirts because they were falling and out of control. He again expressed his frustration at the staff member who didn't talk to him and because he felt like he was the only one in the hallway. Mark wanted to know who it was or at least have us encourage the staff member to talk to him. Brian shared that it was not important who it was and we needed to better understand what was happening. Mark again shared that both students were out of control and falling down; one was falling one way and one was falling the other way. He grabbed both boys by their shirts to keep them from falling. In Mark's opinion, he was keeping the students safe. Brian shared with Mark the importance of not putting hands on kids for whatever the reason.

Following the meeting with Mark, we again visited with Regan Weaver. Regan shared what she saw transpire after the assembly. She said she was walking behind the boys in the hallway. She did not seem to think that the boys were acting that badly. She said they had their arms around each other and were making contact with each other. She heard Mark yell, grab the boys, push them against the wall and yell at them against to get to the office. Regan said that the boys were not up against the wall until Mark pushed them there. She also didn't seem to think that the boys were falling over prior to Mr. Zima grabbing them. Regan was asked why she thought Mark acted in this way...was trying to keep the boys from falling? Regan emphatically said no. The way it looked to her, Mark was very angry.

(Test. of Sink, Flick; Exs. A3 at 1-2, 4-6, A4 at 3-4.)

16. On June 7, 2010, Ms. Sink prepared a Letter of Reprimand for Respondent, which stated, in relevant part:

On June 4, 2010, at approximately 10:25 a.m. you directed three 7<sup>th</sup> grade male students to the office. Upon following them to the office area you yelled at two of the students from across the office to sit down. This action was carried out in front of me, two secretaries, a grandparent, and the three students. I immediately approached you by my office and explained to you that yelling at students was unacceptable.

It was later reported to me by another staff member that you were witnessed being physically inappropriate with two of the 7<sup>th</sup> grade students who were sent to the office. As students were returning to their lockers following the assembly, two boys were pulling each other's hoods over their heads as they were walking down the hallway. When rounding the hallway going into the 8<sup>th</sup> grade hall, it was alleged that you quickly approached the boys, grabbed both by their shirts at the arms, pushed them up against the wall, and shouted at them to get to the office. Though you indicated that you were keeping the students from "falling" my investigation determined that you did engage in inappropriate physical contact with the two 7<sup>th</sup> grade students.

This type of behavior is detrimental to the learning environment at Meadow View and will not be tolerated. You are directed to refrain from any physical contact with students and you are to speak to students with an appropriate tone of voice. In the future, should you verbally or physically intimidate students, further discipline, up to and including a possible recommendation for dismissal, may occur.

(Test. of Sink; Ex. A2 at 1.) On June 7, 2010, Mr. Flick and Ms. Sink met with Respondent and provided him with the letter of reprimand. Mr. Flick prepared notes documenting the action, which stated, in part:

June 7, 2010

At approximately 2:20, Jenny told Mark to come and see us after school to discuss the incident from last Friday. At approximately 2:45, Mark came to my office, Jenny closed the door and Jenny told Mark we had looked further into the allegations of Friday's events. At that time Mark asked if this had anything to do with

discipline. I told Mark it depended on how he viewed discipline. Mark went on to say that he had been in contact with Jeff Jackson and that if this involved discipline, he would only discuss it with Jeff present. Jenny then told him we had been in contact with Tim Keeley, shared our findings and the decision had been made to give him a letter of reprimand. She then placed the letter on the table and Mark did not touch it. Mark again wanted to know if this was discipline and I shared it was a letter of reprimand and he could either take the letter with him or we would put it in his mailbox. As Mark stood up angrily and prepared to leave, I went on to tell him that the letter specifically stated that he is to have professional interactions with students by not touching them and addressing them in an appropriate tone of voice at all times. Mark then exited the office and returned to his room with his letter.

(Test. of Sink, Flick; Exs. A3 at 3, A5.) Respondent did not grieve the reprimand. (Test. of Respondent.)

#### **The period of January through April 2011, and the sexual harassment complaint**

17. Kathi Holvey is currently employed as a consultant grant writer. During the relevant time period of January through April 2011, Ms. Holvey was the Assistant Principal at Meadow View School. She was also Respondent's supervisor. At some point in time, Ms. Holvey gave her personal email account to Respondent, as well as the other teachers at Meadow View School. (Test. of Holvey.)

18. Sebastian Bolden is a teacher at Meadow View School. He teaches eighth grade. He has been at Meadow View School for five years. (Test. of Bolden.)

19. Natalie Oliver is currently employed as a teacher at Cascade Middle School. During the relevant time period of January through April 2011, she was employed at Meadow View School teaching seventh grade. Ms. Oliver taught in classroom 36. Respondent taught in classroom 37. (Test. of Oliver.)

20. Christina Parra is currently employed as the Assistant Superintendent for the Bethel School District. She has held that position for three years. She is familiar with the rules of professional conduct for teachers. Ms. Parra was previously employed by the South Lane School District for 21 years. (Test. of Parra.)

21. Sharon Dye and Erik Wright were teachers at Meadow View School during the relevant time period of January through April 2011. (Ex. A11.)

22. Staff at Meadow View School can review the Staff Handbook to determine what behaviors are appropriate and/or expected. Staff can also review the Commission's rules and regulations. (Test. of Flick.)

23. On January 28, 2011, Mr. Bolden met with Mr. Flick to discuss the inappropriate behaviors that he and several other teachers (Natalie Oliver, Sharon Dye, and Erik Wright) had observed of Respondent while at Meadow View School.

The teachers had just completed an online training for sexual harassment. Following the training, Mr. Bolden, Ms. Dye, Ms. Oliver, and Mr. Wright discussed the red flags they had seen at Meadow View School. Mr. Bolden was elected to report the information to Mr. Flick.

Mr. Bolden told Mr. Flick that he and the other teachers had observed Respondent call female staff and students inappropriate names such as "honey" and "sweetie." Mr. Bolden also told Mr. Flick that he and the other teachers had observed Respondent touch female staff and students inappropriately.

Mr. Flick then spoke with Sharyn Dye, Natalie Oliver, and Erik Wright regarding their concerns and observations. (Test. of Bolden, Flick; Ex. A8.) Mr. Flick prepared notes detailing the interviews, which stated, in part:

On Friday, January 28<sup>th</sup> (grading day), I was approached by Sebastian Bolden who came down to my office and shared that after participating in the child abuse and sexual abuse online trainings, the 7/8 team had concerns with Mark Zima's behavior. Sebastian felt awkward reporting and claimed because he was in the administration program, he was the selected spokesperson. Sebastian shared the concerns and claimed that Mark has [engaged in] inappropriate touching of the female gender and uses inappropriate names when referring to the female gender.

Upon hearing this report, I went down the 7/8 wing to gather some more information from the teachers.

Sharyn Dye claimed that for years, Mark has touched the girls inappropriately by hugging or giving headlocks and that no one has ever reported it. She also reported that he had recently laid his head on her shoulder when in the hallway and she didn't like it, but also didn't say anything to him. Sharyn also shared that he uses words like "sweetie, darling and honey" when talking to female staff and students.

When I visited with Natalie Oliver, she claimed that Mark had referred to her as "darling" on several occasions and she didn't like it as it was very unprofessional. When I asked her if she had called it to his attention she shared that she had not. She also had observed questionable touching in the hallways with female students.



In talking with Eric Wright, he too shared that he has heard the unprofessional names spoken from Mark and had observed CM getting a headlock in the hallway.

All of the teachers were unsure if Mark even knew he was aware of his actions, claimed they didn't want him to get in trouble but that they did want him to act professionally around the children and them as teachers. I told them I would address it with Mark.

(Test. of Flick; Ex. A8 at 1-2.)

24. On February 2, 2011, Mr. Flick met with Respondent to discuss the behaviors witnessed by the other teachers. During the meeting, Mr. Flick shared the other teacher's observations and concerns. Mr. Flick also informed Respondent that he expected the inappropriate behaviors towards female staff and students to stop. (Test. of Flick; Ex. A8 at 1-2.) Mr. Flick prepared notes detailing the discussion, which stated, in part:

I met with Mark in the afternoon on February 2 and I shared the following:

- I met with the teachers on his team on Friday and they were concerned with his professional actions at school in regard to touching female students and calling females names such as "sweetie, darling and honey." Mark was very surprised and claimed he was not aware of this issue and was bothered that his colleagues wouldn't come directly to him. I informed Mark that this is not an easy [] conversation to have with a colleague, his colleagues didn't want him to get in trouble but that they did want it to stop and I expected it to stop. Mark claimed he was from the mid-west and those were words he grew up hearing and using.
- I also explained that there were concerns with touching females and that it had been reported he had put kids in headlocks in the hallways. I used CM as and [sic] example that had been reported to me. Mark claimed that he knew the family very well, and that if he had done a headlock it was just being playful (he didn't remember doing it).
- I explained to Mark that he needed to have a hands-off policy for two reasons. The first one was that he was written up at the end of 2009-2010 school year and it stated he was to keep his hands off kids. The second reason was that he is male and that anytime he touches a female, he is setting himself up for a possible problem if the female reports he hurt her or touched her inappropriately. I explained it is all about a student's interpretation and he should know that because last June his interpretation of the incident was very different than the student in the hallway.
- I told Mark that now that he was aware, he needed to not be touching students at school and he needed to be very careful in