



1355872

Nathan Parker (49806)
Discipline Order

1
2 BEFORE THE TEACHER STANDARDS AND PRACTICES COMMISSION
3 OF THE STATE OF OREGON
4
5
6

7 In the Matter of the)
8 Teaching License of) FINAL ORDER
9)
10 NATHAN PARKER) Case No. 1102508
11

12
13 On April 30, 2012, Administrative Law Judge (ALJ) Rick Barber issued a Proposed
14 Order in this case.
15


16 The Teacher Standards and Practices Commission adopts in its entirety the Findings of
17 Fact, Conclusions of Law and Order contained in the attached Proposed Order.
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20 ORDER
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22 The Commission adopts the Proposed Order in its entirety and revokes Nathan Parker's
23 Oregon Standard Teaching License for one (1) year.
24

25 Dated this 28th day of August 2012.
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28 TEACHER STANDARD AND PRACTICES COMMISSION
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32 By: 
33 Victoria Chamberlain, Executive Director
34 Teacher Standards and Practices Commission
35

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38 **NOTICE:** You are entitled to judicial review of this order. Judicial review may be obtained by
39 filing a petition for review within 60 days of the service of this order. Judicial review is pursuant
40 to the provision of ORS 183.482 to the Oregon Court of Appeal.

CERTIFICATE OF MAILING

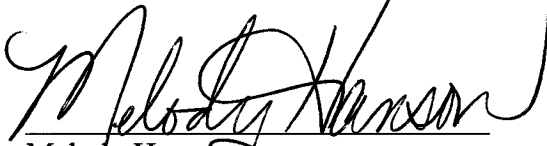
On August 28, 2012, I mailed the foregoing Final Order and Proposed Order in OAH Case No. 1102508 to:

By: Certified Mail – Return Receipt Requested and U.S. First Class Mail
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Melody Hanson
Director of Professional Practices

RECEIVED

MAY 01 2012

Teacher Standards &
Practices Commission

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

IN THE MATTER OF:

NATHAN PARKER

) **PROPOSED ORDER**

)

) OAH Case No. 1102508

) Agency Case No.

HISTORY OF THE CASE

On April 8, 2011, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing to Nathan Parker (Licensee). On April 13, 2011, Licensee requested a hearing.

On September 9, 2011, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Rick Barber was assigned to preside at hearing. A prehearing conference was held on November 1, 2011, and the case was set for hearing on April 18 and 19, 2012.

The hearing was held as scheduled on April 18, 2012, in Salem, Oregon.¹ Licensee appeared without counsel and testified. He called no other witnesses. The Commission was represented by Assistant Attorney General Raul Ramirez. The Commission called the following witnesses: Licensee; Mt. Angel School District Superintendent Troy Stoops; Middle School Principal Debi Brazelton; and Mt. Angel Police Officer Jonathan Lamoreaux. The record closed on April 18, 2012.

ISSUES

1. Whether Licensee committed gross neglect of duty by making comments to the trumpet players in his band;
2. Whether Licensee committed gross neglect of duty by calling a student a "pussy" when he did not bring his musical instrument to class;
3. Whether Licensee committed gross neglect of duty by driving female student K home from school, in violation of school district policy;
4. Whether Licensee committed gross neglect of duty by expressing interest in letting student K stay with his family while her family was in California;

¹ The additional day of hearing was not needed.

5. Whether Licensee committed gross neglect of duty by commenting on K's looks, telling her she was pretty, and by not being truthful with the Board investigator about that comment;

6. Whether Licensee committed gross neglect of duty by commenting to student K that he wished he could take her to his home but his wife and kids were there, and by not being truthful with the Board investigator about that comment;

7. Whether Licensee committed gross neglect of duty in his comments to the investigator during his September 10, 2010 interview;

8. Whether Licensee committed gross neglect of duty in regards to the following incidents for which he received either reprimands or letters of directive:

a. A December 5, 2007 Letter of Directive from the Principal regarding the tone of a letter sent to parents;

b. A January 26, 2009 Letter of Reprimand concerning comments made about the band's bass drum player;

c. A January 27, 2009 Letter of Reprimand for throwing a student's book on the ground;

d. A March 9, 2010 Letter of Reprimand for throwing a student's book across the band room; and

e. A March 17, 2009 Letter of Reprimand for requiring students to stay late when Licensee's keys had been stolen and he believed the students knew who had the keys.

9. Whether, if the charges against Licensee are proved, his Teaching License should be revoked.

EVIDENTIARY RULING

Exhibits A1 through A14, offered by the Commission, were admitted into evidence without objection. Procedural Documents P1 through P6 are part of the documentary record.

FINDINGS OF FACT

1. Licensee has held a Standard Teaching License, with a Music Endorsement, since approximately 1999. He taught in the Rainier School District from 1999 until he resigned in lieu of termination on November 19, 2003. Licensee accessed sexually explicit materials using the district's computers, leading to the separation from employment. The Commission entered into a stipulation with Licensee on December 30, 2003, suspending his teaching license for 90 days and requiring him, *inter alia*, to complete boundaries training. (Ex. A1). Licensee then spent three years working in the South Umpqua School District. (Ex. A13 at 1).

2. In September 2007, Licensee began teaching in the Mt. Angel School District. He was the band teacher for 5th grade through 12th grade, requiring him to "itinerate" between the elementary, middle and high schools. Licensee also taught high school physical education (PE) classes. (Test. of Licensee, Stoops). Licensee's teaching style in the band classes was highly energetic and intense, because he was passionate about the music and the excellence of the bands. (Test. of Stoops).

3. When Licensee started with the Mt. Angel School District, Dave Carlson was the Principal of the middle school. On September 20, 2007, Carlson received a complaint about comments Licensee had made to the trumpet players in the band. He told them to warm up their lips and strengthen their mouths, a normal exercise for trumpet players, but Licensee also told them their girlfriends would appreciate it. One of the trumpet players, R, indicated that R did not have a girlfriend. Licensee said that R's boyfriend would appreciate the lip exercises. R became angry, quit playing, and put away his instrument. (Ex. A2 at 1).

4. Licensee immediately knew he had said something he shouldn't, and reported the incident to Carlson. Licensee was contrite, and apologized to R about the incident. Carlson warned Licensee about inappropriate use of humor in interactions with students. R eventually quit band, and Licensee later told another staff member that "losers" quit band, when the staff member wondered whether R was still in the band. (Ex. A2).

5. The week before the incident with R, another student, S, had forgotten to bring his baritone saxophone, a heavy instrument, to school. Licensee asked him why he had not brought the instrument, and S said that the handle on the case was broken. The student reported to Principal Carlson that Licensee called him a "pussy." (Ex. A2 at 2). Licensee believes he told S that he had "pussitis," which he defined at hearing as "the condition of being a pussy." A pussy, in Licensee's vernacular, is a weakling. (Test. of Licensee).

6. On December 5, 2007, the high school principal presented a Letter of Directive to Licensee concerning a letter he had sent to parents on November 28, 2007. The letter, which is not in the record, was considered "most alarming" in its tone and in placing blame on a group of parents. Licensee was directed to have all further letters previously approved by the principal before being sent out. (Ex. A10 at 5).

7. On January 16, 2009, Licensee received a Letter of Reprimand from the middle school principal for use of "inappropriate language and sarcastic remarks that were found to be offensive in nature." (Ex. A10 at 4). In attempting to explain to the class the importance of the beat set up by the bass drum, Licensee said something similar to: "The bass drum player is not just the fat guy in the band that sits there and bangs on something. He is the most important person in the band." (Ex. A13 at 5). The bass drum player took the weight comment personally and complained to the principal about Licensee's comment. On another occasion when several students had forgotten to bring their instruments to school after Christmas break, Licensee said "WTF!" WTF means "what the fuck." Licensee used only the letters. (Test. of Licensee; Ex. A10).

8. On January 27, 2009, Licensee was frustrated with a student, A, who had left his music notebook in the bleachers after the band played at a basketball game. Licensee picked up the notebook and, when on the ramp in the hallway between the gym and the band room, threw the notebook at A's feet. Other students observed this incident and reported it to Stoops, who was the principal at the time. Stoops reviewed the videotape from the hall camera and watched the incident occur. He gave Licensee a Letter of Reprimand for the incident. (Ex. A10 at 3; Test. of Stoops). Licensee believes A was about 100 feet away from where he threw the notebook, with no one else around, (Test. of Licensee), but Stoops noted after reviewing the video that A was about 12-14 feet away from Licensee, and there were other students nearby. (Test. of Stoops).

9. Licensee was teaching a high school PE class during March 2009. When teaching that class, Licensee would put his keys on the stage in the gym, so that he could better participate with the students in whatever the class was doing. During class on March 17, his keys were taken from the stage. Licensee believed he knew which group of students had taken the keys, so he singled out certain male students who were in the locker room and would not let them leave until they told him where his keys were, or who had taken them. (Test. of Licensee). Stoops disciplined Licensee because of his selection method for singling out the students forced to remain. They were singled out because Licensee either thought they were likely to have stolen the keys, or because Licensee had had problems with them before. (Test. of Stoops; Ex. A10 at 2).

10. On January 27, 2010, the father of student NH emailed Principal Brazelton at the middle school concerning the way Licensee treated NH in band class. Licensee often yelled at NH to "Play!" and NH felt singled out and embarrassed. A couple of days earlier, NH's mother had called Licensee about NH's grade. Afterward, without mentioning NH or the parent who called, Licensee told the class that a parent had called about grades, and informed the class that they were responsible for their own grades. Brazelton counseled with Licensee about not singling out NH or any other student and about better ways to require the student to participate. She also told him not to talk to the class about calls from parents concerning grades. (Ex. A3, A4).

11. In late February or early March 2010, student N was reading her science book during band class rather than playing her instrument. Licensee asked her at least twice to close the book and participate in the class. N continued to read the science book, so Licensee walked over to her, took the book and threw it across the room. N told her mother about the incident, and that Licensee yelled a lot in frustration at the students. Brazelton found out about the incident from the parent. Earlier, Brazelton had asked Licensee to find out why N wanted to quit band. Licensee had agreed to find out from N, but did not tell Brazelton about the book throwing incident that had occurred. After hearing about the incident, Brazelton believed that N quit because of Licensee. N told her that she quit for different reasons (wanting to work with computers instead of being in band), but Brazelton did not believe her. (Test. of Brazelton, Ex. A5).

12. The middle school band was scheduled to go to a band competition in March 2010. Brazelton expected Licensee to review all of students' grades prior to the competition to

see if any of them were precluded from going because of failing classes. There were four or five students who had grades that would disqualify them from going. Licensee had not told them they were disqualified from going because under past administrations the disqualification rule had not been applied to band competitions. (Test. of Licensee). Brazelton expected him to apply the rule to band as well as other activities, such as sports, and she pulled the students off the bus before they could go to the competition. (Test. of Brazelton, Ex. A5).

13. At the strong urging of Brazelton, Licensee's contract with the district was non-renewed in March 2010. As a result, his job ended at the end of the 2009-10 school year. (Test. of Brazelton).

14. On June 18, 2010, after the school year was over, student B was in the school office talking to the school secretary, Reagan. B told Reagan that the students were happy Licensee was finished at the school because they thought he was the "next Molan." Molan was a former teacher who had sexually abused students and had been prosecuted for his actions. B told Reagan that Licensee had taken student K home from band a couple of times and commented on her looks. He had also allegedly said "I would take you home but my wife and kids are home." (Ex. A7).

15. Reagan reported the conversation to an administrator, and the school contacted Mt. Angel police to report what B had said. Officer Lamoreaux investigated the case by interviewing student B and also student K, the person to whom Licensee made the statements. K initially denied that the statements were made, but later admitted they were true. She believed Licensee was joking when the comments were made. Lamoreaux believed that discussing the matter was difficult for K because he was aware she had been the victim of a previous episode of sexual abuse by another student. (Test. of Lamoreaux).

16. The school district does not have a policy against teachers giving students a ride home from school. (Test. of Stoops).

17. Licensee gave K rides home from school on a couple of occasions, but not alone. The male exchange student who lived with Licensee was also in the car, as was his friend. Licensee made the "I would take you home" comment to K in a joking fashion because that was the way the kids in his class would joke around. He believed K knew he was joking. He commented on K's looks during a class when the band was watching a movie. It was a private comment to her as she was preparing transfer to Silverton High School, and he was encouraging her to be in band. He said that band needed the popular pretty kids to be in the class, not just the band geeks. (Test. of Licensee). K believed Licensee was joking when he made the comments. (Ex. A6 at 3).

18. Student K took piano lessons from Licensee's wife, also a music teacher. When K's family was going to California for spring break, and K wanted to stay in town for a band project, Licensee offered to have her stay with his family. (Test. of Licensee). In hindsight, after the comments Licensee made to K were revealed to K's mother, she wondered if Licensee had an ulterior motive for asking K to stay at his house. (Test. of Lamoreaux).

19. When the Commission's investigator asked Licensee if he had made the comments to K, Licensee initially lied to the investigator and said he had not made them. He later recanted his comments and admitted he had made the comments to K. (Ex. A13; Test. of Licensee).

CONCLUSIONS OF LAW

1. Licensee committed gross neglect of duty by making comments to the trumpet players in his band;

2. Licensee committed gross neglect of duty by calling a student a "pussy" when he did not bring his musical instrument to class;

3. Licensee did not commit gross neglect of duty by driving female student K home from school;

4. Licensee did not commit gross neglect of duty by expressing interest in letting student K stay with his family while her family was in California;

5. Licensee committed gross neglect of duty by commenting on K's looks, telling her she was pretty, and by not being truthful with the Board investigator about that comment;

6. Licensee committed gross neglect of duty by commenting to student K that he wished he could take her to his home but his wife and kids were there, and by not being truthful with the Board investigator about that comment;

7. Licensee committed gross neglect of duty in his comments to the investigator during his September 10, 2010 interview;

8. Licensee committed gross neglect of duty in regards to the following incidents for which he received either reprimands or letters of directive:

b. A January 26, 2009 Letter of Reprimand concerning comments made about the band's bass drum player;

c. A January 27, 2009 Letter of Reprimand for throwing a student's book on the ground;

d. A March 9, 2010 Letter of Reprimand for throwing a student's book across the band room; and

e. A March 17, 2009 Letter of Reprimand for requiring students to stay late when Licensee's keys had been stolen and he believed the students knew who had the keys.

9. Licensee's Teaching License should be revoked.

OPINION

The Commission contends that Licensee committed gross neglect of duty, and has the burden to present evidence to prove its claim. ORS 183.450(2). It must prove its case by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

All charges against Licensee allege that he committed gross neglect of duty under ORS 342.175, which states in part:

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

* * * * *

(b) Gross neglect of duty[.]

Similarly, the administrative rule is also cited for each charge:

**584-020-0040
Grounds for Disciplinary Action**

* * * * *

(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:

* * * * *

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

OAR 584-020-0040. As will be seen, the notice incorporates by reference other rules into this rule in its allegations against Licensee. Each allegation is addressed below.

Comments to the trumpet players. Licensee made a comment to his middle school trumpet players about warming up their lips and strengthening their mouths, exercises that were

necessary to successfully play the trumpet. However, he added the jocular comment that their girlfriends would appreciate it. Then, when one of the students, R, said he had no girlfriend, Licensee said that his boyfriend would appreciate it. He later referred to R as a "loser" who had quit band.

Although the Commission's allegation of gross neglect of duty in this case arises from the statute and rule set forth above, the specifics of this charge (and several others) are found in OAR 584-020-0010(1) (recognize the worth and dignity of all persons and respect for each individual), OAR 584-020-0010(5) (use professional judgment), and especially OAR 584-020-0035(1)(c)(D),² which states:

584-020-0035
The Ethical Educator

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:

* * * * *

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

(Emphasis added). The Commission contends that Licensee violated this rule with his comments to the trumpet players, his separate comment to R, and his later comment about R. I agree with the Commission.

Licensee's comment to the trumpet players was on the edge of propriety. Referring to boys strengthening their lips to kiss their girlfriends was a jocular comment and, if that was the only comment made, I would find it inappropriate but probably not an instance of gross neglect of duty.

However, Licensee's comment to R about strengthening his lips for his "boyfriend" and the later comments that R was a "loser" because he was no longer in the band both clearly violate the standard. Even if, as Licensee claims, the "loser" comment was made more generically about all of those "losers" who are no longer in the band, the comment was inappropriate. In fact, Licensee's earlier inappropriate comments to R may have caused him to be one who no longer wanted to be in the band. Licensee committed gross neglect of duty in this instance.

² The citation in the Notice is incomplete but is sufficiently clear to identify this rule and subsection.

The "pussy" comment. Approximately a week before the comments to R, another student, S, failed to bring his baritone saxophone to school because the handle on the large case had broken. The student reported later that Licensee called him a "pussy" in class. Licensee did not dispute making the comment, although he testified that he actually said that S had "pussitis," which he defined as the condition of being a "pussy." The distinction between the two words is negligible, and the use of either word was inappropriate.

Under the same rules quoted above, Licensee's comments to S constituted gross neglect of duty. Whether the term is understood to refer to S as being weak and/or effeminate, or whether it was used in reference to female sexuality, it was a comment that was out of place from a teacher to a student.

Driving K home. The Commission contends that Licensee drove K home from school in his vehicle, thereby disregarding lawful district policies and violating OAR 584-020-0025(2)(e). However, although Licensee admits driving K home on a few occasions, Superintendent Stoops testified that it was not against district policy to drive a student home from school. Moreover, although the police and the district assumed that Licensee and K were alone in the vehicle when certain comments were made, the evidence establishes that at least two other students were in the car when K was driven home. One of the other students was an exchange student living with Licensee, and was present through the entirety of the trips in the car.

The Commission has failed to prove that Licensee violated district policy by giving K rides home from school, and has failed to prove gross neglect of duty in this instance.

Offering K a place to stay during spring break. Similarly, the Commission has failed to show that Licensee committed gross neglect of duty by offering K a place to stay when her family went to California during spring break. K had a relationship with Licensee's family, because she was taking piano lessons from Licensee's wife, and K wanted to stay for a band concert rather than go to California.

As will be shown below, Licensee made some later comments to K that concerned K's mother, causing her (in hindsight) to question whether Licensee's offer to watch over K during spring break was an effort to groom her or take advantage of her.

K's mother's concern was not unreasonable, considering the comments Licensee later made to K, but the facts do not bear out any ulterior motive on Licensee's part for the offer of a place to stay during spring break. The Commission has shown no violation of professional judgment or a violation of professional boundaries by Licensee's offer to have K spend spring break with his family.

Commenting that K was pretty. The Commission contends that Licensee told K that she was pretty, thereby violating appropriate boundaries, and that Licensee was not truthful to the investigator about making the comment.

Licensee did make the “pretty” comment to K, but in a context that made it less of a boundary violation than the Commission contended. When discussing K’s pending transfer to Silverton High School, Licensee told K that the band needed the “popular” and “pretty” band members, getting away from the cliché of the “band geek.” There was no testimony from any other source to contradict Licensee’s explanation of the circumstances, and it is unclear whether such a comment constituted a boundary violation.

What is clear is that Licensee lied about the comment at the beginning of his interview with the Commission investigator.³ The Commission had a right to expect truthful answers from Licensee and, at least initially, he did not provide truthful answers. Later in the interview, he admitted that he had made the comments (including the one about taking K to his house, discussed below). (Ex. A13). At hearing, when asked about why he lied, Licensee testified he was “trying to get away with it.” (Test. of Licensee). Licensee’s fabrications violated OAR 584-020-0040(4)(c), which states:

Grounds for Disciplinary Action

* * * * *

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

* * * * *

(c) Knowing falsification of any document or *knowing misrepresentation directly related to licensure, employment, or professional duties*[.]

(Emphasis added). Licensee’s misrepresentations, in the context of an investigation about licensure and professional duties, were a violation of this rule. This misrepresentation charge is the most serious charge against Licensee, and the Commission has established that he committed gross neglect of duty.

Offering to take K to his house. As with the previous comment, Licensee initially denied making this comment but later retracted his denial. Licensee told K that he wished he could take her to his house, but his wife and kids were there. In any context, Licensee’s comment was a boundary violation, crossing the line of appropriateness for a conversation between a teacher and a student.⁴ Licensee again violated OAR 584-020-0035(1)(c)(D) by committing gross neglect of duty.

However, the violation was in the inappropriate comment and the attempted cover-up of the incident. The Commission has failed to prove that there was any actual sexual or grooming

³ It was Licensee who stated in the hearing that he had “lied” to the investigator.

⁴ The record indicates that Licensee did not know that K had been previously sexually abused, and (as will be seen), I do not conclude that any sexual “grooming” was occurring. However, K’s previous experiences point out that even seemingly innocent (albeit foolish) comments can cause harm.

conduct involved in the comment. Licensee made the comment in a vehicle with three students, including K, inside. As Licensee pointed out, if he was really seeking a sexual or grooming relationship with K, he would have made the comment in private. Even K indicated that he thought Licensee was joking around.

Once again, the more serious issue under this charge was Licensee's misrepresentations to the investigator. For the reasons set forth above, I find an additional violation of the rule.

Comments to the Investigator. Licensee told the investigator that he often "crosses the line" in his teaching style, trying to reach his students in ways that he knows violate the district's policies. The Commission contends that Licensee's attitude constituted a boundary violation, and further contended that Licensee agreed that he had been "grooming" K. The Commission is partly correct and partly incorrect.

Licensee's teaching style, as he described it to the investigator, was different than other teachers:

I'm always...I've always been on the edge of doing things that are...I've crossed the line quite often. I get results from the kids by building relationships with them and being...treating...you know, being like a normal person to them. And it's not; it's not the right way to teach kids. But it's worked for me. It's the way I've always done it. And it's something I am changing but it's...I don't know.

(Ex. A13 at 7). This comment, perhaps relatively innocuous in the abstract, has been shown by the other events in this case to be more than just a philosophy for Licensee. The comments constituted gross neglect of duty.

However, the evidence does not support the charge of grooming, or even of Licensee admitting to grooming. His comments show that Licensee understood, in retrospect, that his actions could look like grooming. (*Id.* at 9). However, as he testified, that was never his intention.

The evidence indicates that Licensee's tendency to "cross the line" constitutes gross neglect of duty, but it does not indicate that he was actually grooming, or attempting to groom, K or any other student.

Incidents leading to reprimand. The Commission contends that the incidents leading to the five letters of reprimand or directive that Licensee received from the Mt. Angel School District all constitute gross neglect of duty. In my review of the evidence provided about the underlying incidents, I differentiate between events that were disciplinary but not necessarily arising to the level of gross neglect of duty.⁵

As a result, I conclude that the Letter of Directive of December 5, 2007 does not, on this record, establish that Licensee committed gross neglect of duty by writing a letter to parents.

⁵ The use of the adjective "gross" implies that there can be episodes of neglect of duty that are not "gross" in nature.

The letter is not in evidence, so I am not able to determine what was said that the principal found "most alarming" in Licensee's letter. Accordingly, the event did not constitute gross neglect of duty.

However, the other four episodes that led to Letters of Reprimand were of a serious enough nature that I must agree with the Commission that they constituted gross neglect of duty. Two episodes, in 2009 and 2010, involved Licensee throwing a book in anger and frustration. One involved inappropriate comments to band members about the bass drum player. The final one involved Licensee's poor choice in holding certain students in the locker room because he believed they knew who had stolen his keys.

Of the four episodes, the two involving thrown books are the most concerning. As Brazelton testified, she strongly suggested non-renewal of his teaching contract because she did not want to have to explain to a parent when Licensee injured a student with a thrown book.

Sanctions. In this case, the Commission seeks to revoke Licensee's teaching license for the multiple episodes of gross neglect of duty. Although the Commission has not established that all of its allegations against Licensee constituted gross neglect of duty, it has provided sufficient information to justify revocation in this case.

It is evident that Licensee has much to offer as an educator. Superintendent Stoops commended Licensee's passion and intensity for leading school bands, and it was evident to me as well. However, if there is a "dark side" to that passion and intensity, it is in the form of temper and a biting wit. Most of the charges against Licensee stem from either expressions of anger or from making comments that were grossly inappropriate. Because the record also includes instances of misrepresentation to the Commission's investigator, as this record does, revocation is appropriate.

ORDER

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

That the April 8, 2011 Notice be MODIFIED to find that certain charges mentioned above be removed, and that it be otherwise AFFIRMED. Licensee's teaching license should be revoked.

Rick Barber

Administrative Law Judge
Office of Administrative Hearings

EXCEPTIONS

The proposed order is the Administrative Law Judge's recommendation to the Teacher Standards and Practices Commission. If you disagree with any part of this proposed order, you

may file written objections, called "exceptions," to the proposed order and present written argument in support of your exceptions. Written argument and exceptions must be filed **within fourteen (14) days after mailing of the proposed order** with the:

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

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

CERTIFICATE OF MAILING

On April 30, 2012 I mailed the foregoing Proposed Order issued on this date in OAH Case No. 1102508.

By: First Class and Certified Mail

Certified Mail Receipt # 7010 2780 0000 2132 8960

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