

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

In the Matter of the)
Teaching License of) FINAL ORDER
)
JOLEEN A. FAVORITE) Case No. 900884

On June 22, 2009, Administrative Law Judge (ALJ) Dove L. Gutman issued a Proposed Order in this case.


The Teacher Standards and Practices Commission adopts in its entirety the Findings of Fact, Conclusions of Law and Order contained in the attached Proposed Order.

ORDER

The Commission adopts the Proposed Order in its entirety and suspends the Oregon teaching license of Joleen A. Favorite for 45 days from the date of this Order.

Dated this 10th day of August 2009.

TEACHER STANDARD AND PRACTICES COMMISSION

By: 
Victoria Chamberlain, Executive Director

NOTICE: You are entitled to judicial review of this Final Order pursuant to the provisions of ORS 183.480. Judicial review may be obtained by filing a petition in the Oregon Court of Appeals. The petition must be filed within 60 days from the date of service of this Final Order.

RECEIVED

JUN 23 2009

Teacher Standards &
Practices Commission

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

IN THE MATTER OF THE
TEACHING LICENSE OF:

JOLEEN A. FAVORITE

) **PROPOSED ORDER**

)

) OAH Case No.: 900884

) Agency Case No.:

HISTORY OF THE CASE

On January 7, 2009, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing (Notice) to Joleen A. Favorite (Respondent). On January 15, 2009, Respondent requested a hearing.

On January 22, 2009, 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 March 20, 2009, a pre-hearing telephone conference was held. ALJ Gutman presided. The Commission was represented by Assistant Attorney General (AAG) Jeff Dover. Respondent was represented by Heidi Brown, attorney at law. On March 20, 2009, ALJ Gutman issued a pre-hearing order.

On May 15, 2009, a hearing was held at the OAH in Tualatin, Oregon. Respondent was represented by Ms. Brown. Respondent testified. The Commission was represented by AAG Dover. George Finch, investigator, testified on behalf of the Commission. Alan Wellman and Sarah McDonald testified on behalf of Respondent. The record closed on May 15, 2009.

ISSUES

1. Whether Respondent engaged in gross neglect of duty by demonstrating or expressing professionally inappropriate interest in student TK's personal life, in violation of OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(c)(A).

2. Whether Respondent engaged in gross neglect of duty by not honoring appropriate adult boundaries with students GL and TK in conduct and conversations, in violation of OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(c)(D).

3. Whether Respondent engaged in gross neglect of duty by failing to use professional judgment, in violation of OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5).

4. Whether Respondent's license shall be suspended for 90 days. ORS 342.175.

EVIDENTIARY RULINGS

Exhibits A1 through A5, offered by the Commission, and Exhibits R1 through R17, offered by Respondent, were admitted into the record without objection.

During closing arguments, Respondent submitted nine cases for consideration that were previously before the Commission for proposed sanctions. On May 15, 2009, ALJ Gutman, *sua sponte*, reopened the record, labeled the cases as Exhibit R18, and admitted Exhibit R18 into the record. If any party objects to the admission, the party has ten (10) days from the date of the Proposed Order to inform the OAH of the objection in writing.

MOTION TO AMEND

During closing arguments, the Commission made a Motion to Amend (Motion) its Notice by interlineation. Respondent objected to the Motion.

Oregon Administrative Rule (OAR) 137-003-0530 is titled "Late Filing and Amendment of Documents" and provides, in pertinent part:

(4) Notwithstanding any other provision of these rules, at any time after the issuance of the notice required by ORS 183.415, an agency may issue an amended notice. If an agency issues an amended notice, any party may obtain, upon request, a continuance determined to be reasonably necessary to enable the party to file an amended response, if required by agency rules, or to respond to any new material contained in the amended notice. If the agency files an amended notice after the evidentiary record has been closed, the agency shall inform the administrative law judge, who will reopen the record and conduct any further hearing or listen to additional argument required by new matters in the amended notice. If the administrative law judge has issued a proposed order, the administrative law judge shall prepare an amended proposed order after completion of any further hearing.

(5) Unless otherwise provided by law, when a party or agency files any document for the contested case proceeding, the agency or the administrative law judge may permit the party or agency to file an amended document if the agency or administrative law judge determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties or the agency.

The Commission requested that the word "Umatilla" in the first allegation be stricken and replaced with the word "Hermiston." The Commission asserted that the mistake was due to scrivener's error. Respondent objected, but did not assert that she was unfairly prejudiced by the Motion. Pursuant to the authority cited above, because the word "Umatilla" was the result of a scrivener's error and because Respondent was not unfairly prejudiced by the amendment, the

Motion was GRANTED.

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).

During the hearing, Respondent testified that student TK's mother called Respondent to check on her son's grades. Respondent further testified that she made several phone calls to the home of student TK to talk to the student's mother. Respondent denied making the phone calls to talk to student TK. Respondent's testimony was credible and logical.

The Commission, on the other hand, presented hearsay statements from the parents of student TK that alleged that Respondent contacted student TK at home on a regular basis, that the mother became concerned and contacted the school, and that the school principal issued a letter about the conduct. The Commission did not submit a copy of the alleged letter for consideration and did not call the parents of student TK as witnesses in the hearing.

I will review whether the hearsay statements are substantial evidence in this matter.

Hearsay may constitute substantial evidence to support a finding of fact in an administrative hearing. *See Reguero v. Teacher Standards and Practices*, 312 Or 402 (1991). In *Reguero*, the Oregon Supreme Court specifically rejected the "residuum rule," under which a finding based solely on hearsay testimony can never be supported by substantial evidence:

[W]e reject the residuum rule and affirm the Court of Appeals' holding that hearsay evidence alone, even if inadmissible in a civil or criminal trial, is not incapable of being 'substantial evidence' *
* *. *Id.* at 418.

In setting forth a framework for determining whether hearsay is substantial evidence that supports a finding, the *Reguero* Court explained that the determination is case specific and must take into account countervailing as well as supporting evidence. *Id.* at 417-418. In making that determination, a variety of factors may be considered, including:

[T]he alternative to relying on the hearsay evidence; the importance of the facts sought to be proved by the hearsay statements to the outcome of the proceeding and considerations of economy; the state of the supporting or opposing evidence, if any; the degree of lack of efficacy of cross-examination with respect to the particular hearsay statements; and the consequences of the decision either way. *Id.* at 418.

With regard to the first *Reguero* factor (“the alternative to relying on the hearsay evidence”), the parents of student TK are material witnesses in this matter. Yet, no effort was made to secure their testimony. Thus, this factor weighs in favor of Respondent.

As to the second *Reguero* factor (“the importance of the facts sought to be proved by the hearsay statements to the outcome of the proceeding and considerations of economy”), the facts from the parents of student TK are paramount to the outcome of the proceeding. In addition, the considerations of the economy of having the witnesses appear for hearing are of less importance. Hence, this factor weighs in favor of Respondent.

With regard to the third *Reguero* factor (“the consequences of the decision”), the suspension of a teaching certificate is a matter of extreme consequence. *See Hause v. MVD*, 127 Or App 421, *rev den* 319 Or 281 (1994). Consequently, this factor weighs in favor of Respondent.

As to the fourth *Reguero* factor (“the degree of lack of efficacy of cross-examination with respect to the particular hearsay statements”), it cannot be presumed based on the necessity of a credibility finding that cross-examining the parents of student TK would have been ineffective. As such, this factor weighs in favor of Respondent.

With regard to the final *Reguero* factor (“the state of the supporting or opposing evidence, if any”), the contradictory evidence adduced at hearing and the credible testimony provided by Respondent favors Respondent in this matter.

Accordingly, after weighing the *Reguero* factors, I find that the hearsay statements made by the parents of student TK are not substantial evidence. Therefore, I find by a preponderance of the reliable evidence that Respondent did not make numerous phone calls to student TK’s home to talk to student TK.

FINDINGS OF FACT

Background

1. Respondent is a substitute teacher for the Hermiston School District and has been since September 2007. She received her teaching license in 2000. Respondent is 31 years old. She is married with two young children. (Test. of Favorite; Ex. R5.)

2. From August 2003 through June 2006, Respondent was employed as a Wellness

Teacher at Hermiston High School (HHS). Respondent received good evaluations each year, culminating in several distinguished marks during her third year at HHS. (Test. of Favorite; Exs. R7 through R9.)

3. During fall 2005, Respondent's husband, Mr. Favorite, was a coach at HHS and students GL and TK were students at HHS. Mr. Favorite was the coach of student GL. (Test. of Favorite.)

Respondent's behavior while employed at HHS

4. Sometime prior to October 26, 2005, student TK became Respondent's teaching assistant at the request of the student's mother. Student TK's mother called Respondent to check on her son's grades. Respondent made several phone calls to the home of student TK to talk to the student's mother. Respondent did not call to talk to student TK. (Test. of Favorite.)

5. During the evening of October 26, 2005, Respondent and Mr. Favorite got into an argument at their residence. Respondent had recently undergone surgery for an ectopic pregnancy and lost the couple's second child. Mr. Favorite was devastated by the loss. He left the house after rummaging around in the bedroom closet and telling his son goodbye. Respondent feared that her husband had taken the gun that was locked in the closet in order to commit suicide. Respondent panicked and contacted student GL to help search for Mr. Favorite. Student GL had gone fishing with Mr. Favorite several times in the past. Respondent believed that her husband may have gone to the fishing hole, but did not know where it was located. Respondent told student GL to meet her at the high school parking lot in order to look for Mr. Favorite. Respondent also told student GL to bring another student with him. Student GL brought student TK with him. Respondent arrived at the high school parking lot with an unopened bottle of beer in her car. Students GL and TK disposed of the bottle of beer in a trash can and got into Respondent's car to help her search for Mr. Favorite. Respondent drove around looking for her husband, but could not locate him. Respondent dropped the students back off at the high school parking lot. Mr. Favorite returned home later that evening. (Test. of Favorite; test. of Finch; Ex. R4.)

6. On November 7, 2005, Respondent met with Sheri Marlow, Assistant Superintendent of Hermiston School District, and Darce Driskel, Superintendent of Hermiston School District, to discuss the events of October 26, 2005. Respondent was informed that she needed to make better choices in the future. No further action was taken against Respondent at that time. (Ex. A1.)

7. On November 22, 2005, Respondent transported three students, including student TK, off HHS campus in her personal vehicle without teacher, parent, or administrative permission. Respondent intended to meet the students at Dairy Queen (DQ), but the students did not have transportation. Respondent took the students to lunch to reward them for a job well done. Respondent was unaware that one of the students had left a scheduled class to attend the lunch. Respondent returned the students to HHS campus as the first bell was ringing for the next class. Respondent wrote notes for each student so they could get their books and attend class. (Test. of Favorite; Ex. A2.)

8. Respondent's act of transporting students off campus for lunch was considered a field trip under Hermiston Board of Education School Board Policy. (Exs. A2, A3.)

9. The field trip procedures at HHS required, among other things, that the principal approve the field trip request and the transportation arrangements, and that the parents of the students be notified in advance of the trip. (Ex. A3.) Respondent did not follow HHS field trip procedures. (Test. of Favorite; Ex. A2.)

10. On November 23, 2005, Sean Gallagher, HHS Principal, determined that Respondent had neglected her duties and responsibilities as a teaching professional by taking three students to lunch without following proper field trip procedures. Mr. Gallagher also determined that Respondent had created an unnecessary liability situation for the school district. Mr. Gallagher reprimanded Respondent for neglect of duty and placed the reprimand in her personnel file. (Exs. A2, A3.)

11. On December 16, 2005, Superintendent Driskel notified the Commission of Respondent's conduct. (Ex. A4.) The Commission began an investigation. (Test. of Finch.)

12. On January 17, 2006, Respondent signed an agreement with the Hermiston School District to resign from employment effective June 7, 2006. (Ex. A5.)

13. From September 2006 through June 2007, Respondent was employed as a Physical Education Teacher at Umatilla High School. She received a good evaluation for the school year. Respondent's job ended on June 13, 2007 due to her temporary status. (Exs. R5, R15-R16.)

Respondent's actions to address her behavior

14. From February through June 2008, Respondent saw Dr. Robert Anstine, a marriage counselor, to reduce the major stressors in her life and increase the satisfaction in her marriage. Respondent learned healthy ways to cope with stressful situations. (Ex. R2; test. of Favorite.)

15. On March 21, 2008, Respondent underwent a psychological evaluation with Dr. Crispin Juguilon. Respondent was diagnosed with stress-related adjustment disorder. (Ex. R1; test. of Favorite.)

16. On April 30, 2009, Respondent underwent a chemical dependency assessment at First Step Community Counseling Services. Respondent's screening revealed insufficient symptoms to indicate abuse or addiction. (Ex. R3.)

17. Respondent received positive recommendations from Sean Gallagher, principal at HHS; Steven Anderson, teacher at HHS; Brandt Lind, teacher at HHS; Jocelyn Jones, Wellness Department Chair at HHS; John Thomas, Principal at Umatilla High School; and Dr. Anstine. (Exs. R2, R11-R14, R17.)

18. Respondent agreed that her conduct involving students GL and TK was

inappropriate. (Test. of Favorite.)

Notice and proposed sanction

19. On January 7, 2009, the Commission issued a Notice of Opportunity for Hearing to Respondent. The Notice alleged that Respondent committed gross neglect of duty by the following acts:

1. While working for the Umatilla School District, you demonstrated or expressed professionally inappropriate interest in a student's personal life in violation of OAR 584-020-0040(4)(o) as it incorporates 584-020-0035(1)(c)(A) when you made numerous calls to a student TK's home and took the student to lunch.
2. On or about October 26, 2005, you did not honor appropriate adult boundaries with students in conduct and conversations in violation of OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(c)(D) when you called a student (GL) to help you search for your husband, whom you thought was suicidal. Additionally, you picked up GL and student TK at the high school to have them help you search for your husband. You arrived with an unopened bottle of beer in your car, requiring the students to dispose of the alcohol and help you with marital issues.
3. You failed to use professional judgment in violation of OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5) when you engaged in any of the conduct described in paragraphs 1 or 2 above.

(P1.)

20. In determining the proposed sanction of 90 days' suspension, the Commission considered Respondent's conduct, the loss of her child, and the recommendations from her co-workers. The Commission did not consider Respondent's treatment with Dr. Anstine, the psychological evaluation and diagnosis, and the chemical dependency assessment. (Test. of Finch; hearing record.)

CONCLUSIONS OF LAW

1. Respondent did not engage in gross neglect of duty by demonstrating or expressing professionally inappropriate interest in student TK's personal life, in violation of OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(c)(A).
2. Respondent engaged in gross neglect of duty by not honoring appropriate adult boundaries with students GL and TK in conduct and conversations, in violation of OAR 584-

020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(c)(D).

3. Respondent engaged in gross neglect of duty by failing to use professional judgment, in violation of OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5).

4. Respondent's license should be suspended for 45 days.

OPINION

The Commission contends that Respondent committed gross neglect of duty and should have her license suspended for 90 days. The Commission has the burden of proving the allegations by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Reguero v. Teacher Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on the Commission in disciplinary action); *Cook v. Employment Division*, 47 Or App 437 (1980) (the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987). As modified below, the Commission has met its burden.

1. Whether Respondent engaged in gross neglect of duty by demonstrating or expressing professional inappropriate interest in student TK's personal life, in violation of OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(c)(A).

OAR 584-020-0040 is titled "Grounds for Disciplinary Action" and provides, in relevant 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:

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

OAR 584-020-0035 is titled "The Ethical Educator" and provides, in pertinent 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:

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

(A) Not demonstrating or expressing professionally inappropriate interest in a student's personal life[.]

The Commission contends that Respondent demonstrated or expressed professionally inappropriate interest in a student's personal life by making numerous phone calls to student TK at his home. However, as set forth in the credibility determination, the reliable evidence establishes that Respondent did not make numerous calls to student TK at his home. Thus, the Commission's argument is without merit.

The Commission also contends that Respondent demonstrated or expressed professionally inappropriate interest in a student's personal life by taking student TK to lunch. I disagree with the Commission.

On November 22, 2005, Respondent took three students to lunch, one of which was student TK. The purpose of the lunch was to reward the students for a job well done, not to demonstrate or express an inappropriate interest in a student's personal life.

Accordingly, I find by a preponderance of the evidence that Respondent did not engage in gross neglect of duty by demonstrating or expressing professionally inappropriate interest in student TK's personal life, in violation of OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(c)(A).

2. Whether Respondent engaged in gross neglect of duty by not honoring appropriate adult boundaries with students GL and TK in conduct and conversations, in violation of OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(c)(D).

OAR 584-020-0035(1) further provides:

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

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

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

The Commission contends that Respondent did not honor appropriate adult boundaries with students GL and TK in conduct and conversations. I agree with the Commission.

During the evening of October 26, 2005, Respondent called student GL to help search for her husband, whom Respondent thought was suicidal and carrying a gun. Respondent told student GL to meet her at the high school parking lot and to bring another student with him. Student GL brought student TK with him. Respondent arrived at the parking lot with an unopened bottle of beer in her car, causing students GL and TK to dispose of the beer in a trash can before getting into Respondent's car to help search for her husband.

I find, by a preponderance of the evidence that Respondent did not honor appropriate adult boundaries with students GL and TK in conduct and conversations during the evening of October 26, 2005. Therefore, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(c)(D).

Respondent argued that student GL was not a student in her classroom at HHS. However, the rule cited above does not limit the ethical educator to students in his/her classroom. As such, Respondent's argument is unpersuasive.

Respondent also argued that there was no connection between her behavior off duty and her job as a teacher at HHS. Respondent is incorrect. By contacting and involving students GL and TK in her marital problems, Respondent created the nexus. *See TSPC v. Bergerson*, 342 Or 301 (2007). Thus, Respondent's argument is without merit.

3. Whether Respondent engaged in gross neglect of duty by failing to use professional judgment, in violation of OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5).

OAR 584-020-0040(4) provides:

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:

(n) 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[.]

The Commission contends that Respondent failed to use professional judgment when she made numerous calls to student TK at his home. However, as set forth in the credibility determination, the reliable evidence establishes that Respondent did not make numerous calls to student TK at his home. As such, the Commission's argument is without merit.

The Commission next contends that Respondent failed to use professional judgment when she took student TK to lunch. I agree with the Commission.

As a teaching professional, Respondent was required to follow HHS field trip procedures before transporting students off campus for any reason. On November 22, 2005, Respondent failed to obtain parental and administrative approval before she drove three students to DQ for lunch. Consequently, Respondent failed to use professional judgment when she took student TK (and others) to lunch.

The Commission also contends that Respondent failed to use professional judgment during the events of October 26, 2005. I agree with the Commission.

As a competent educator, Respondent is required to use professional judgment when making a decision. By contacting and involving students GL and TK in the search for her purported suicidal husband on October 26, 2005, Respondent failed to use professional judgment in her decision-making process. Accordingly, Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5).

4. Whether Respondent's license shall be suspended for 90 days.

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

(1) The Teacher Standards and Practices Commission may suspend or revoke the license 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 person has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176¹ based on the following:

(b) Gross neglect of duty;

As set forth above, the Commission may suspend the license of a teacher for gross neglect of duty. In this case, the Commission proposes to suspend Respondent for 90 days.

¹ ORS 342.176(1) provides, in relevant part:

Upon receipt of a complaint or information that a person has violated ORS 342.143 or 342.175, the Teacher Standards Practices Commission shall promptly undertake an investigation.

However, the Commission did not consider all of the mitigating factors in this case. As set forth in the record, Respondent saw Dr. Anstine for five months and learned healthy ways to manage her stress. In addition, Respondent underwent a psychological evaluation, which revealed an underlying adjustment disorder. Moreover, Respondent underwent a chemical dependency assessment, which established insufficient symptoms to indicate abuse or addiction. Furthermore, Respondent acknowledged that her conduct involving students GL and TK was inappropriate. Finally, Respondent's subsequent employment at Umatilla High School was without similar incidents.

Accordingly, after reviewing the record in its entirety and taking into account Respondent's conduct and all of the mitigating factors in this case, I believe that a suspension for 45 days is appropriate.

Respondent argued that a public reprimand is appropriate and cited several cases where such a sanction was imposed.² However, the cases that were cited did not involve a teacher taking students to look for a man believed to be suicidal and carrying a gun. As such, Respondent's argument is unpersuasive.

ORDER

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

1. Respondent did not engage in gross neglect of duty by demonstrating or expressing professional inappropriate interest in student TK's personal life, in violation of OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(c)(A).
2. Respondent engaged in gross neglect of duty by not honoring appropriate adult boundaries with students GL and TK in conduct and conversations, in violation of OAR 584-020-0040(4)(o) as it incorporates OAR 584-020-0035(1)(c)(D).
3. Respondent engaged in gross neglect of duty by failing to use professional judgment, in violation of OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5).
4. Respondent's license should be suspended for 45 days.

Dove L. Gutman

Senior Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: June 22, 2009

² Respondent submitted nine cases for consideration. Eight of the cases involved reprimand and one case involved suspension and probation. (Ex. R18.)

EXCEPTIONS

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

Teacher Standards and Practices Commission
465 Commercial Street, NE
Salem, Oregon 97301

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

CERTIFICATE OF MAILING

On June 22, 2009, I mailed the foregoing Proposed Order in OAH Case No. 900884.

By: First Class and Certified Mail

Certified Mail Receipt #7008 1830 0003 4612 2382

Heidi Brown
Attorney at Law
111 SW Fifth Ave Ste 1650
Portland OR 97204-3627

By: First Class Mail

Melody Hanson
Teacher Standards & Practices Commission
465 Commercial Street NE
Salem OR 97301

Jeff Dover
Assistant Attorney General
Department of Justice
1162 Court Street NE
Salem OR 97301-4096

Pam Arcari
Administrative Specialist
Hearing Coordinator