

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

IN THE MATTER OF:) **FINAL ORDER ADOPTING RULING**
) **ON MOTION FOR SUMMARY**
) **DETERMINATION AND PROPOSED**
) **ORDER**

LUZ GONZALEZ-MOORE,)
Respondent) OAH Case No.: 2016-ABC-00016¹

This matter came before the Teacher Standards and Practices Commission during its meeting of January 26, 2017 to consider the Ruling on Motion for Summary Determination and Proposed Order issued by Administrative Law Judge Dove Gutman on January 9, 2017. Respondent did not file exceptions to the ruling and proposed order.

After considering the record, the Commission adopts the Ruling on Motion for Summary Determination and Proposed Order as the Final Order as set forth below, and imposes a three-month suspension of Respondent's teaching license; three years probation, and a requirement to complete a cultural inclusion/racial micro-aggressions course as discussed below.

HISTORY OF THE CASE

On May 31, 2016, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing to Luz Gonzalez-Moore (Respondent). On June 20, 2016, Respondent, through counsel, requested a contested case hearing.

On August 11, 2016, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Joe Allen to preside at hearing.

On September 20, 2016, ALJ Allen convened a prehearing telephone conference. Attorney Jennifer Sung represented Respondent. Senior Assistant Attorney General Raul Ramirez represented the Commission. Jeff Van Laanen appeared on behalf of the Commission. During the prehearing, ALJ Allen set dates for the parties to file Motions for Summary Determination (November 9, 2016), and Responses (November 23, 2016). ALJ Allen also scheduled the contested case hearing for January 17, 2017 through January 19, 2017.

On October 31, 2016, Ms. Sung withdrew as attorney of record for Respondent.

On November 9, 2016, Mr. Ramirez filed the Commission's Motion for Summary Determination (MSD) and Exhibits 1 through 7. On November 28, 2016, ALJ Allen issued a letter to Respondent notifying her of the requirements for filing a Response to the Commission's

¹ The new case number is a result of the case being placed into the case management system of the OAH. The former case number was 1604683.

MSD, and informing Respondent that she had until December 12, 2016, to file her Response. Respondent did not file a Response.

On January 4, 2017, the case was reassigned to Senior ALJ Dove L. Gutman for ruling on the MSD. ALJ Gutman closed the record and took the matter under advisement.

ISSUES

1. Whether there are genuine issues as to any material fact, and if not, whether the Commission is entitled to a ruling as a matter of law. OAR 137-003-0580.
2. Whether, on or about March 2014 through May 2014, Respondent engaged in gross neglect of duty. ORS 342.175(1), OAR 584-020-0040(4)(n).
3. If so, whether Respondent should be suspended for three months, placed on probation for three years, and be required to take a course or class in cultural inclusion and racial micro-aggressions.

DOCUMENTS CONSIDERED

The following documents were reviewed and considered: The Commission's MSD, Exhibits 1 through 7,² and the pleadings.

LEGAL STANDARD FOR SUMMARY DETERMINATION

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

- (1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.
- (2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.
- (3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

² Exhibit 5 also includes attachments A through D.

(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 hearing.

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

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

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

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

137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

FINDINGS OF FACT

Background

1. Respondent has been licensed by the Commission since April 18, 2000. (Ex. 1.) Respondent currently holds an Initial II Teaching License with endorsements in the following:

- Early Childhood, Elementary: English for Speakers of Other Languages/Bilingual;
- Middle Level: Multiple Subjects; and
- Early Childhood, Elementary: Multiple Subjects Self-Contained.

(Ex. 2.)

2. During the 2013-2014 school year, Respondent was employed as a teacher at Richmond Elementary School through the Salem-Keizer School District. (Ex. 5.)

3. In March and April 2014, students LM, W, and NF were students in Respondent's third grade class. At that time, student LM was behind in her reading level and student NF was a special education student. (Ex. 5, Attachment A, Attachment B, Ex. 6.)

Behavior

4. On or about March 10, 2014, during Respondent's third grade class, student LM was purportedly talking instead of doing her assignment. In front of the class, Respondent called student LM a "Chatty Cathy." Respondent also told LM that she was concerned about LM's reading level, that it was going to be difficult for LM to catch up, and that it was more likely that LM would drop out of school. Respondent told LM that middle school and high school would be more difficult for LM, that LM would feel dumb and not like school, and that someone would come along and make LM feel more loved and LM would end up being a "baby mama." The comments upset student LM. (Ex. 5, Attachment A, Ex. 6.) After class, student LM and/or her parents reported the statements to Lizi Aguilar-Nelson, the Principal of Richmond Elementary School. Ms. Aguilar-Nelson initiated an investigation. (Exs. 4, 5, 6.)

5. On or about March 10, 2014, during Respondent's third grade class, student W was purportedly using sign language during independent reading time. In front of the class, Respondent told student W to stop whatever sign language he was doing. Respondent also told W that if he continued to interrupt, she would stop reading to the class. Students in the class responded by calling out W's name, thereby making W upset. (Ex. 5, Attachment A, Ex. 6.)

6. On or about March 10, 2014, Respondent told her third grade class, "Why do you come to school if you are not ready," and "You guys come to school to learn not for me to babysit you." Some students from Respondent's class reported the statements to Ms. Aguilar-Nelson. (Ex. 5, Attachment A, Ex. 6.)

7. On March 13, 2014, shortly before school lunch ended, Ms. Aguilar-Nelson notified Respondent that she was investigating various comments that Respondent had made to her students and her third grade class. Ms. Aguilar-Nelson also notified Respondent that she needed to attend an investigatory meeting the following day at 1:00 p.m. (Ex. 5, Attachment A, Ex. 6.)

Following lunch, Respondent became upset about the pending investigation, stepped out of her classroom into the hallway and telephoned her union representative. Students and/or others overheard Respondent telling someone on the phone that she was afraid she was going to be fired. Some students became upset. (Ex. 5, Attachment A, Ex. 6.) Respondent subsequently notified parents and/or others about the investigatory meeting involving her and the principal that was scheduled the following day. Some parents became upset. (Ex. 5, Attachment A.)

8. On March 14, 2014, sometime prior to 1:00 p.m., Ms. Aguilar-Nelson received several phone calls from concerned parents regarding whether Respondent was going to be fired at the investigatory meeting scheduled that day. Ms. Aguilar-Nelson also had several students and staff members ask her if Respondent was going to be fired. (Ex. 5, Attachment A at 3.)

9. On March 14, 2014, at 1:00 p.m., Ms. Aguilar-Nelson interviewed Respondent regarding her behavior. During the interview, Respondent admitted to making the statements to students LM and W. Respondent also admitted to telling some parents about the meeting that was scheduled that day. (Ex. 5, Attachment A.)

10. On April 8, 2014, Ms. Aguilar-Nelson issued a letter of reprimand to Respondent, finding that Respondent had violated Administrative Policy INS-A003, "*Harassment, Intimidation or Bullying: Any act that substantially interferes with a student's educational benefits, opportunities or performance...Creating a hostile educational environment, including interfering with the psychological well-being of a student.*" Ms. Aguilar-Nelson also found that Respondent had violated District Policy HUM-A0021, "*Duties of Employees and District Teaching Standards.*" (Ex. 5, Attachment C at 1.) In the letter of reprimand, Ms. Aguilar-Nelson opined, in part:

As you know, I received complaints from students and parents who stated that they found your interactions with them to be harassing, and intimidating. During our investigation, we found many instances where you engaged in a pattern of harassing, intimidating and demeaning your students. Exhibiting an overall lack of professional behavior and failing to create an environment conducive to learning.

In the future you are directed to:

1. Consistently exercise good professional judgment concerning the manner in which you interact with students. Specifically, you are directed to utilize language that is professional, appropriate, and respectful when working with students.

2. Establish and maintain a positive classroom environment through acceptable classroom management techniques.

3. You are cautioned not to discuss this matter with or retaliate against students, parents or your supervisor in any way.

I encourage you to take this opportunity to modify your professional behavior. Please be aware that if these directives are not followed, and/or if there are any additional incidents of this nature, you will be subject to further disciplinary action, up to and including termination of your employment.

(Ex. 5, Attachment C at 1-2.) Respondent signed the letter on April 9, 2014. (Ex. 5, Attachment C at 2.)

11. On or about April 29, 2014, during third grade class, student NF (special education student) asked Respondent if he could go to the bathroom. In front of the class, Respondent replied, "Do you need to change your diaper?" The entire class started laughing, making NF feel upset and sad. (Ex. 5, Attachment B at 1.) The following day, student NF did not go to the bathroom all day long because he was scared. (Ex. 5, Attachment B at 2.)

12. On April 30, 2014, the mother of student NF reported Respondent's behavior to Ms. Aguilar-Nelson. (*Id.*)

13. On May 1, 2014, Ms. Aguilar-Nelson spoke to several students in Respondent's third grade class, including student M. Student M confirmed to Ms. Aguilar-Nelson that Respondent asked student NF, "Do you need to change your diaper?" (Ex. 5, Attachment B at 1-2.)

14. On May 1, 2014, at the end of the school day, Respondent told student NF, "Thank you [NF]! Now they are really going to fire me because of you. Good job, good job." (Ex. 5, Attachment B at 2.)

15. On May 8, 2014, Ms. Aguilar-Nelson interviewed Respondent regarding the statements made to student NF. Following the interview, Ms. Aguilar-Nelson issued a Letter of Reprimand to Respondent, finding that Respondent had violated District Policy HUM-A021, "*Each employee will perform duties in order that the school operation may be conducive to effective learning and will use reasonable precaution to ensure a safe, pleasant and healthful environment for pupils and employees.*" Ms. Aguilar-Nelson also found that the violation was compounded by the fact that Respondent had been verbally warned and reprimanded previously for similar behavior. (Ex. 5, Attachment D at 1.) In the letter of reprimand, Ms. Aguilar-Nelson opined, in part:

As you are aware, a parent shared a concern about her son [NF], a student in your class. She explained that he was very embarrassed when he asked to use the rest room and you asked him if he needed

to change his diaper. You made this comment in front of other students causing additional embarrassment to the point that the student was afraid to ask for permission to use the restroom the following day. Then when you stated to [NF]: "thank you [NF], they are really going to fire me now," [y]ou made him feel responsible for your poor behavior and made him feel "very sad."

I find that while you may not have intended your comments to be hurtful to the student, you exercised poor judgment and exhibited unprofessional conduct in your communications. I would warn you about using humor, sarcasm, irony in your dealing with students. Young people don't understand this type of communication and they think you are serious. This is an inappropriate form of communication for this age group of children. I would encourage you to apologize to [NF] for what you said and how it made him feel. In addition, as we talked about you are not to discuss this incident with any student, beyond an apology to [NF], or staff.

I am encouraging you to register and participate in an Envoy training session. You can find that information on the Academy of Teaching and Learning on the district web page.

You have a professional responsibility to demonstrate the highest standards of behavior, exercise professional judgment and act in a courteous and sensitive manner when interacting with students. Therefore, I am issuing the following directives:

1. You are to consistently exercise good professional judgment concerning the manner in which you interact with students. You will treat all students with respect and maintain a professional demeanor at all times. Specifically, you are directed to refrain from using demeaning or derogatory language and humiliating students in any manner.
2. You are cautioned not to engage in any retaliation against the student or staff members involved in this incident and the reporting of the incident.

If these directives are not followed and if there are any additional incidents of this nature, you will be subject to further disciplinary action, up to and including dismissal.

(Ex. 5, Attachment D at 1-2.) Respondent signed the letter of reprimand on May 12, 2014. (Ex. 5, Attachment D at 2.)

Additional information

16. On July 22, 2014, Respondent resigned from her teaching position at Richmond Elementary School. (Ex. 7.)

17. On January 28, 2016, Respondent and her attorney met with Paul Cimino, Investigator with the Commission. During the recorded interview, Respondent admitted to, among other things, making the diaper statement to student NF. Respondent also admitted to using “baby talk” with student NF and calling him “Nay, Nay.” (Ex. 6 at 2-3.)

CONCLUSIONS OF LAW

1. There are no genuine issues as to any material fact and the Commission is entitled to a ruling as a matter of law.
2. Respondent engaged in gross neglect of duty.
3. Respondent should be suspended for three months, placed on probation for three years, and be required to take a course or class in cultural inclusion and racial micro-aggressions.

OPINION

The record establishes that there are no genuine issues as to any material fact and the Commission is entitled to a ruling as a matter of law.

Violation

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

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

(b) Gross neglect of duty[.]

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

(4) Gross neglect of duty is any serious and material inattention to

or breach of professional responsibilities. The following may be admissible as evidence of gross neglect of duty. Consideration may include but is not limited to:

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

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

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 and substantial deviation from professional standards of ethics set forth in OAR 584-020-0035.

The Commission finds that Respondent engaged in gross neglect of duty by failing to act as a competent and ethical educator.

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

The educator demonstrates a commitment to:

(5) Use professional judgment[.]

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

(2) The competent teacher demonstrates skills in:

(a) Establishing and maintaining classroom management that is conducive to learning;

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

OAR 584-020-0030 is titled "Human Relations and Communications" and provides, in pertinent part:

(2) The competent teacher demonstrates:

(b) Skill in communicating with administrators, students, staff, parents, and other patrons.

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

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

Pursuant to the authority cited above, the competent educator demonstrates a commitment to use professional judgment, skills in establishing and maintaining classroom management that is conducive to learning, skills in using district rules and regulations, and skills in communicating with administrators, students, staff, parents, and other patrons.

In addition, the ethical educator considers the needs of the students, the district, and the profession, and maintains an appropriate professional student-teacher relationship by honoring appropriate adult boundaries with students in conduct and conversations at all times.

The evidence in this matter is uncontroverted. In March 2014 through May 2014, Respondent made numerous statements to her third grade students that were disrespectful, demeaning, humiliating, insensitive and/or derogatory in nature. Respondent made those statements in the classroom in front of the students' peers.

In addition on March 13, 2014, Respondent had a phone conversation outside of her classroom that was overheard by some of her students. Respondent told the person on the phone that she was afraid she was going to be fired. Respondent's comments upset several students. Following the phone conversation, Respondent notified several parents and/or others about the pending investigatory meeting scheduled the following day, causing those individuals to become upset and concerned that Respondent was going to be fired.

Respondent's conduct violated the district's policies on harassment, intimidation,

bullying, and creating a hostile education environment not conducive to learning. Respondent's conduct also violated the district's policies on the duties of employees and teaching standards.

The Commission finds that Respondent failed to use professional judgment, failed to recognize the worth and dignity of all persons, failed to respect each individual, failed to demonstrate skills establishing and maintaining classroom management that is conducive to learning, failed to honor appropriate adult boundaries with students in conduct and conversation at all times, failed to demonstrate skills in using district policies and regulations, and failed to demonstrate skills in communicating with students, staff, parents and others. I further find that Respondent's actions involved a substantial deviation from the professional standards of competency and ethics.

Therefore, the evidence in the record establishes that in March 2014 through May 2014, Respondent engaged in gross neglect of duty, in violation of OAR 584-020-0040(4)(n), (4)(o) and ORS 342.175(1)(b).

Sanction

ORS 342.175 further provides:

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

(b) Gross neglect of duty[.]

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

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

- (1) If the misconduct or violation is an isolated occurrence, part of a continuing pattern, or one of a series of incidents;
- (2) The likelihood of a recurrence of the misconduct or violation;
- (3) The educator's past performance;

- (4) The extent, severity, and imminence of any danger to students, other educators, or the public;
- (5) If the misconduct was open and notorious or had negative effects on the public image of the school;
- (6) The educator's state of mind at the time of the misconduct and afterwards;
- (7) The danger that students will imitate the educator's behaviors or use it as a model;
- (8) The age and level of maturity of the students served by the educator;
- (9) Any extenuating circumstances or other factors bearing on the appropriate nature of a disciplinary sanction; or
- (10) To deter similar misconduct by the educator or other educators.

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

As determined previously, Respondent engaged in gross neglect of duty on or about March 2014 through May 2014. The Commission seeks to impose three months of suspension, and three years of probation contingent on taking a course or class in cultural inclusion and racial micro-aggressions.

A review of the record establishes that the proposed sanction is appropriate and within the Commission's discretionary authority.

Accordingly, the Commission's MSD is granted and the hearing scheduled for January 17 through January 19, 2017 is cancelled.

RULING

The Commission's Motion for Summary Determination is GRANTED.

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ORDER

Based on the foregoing, the Teacher Standards and Practices Commission issues the following order:

1. Respondent is hereby suspended for three months
2. Respondent is placed on probation for a period of three years following reinstatement of her teaching license. Respondent will need to apply for reinstatement in accordance with the Commission's rules.
3. As a condition of probation, Respondent must successfully take and complete a course (subject to Commission approval) on cultural inclusion and racial micro-aggressions.

It is so Ordered this 8th day of February, 2017.



Dr. Monica Beane, Executive Director
Teacher Standards and Practices Commission

NOTICE OF APPEAL RIGHTS

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provision of ORS 183.482 to the Oregon Court of Appeals.

CERTIFICATE OF MAILING


On February 9, 2017, I mailed the foregoing Final Order Adopting Ruling on Motion for Summary Determination and Proposed Order in OAH Case No. 2016-ABC-00016 to:

By: U.S. First Class Mail and Certified Mail Return Receipt Requested 7016 0750 0000 2419 0884

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