





## ISSUES

1. Whether there are any genuine issues as to any material facts and, if not, whether the Commission is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.
2. Whether Respondent engaged in gross neglect of duty. ORS 342.175(1)(b); OAR 584-020-0040(4)(n).
3. If so, whether Respondent should receive a public reprimand. ORS 342.175(1)(b).

## DOCUMENTS CONSIDERED

The following documents were reviewed and considered in this matter: The Commission's MSD, Exhibits 1 through 6, Respondent's Response, the Commission's Reply, and the pleadings.

## FINDINGS OF FACT

### *Background*

1. Respondent has been licensed with the Commission since July 1, 1974. (MSD at 2; Notice of Opportunity for Hearing at 1.)
2. Respondent previously held a Standard Teaching License, with endorsements in Basic Technology Education (018) and Standard Social Studies (020), valid from September 5, 2011, through September 4, 2016. (Ex. 1.)
3. In February 2015, Respondent was employed as a high school teacher by the Sisters School District (the District) and the High Desert Education Service District (HDES<sup>1</sup>).<sup>1</sup> (Exs. 2, 6.)

### *Respondent's behavior*

4. On February 12, 2015, Sisters High School (SHS) Principal Joe Hosang notified Deschutes County Deputy Neil Mackey, the School Resource Deputy for the District, that one of the teachers at SHS, Respondent, had reportedly slapped a student, AM, on the back of her head while in class that morning.<sup>2</sup>

On February 12, 2015, Deputy Mackey interviewed AM with her father, MM, present. AM reported that she was in her second period class (9:15 am to 10:15 am) that morning, taught by Respondent, and was working on a project and talking with her cousin, CM. AM reported

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<sup>1</sup> HDES<sup>1</sup> is a publicly-funded agency that partners with local school districts to provide education services at a regional level. The services range from business, legal and administrative support to school improvement efforts and special education programs. See, [www.hdesd.org](http://www.hdesd.org).

<sup>2</sup> AM's father filed the complaint with the District. (Exs. 3, 4.)

that she was also listening to music with one earphone in. AM reported that Respondent came up behind her and may have said something, but she was not sure. AM reported that she took her earphone out and that Respondent then slapped her on the back of her head with what she thought was an open hand. AM reported that the slap was not hard enough to hurt, but was done with enough force to move her head a little.<sup>3</sup> AM reported that Respondent said something like, "Just because you're a girl doesn't mean you can't be slapped..." or words to that effect. AM reported that she was upset over this, so she closed her computer down and left the classroom. AM reported that she walked around for a few minutes to calm down, and then returned to the classroom and texted her father. Deputy Mackey looked at MM's text messages, which confirmed that at 9:45 am, MM received a text from AM that said, "Oh, I didn't get in trouble. But last time I did I was just mad. Then my teacher just like smacked me not hard but still..." MM told the deputy that upon receiving the text, he left work and drove to SHS to see what was going on.

On February 12, 2015, Deputy Mackey interviewed CM, who reported that she was in the second period class with AM. CM reported that she was working to the right of AM on her own project. CM reported that Respondent was in the front of the classroom addressing the class, and that he got up and walked behind both of them. CM reported that she thought AM had one headphone in, and that AM was talking to her. CM reported that Respondent slapped AM on the back of the head and said something like, "Girls get dumb slaps too..." or words to that effect. CM reported that Respondent then walked off and was talking to the other two volunteer instructors in the classroom. CM reported that AM did not say anything but shut down her computer and walked out of the classroom. CM reported that AM returned a few minutes later.

On February 12, 2015, Deputy Mackey interviewed Respondent, who reported that he did not slap AM on the back of the head. Respondent reported that AM had been continually texting on her phone during class, and that he had issued several warnings, both to the class in general, and to AM specifically, not to text while in class and to do their work. Respondent reported that at one point he did walk up behind AM, who had one earphone in. Respondent reported that as he approached her he again reminded the class that they needed to stay on task and do their work, not text on their phones or use their computers to access social media. Respondent reported that he "brushed" the back of AM's head and said, "Just because you're a girl doesn't mean you can't get a dope slap..." or words to that effect.<sup>4</sup> Respondent reported that he brushed the back of AM's head and made his comment in an attempt to convince AM that she needed to do her work, and to not be texting, talking or accessing social media on the open computer she was using. Respondent reported that it was an "affectionate reminder" for AM to do her work. Respondent reported that AM left the classroom shortly thereafter and he did not see her return. Respondent reported that he has used the same management style in the past with other students and that there has never been any prior issues in doing so. (Ex. 4.)

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<sup>3</sup> AM told a friend and classmate, JK, that Respondent had "tapped" her on the back of her head. (Ex. 4 at 6.)

<sup>4</sup> Deputy Mackey also interviewed two volunteer teachers that were present in the classroom. Neither teacher saw the physical contact between Respondent and AM. (Ex. 4 at 7, 10.)

5. Respondent was subsequently placed on paid administrative leave pending the District's investigation. (Exs. 5, 6.)

6. On February 20, 2015, Jayel Hayden, the Director of Human Resources with HDESD, interviewed Respondent regarding the incident. (Exs. 2, 3.)

7. On March 6, 2015, Mr. Hayden issued a Written Reprimand and Directive to Respondent, finding that Respondent's conduct had violated the District's policies and obligations by failing to demonstrate good judgment and by failing to treat students respectfully and appropriately. Mr. Hayden also directed Respondent to treat students appropriately and respectfully, and to not physically touch students unless for their safety or the safety of others. Mr. Hayden warned Respondent that any failure to follow the directive may lead to discipline up to and including dismissal. (Ex. 3.) In the letter of reprimand, Mr. Hayden opined, in part:

On February 12, 2015, a parent filed a complaint with the district against you. They alleged that you slapped the student on the back of the head and made the statement, "Just because you are a girl does not mean you cannot get a dope slap."

During our meeting on February 20, 2015, you confirmed that you *patted* the student with your open hand on the back of the head and made the comment as stated above. The District has concluded that you have failed to demonstrate the behavior and good judgment we expect from you as a school district employee and that is in keeping the District's obligations to treat students respectfully and appropriately.

(Ex. 3; emphasis added.) Respondent signed the letter on March 20, 2015. (*Id.*)

8. On March 19, 2015, Jim Golden, the Superintendent of the District, notified the Commission of Respondent's conduct. (Ex. 2.)

9. No criminal charges were filed against Respondent. (Ex. 4 at 6.)

#### *Commission investigation*

10. On April 8, 2016, Burney Krauger, investigator with the Commission, was assigned to conduct a follow-up investigation. (Ex. 5.)

11. On July 7, 2016, Mr. Krauger interviewed Respondent regarding the incident. Respondent reported that AM was lying on the floor talking to a friend, and using her cell phone. Respondent reported that he approached her as she was lying on the floor, bent down behind her and in a low voice told her to "Knock it off." Respondent reported that AM looked at him in an angry and disgusted look. Respondent reported that he said "I mean it, put it (phone) away, get on task." Respondent reported that as he was backing away from her, he told her "Just because you're a girl doesn't mean you can't get a dope slap," and he "brushed" the back of her head

with his hand.” (Exs. 5, 6.)

12. Respondent “brushed” the back of AM’s head to get her attention and remind her to pay attention in class.<sup>5</sup> Respondent believes that his “gentle reminder” went almost unnoticed by other students in the class. (Ex. 6.)

### CONCLUSIONS OF LAW

1. There are no genuine issues as to any material facts and the Commission is entitled to a favorable ruling as a matter of law.
2. Respondent engaged in gross neglect of duty.
3. Respondent should receive a public reprimand.

### OPINION

#### *1. Standard of Review for Motion for Summary Determination*

The Commission contends that its MSD should be granted. The Commission contends that there are no genuine issues of material fact that remain to be determined and that it is entitled to a ruling as a matter of law. Respondent contends to the contrary.

OAR 137-003-0580 addresses motions for summary determination. It provides, in relevant part:

- (6) The administrative law judge shall grant the motion for a summary determination if:
  - (a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
  - (b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.
- (7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.
- (8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case

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<sup>5</sup> A presentation by another student was taking place in the classroom at the time of the incident. (Ex. 6.)

hearing.

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(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling \* \* \*.

As indicated above, I review the evidence in the manner most favorable to Respondent, the nonmoving party. In doing so, I find that there are no genuine issues of material fact that remain to be determined and the Commission is entitled to a ruling as a matter of law.

2. *Gross neglect of duty*

The Commission contends that Respondent engaged in gross neglect of duty. Respondent contends to the contrary. I agree with the Commission.

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

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

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(b) Gross neglect of duty;

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

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

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(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 part:

The educator demonstrates a commitment to:

- (1) Recognize the worth and dignity of all persons and respect for each individual;

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- (5) Use professional judgment;

OAR 584-020-0015 is titled "Curriculum and Instruction" and provides, in part:

- (2) The competent teacher demonstrates:

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- (e) Skill in the selection and use of teaching techniques conducive to student learning.

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

- (2) The competent teacher demonstrates skills in:

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

As indicated above, gross neglect of duty is any serious and material inattention to or breach of professional responsibilities, including substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030.

On February 12, 2015, student AM was being disruptive in class by using her cell phone and talking to another student. In response to AM's behavior, Respondent approached AM from behind, bent down and told her to "Knock it off." When AM looked at Respondent, purportedly in anger and disgust, Respondent said "I mean it, put it away, get on task." Respondent then "brushed" the back of AM's head with his open hand and told AM, "Just because you're a girl doesn't mean you can't get a dope slap." AM was upset by Respondent's actions and left the classroom.

The District investigated Respondent's conduct and on February 20, 2015, issued a written reprimand and directive to Respondent, finding that Respondent's conduct had violated the District's policies and obligations by failing to demonstrate good judgment and by failing to treat students respectfully and appropriately. The District also directed Respondent to not physically touch students unless for their safety or the safety of others, and to treat students appropriately and respectfully.

### *Dignity and respect*

Pursuant to OAR 584-020-0010(1), the competent educator is required to demonstrate a commitment to recognize the worth and dignity of all persons and respect for each individual.

As stated above, on February 12, 2015, AM was being disruptive in class by using her cell phone and talking to another student. In order to get AM's attention and remind her to pay attention in class, Respondent "brushed" the back of AM's head with his open hand and told AM "Just because you're a girl doesn't mean you can't get a dope slap."

"Dope" is defined as "a dull-witted, obtuse, or stupid person: Nitwit. *Webster's Third New Int'l Dictionary* 674 (unabridged ed 2002).

Respondent's statement to AM singled her out based on her gender, and implied that AM was a stupid person deserving of a "dope" slap. Respondent's statement was inappropriate and disrespectful to AM. Respondent's statement failed to recognize the worth and dignity of AM.

Additionally, Respondent's actions in physically touching AM, whether by "brushing," "patting," "tapping," or "slapping" the back of AM's head to get her attention was inappropriate physical contact and was disrespectful to AM. Respondent, as a learned educator, had more appropriate, respectful, and effective teaching methods at his disposal to obtain and redirect AM's attention in the classroom. Respondent's actions failed to recognize the worth and dignity of AM.

I find that Respondent violated OAR 584-020-0010(1). I further find that Respondent's actions were a substantial deviation from professional standards of competency.

### *Professional judgment*

Pursuant to OAR 584-020-0010(5), the competent educator is required to demonstrate a commitment to use professional judgment.

As indicated above, Respondent's conduct singled AM out based on her gender and implied that AM was a stupid person, deserving a dope slap. Respondent's conduct was inappropriate and disrespectful to AM. In addition, Respondent's conduct caused AM to become upset and leave the classroom. Respondent's conduct exhibited a significant lapse in judgment as an educator. Respondent failed to use professional judgment in dealing with AM's disruptive behavior in class.

I find that Respondent violated OAR 584-020-0010(5). I further find that Respondent's actions were a substantial deviation from professional standards of competency.

### *Teaching techniques*

Pursuant to OAR 584-020-0015(2)(e), the competent educator is required to demonstrate skill in the selection and use of teaching techniques conducive to student learning.

As previously stated, in order to get AM's attention and remind her to pay attention in class, Respondent "brushed" the back of AM's head with his open hand and told AM "Just because you're a girl doesn't mean you can't get a dope slap."

Respondent's teaching methods were inappropriate and disrespectful to AM. Moreover, Respondent's teaching methods upset AM, causing her to leave the classroom and contact her father. Respondent's teaching methods were not conducive to correcting AM's behavior. Rather, Respondent's teaching methods aggravated the situation.

Respondent, as a learned educator, had more appropriate and effective teaching methods at his disposal to obtain and redirect AM's attention. Respondent failed to demonstrate skill in the selection and use of teaching techniques conducive to student learning.

I find that Respondent violated OAR 584-020-0015(2)(e). I further find that Respondent's actions were a substantial deviation from professional standards of competency.

*Using district rules and regulations*

Pursuant to OAR 584-020-0025(2)(e), the competent teacher demonstrates skills in using district lawful and reasonable rules and regulations.

On February 20, 2015, following its investigation, the District issued a written reprimand and directive to Respondent, finding that Respondent's conduct had violated the District's policies and obligations by failing to demonstrate good judgment and by failing to treat students respectfully and appropriately. The District also directed Respondent to not physically touch students unless for their safety or the safety of others, and to treat students appropriately and respectfully.

By violating the District's policies and obligations, (failing to treat AM with respect and failing to demonstrate good judgment in his conduct with AM), Respondent failed to demonstrate skill in using the District's lawful and reasonable rules and regulations.

I find that Respondent violated OAR 584-020-0025(2)(e). I further find that Respondent's actions were a substantial deviation from professional standards of competency.

Therefore, the evidence in the record establishes that on February 12, 2015, Respondent substantially deviated from the professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030. As such, Respondent engaged in gross neglect of duty, in violation of OAR 584-020-0040(4)(n) and ORS 342.175(1)(b).

Respondent contends that the Commission failed to prove that his actions were a substantial deviation from professional standards of competency. I disagree.

As determined previously, Respondent singled AM out based on her gender and implied that AM was a stupid person, deserving a dope slap, which is a substantial deviation from the

professional standards of competency. Respondent also “brushed,” “patted,” or “tapped” the back of AM’s head to get her attention, which is inappropriate physical contact and a substantial deviation from the professional standards of competency. Consequently, Respondent’s argument is without merit.

### 3. Sanction

The Commission contends that Respondent should receive a public reprimand. Respondent contends to the contrary. I agree with the Commission.

ORS 342.175 provides:

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

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(b) Gross neglect of duty;

OAR 584-020-0045 is titled “Factors for Imposing Disciplinary Sanctions” and provides:

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

- (1) If the misconduct or violation is an isolated occurrence, part of a continuing pattern, or one of a series of incidents;
- (2) The likelihood of a recurrence of the misconduct or violation;
- (3) The educator’s past performance;
- (4) The extent, severity, and imminence of any danger to students, other educators, or the public;
- (5) If the misconduct was open and notorious or had negative effects on the public image of the school;
- (6) The educator’s state of mind at the time of the misconduct and

afterwards;

(7) The danger that students will imitate the educator's behaviors or use it as a model;

(8) The age and level of maturity of the students served by the educator;

(9) Any extenuating circumstances or other factors bearing on the appropriate nature of a disciplinary sanction; or

(10) To deter similar misconduct by the educator or other educators.

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

As determined previously, Respondent engaged in gross neglect of duty on February 12, 2015. The Commission seeks to impose a public reprimand. A review of the record establishes that the proposed sanction is appropriate and within the Commission's discretionary authority. I find that Respondent's actions warrant the proposed sanction in this matter.

Accordingly, the Commission's MSD is granted and the hearing scheduled for April 19, 2017 is cancelled.

### **RULING**

The Commission's Motion for Summary Determination is GRANTED.

The hearing scheduled for April 19, 2017 is cancelled.

### **ORDER**

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

The Notice of Opportunity for Hearing issued on September 27, 2016, is AFFIRMED.

**Dove L. Gutman**

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Senior Administrative Law Judge  
Office of Administrative Hearings

## EXCEPTIONS

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

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

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