

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

In the Matter of the)
Teaching License of) FINAL ORDER
)
JANE C. PITCOCK) Case No. 901214

On May 20, 2010, Administrative Law Judge (ALJ) Alison Greene Webster 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 revokes Jane C. Pitcock's right to apply for a teacher or administrator license in Oregon for a period of one year.

Dated this 9th day of August 2010.

TEACHER STANDARD AND PRACTICES COMMISSION

By: 
Victoria Chamberlain, Executive Director
Teacher Standards and Practices Commission

NOTICE: 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

I hereby certify that I served the foregoing order by mailing a true copy thereof certified by me as such by U.S. First Class Mail and U.S. Certified Mail—Return Receipt Requested to the address below:

Jane Pitcock
PO Box 258
Clam Gulch AK 99568

and

Jane C. Pitcock
4550 Old Melrose Road
Roseburg OR 97470-9886

Dated this 13th day of December 2010.

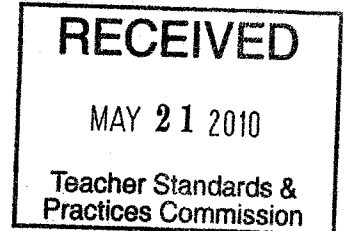
By: Melody Hanson
Melody Hanson, Executive Assistant

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

IN THE MATTER OF THE
TRANSITIONAL ADMINISTRATOR
LICENSE OF

JANE C. PITCOCK,

) **PROPOSED ORDER**
)
)
)
) OAH Case No. 901214



HISTORY OF THE CASE

On June 3, 2009, the Teacher Standards and Practices Commission (TSPC) issued a Notice of Opportunity For Hearing, charging Jane C. Pitcock, Respondent herein, with misconduct and proposing to revoke her Oregon teaching license under ORS 342.177. Respondent timely requested a hearing.

On July 28, 2009, TSPC referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Alison Greene Webster was assigned to preside at hearing.

A hearing was held on April 1, 2010, in Salem, Oregon. Respondent Pitcock appeared without counsel. TSPC was represented by Assistant Attorney General Raul Ramirez. The following witnesses testified on behalf of TSPC: Patrick Lee, Jeanine Dever, Analicia Santos, Tina Fisher, Mary Bringham and Wendy Roque. Jerry Jensen testified on Respondent's behalf. Respondent refused to testify. The hearing was continued for TSPC to present a witness who was unavailable on April 1. The continued hearing was held on May 11, 2010. At the continued hearing, TSPC elected not to call the witness. Following oral closing argument, the record was closed on May 11, 2010.

ISSUES

1. Whether Respondent assigned a teacher to teach an agriculture or math course when the teacher did not hold the proper endorsement to teach either course and, if so, whether Respondent's conduct constituted gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(o), as it incorporates OAR 584-020-0035(2)(a).

2. Whether Respondent asked or directed two different teachers to assign or change student grades to prevent students from failing a class and, if so, whether this conduct constituted gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(n), as it incorporates OAR 584-020-0025(3)(a) and (b).

3. Whether Respondent allowed a student to access Respondent's school computer and email, which contained confidential information about students, and, if so, whether this conduct constituted gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(o), as it incorporates OAR 584-020-0035(1)(a), and OAR 584-020-0040(4)(n), as it incorporates OAR 584-020-0010(5).

4. Whether Respondent offered a school board member access to the school credit card for the private expense of the board member's family and, if so, whether this conduct constituted gross neglect of duty in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(o), as it incorporates OAR 584-020-0035(2)(e), and OAR 584-020-0040(4)(n), as it incorporates OAR 584-020-0010(5).

5. If one or more of the violations are proven, what is the appropriate sanction?

EVIDENTIARY RULINGS

Exhibits A1 to A18, offered by TSPC were admitted into the record without objection.

FINDINGS OF FACT

1. In July 2007, the Camas Valley School District No. 21 in Douglas County, Oregon hired Respondent Jane C. Pitcock to serve as the District Superintendent and Principal of the Camas Valley School. At all times pertinent to this matter, Respondent had a Restricted Transitional Administrator license from TSPC.¹ As part of her Superintendent/Principal duties, Respondent was required, among other things, to direct and assign the District staff and to select all personnel, subject to the approval of the School District Board. (Exs. A1 and A2.)

2. During the summer of 2007, Respondent met Analicia Santos at a fair. At that time, Ms. Santos was licensed by TSPC as an educator. She held an initial teaching license at the secondary level with a health endorsement. This license permitted Ms. Santos to teach health courses, but not other subjects. Respondent was impressed with Ms. Santos' experience with the Future Farmers of America program and invited her to teach agriculture at the Camas Valley School. (Test. of Santos.)

3. At the August 16, 2007 meeting of the Camas Valley District #21 Board of Directors, Respondent notified the District Board that she wanted to hire Ms. Santos to teach forestry/agriculture and use forestry funds to pay Ms. Santos' salary. Respondent added that she had yet to develop a forestry/agriculture program for the school but planned to do so. The District Board questioned whether forestry money could be used to pay Ms. Santos' salary, but

¹ A Restricted Transitional Administrator License, which is only valid for three years, allows regular or substitute administration at all age or grade levels and is restricted to the district from which the co-application is received. The Restricted Transitional Administrator License does not authorize the holder to teach at any level or in any specialty. OAR 584-080-0153.

then approved her hiring and the proposed forestry/agriculture program, contingent upon the use of forestry funds. (Ex. A15.)

4. At all times pertinent to this matter, Jeanine Dever was the District Board secretary and the administrative assistant to the Camas Valley School District Superintendent. In August 2007, in connection with preparing Ms. Santos' employment contract, Ms. Dever confirmed with TSPC that Ms. Santos had a teaching license with a health endorsement only. Ms. Dever realized that Ms. Santos was not qualified to teach agriculture as a science course without a science endorsement on her teaching license. In late August or early September 2007, Ms. Dever informed Respondent that Ms. Santos could not teach agriculture as a science course. (Test. of Dever.)

5. Initially, Respondent hired Ms. Santos to teach one agriculture class. But, by the start of the fall term in September 2007, Respondent assigned Ms. Santos to teach three agriculture classes: two high school courses and a middle school course. Shortly after the fall term began, Respondent assigned Ms. Santos to teach a math class (pre-algebra) in addition to the agriculture classes. (Test. of Dever.)

6. At some point after Ms. Santos started teaching the pre-algebra class (in late September or early October 2007), Ms. Dever approached Ms. Santos about her lack of endorsements in the subjects of science and math. Ms. Dever was concerned that Ms. Santos was teaching courses she did not have the qualifications to teach, and was therefore not in compliance with the law. Ms. Santos told Ms. Dever to talk to Respondent. When Ms. Dever approached Respondent about this licensing issue, Respondent told Ms. Dever, in essence, not to worry about it. (Test. of Dever.)

7. On October 11, 2007, Ms. Dever emailed Bev Pratt of the Oregon Department of Education. Ms. Dever asked whether a student who takes an agriculture/forestry course from a teacher with a health endorsement only can receive a science credit for the course. Ms. Pratt responded on October 16, 2007. She confirmed Ms. Dever's belief that a teacher teaching science must have a science endorsement in the appropriate science area. Ms. Pratt added that if the teacher received a professional technical license in AG/Forestry, the teacher would then be qualified to teach the course. Ms. Dever then telephoned Ms. Pratt and obtained further information regarding the requirements for an agriculture or animal science student to receive science credits for the course, and circumstances in which a health teacher could teach pre-algebra. (Ex. A14; test. of Dever.)

8. At the October 18, 2007 District Board meeting, Respondent advised the Board that "there were two issues concerning highly qualified status of teachers." (A16 at 4.) Respondent reported that Ms. Santos was teaching agriculture as an elective course but was also in the process of obtaining proper licensure so students could receive science credit for the course. The Board was advised that Ms. Santos was teaching agriculture/forestry without a professional technical license. Ms. Dever then spoke up and reported that, per information she received from the Oregon Department of Education, even a teacher with a professional technical license needed to be "highly qualified" in science to teach a science course. Respondent told the Board that she would check the credit standing for all students in the agriculture classes. *Id.*

9. At this same October 18, 2007 meeting, Respondent also notified the Board that a “not highly qualified math teacher [Santos] was working under the direct license of the highly qualified math teacher [Morris].”² (A16 at 4.) Board Member Wolfe asked about the legal requirements for non-qualified math teachers. Ms. Dever reported that, according to information she received from the Oregon Department of Education, a teacher who teaches math must be highly qualified and, if the teacher is not, he or she must become so expediently. Ms. Dever added that an unqualified math teacher cannot work under the direct license of another teacher and teach math in a separate room and/or give grades. In response to Ms. Dever’s comments, Respondent notified the Board that she would move both the pre-algebra class and the algebra 1 class together into the library immediately. *Id.*

10. At the close of the October 18, 2007 meeting, Respondent asked for the Board’s trust and stated that she cannot work without it. She also reminded the Board that they hired her to build a team, and she stated that the Board must trust her to do what is best for the students. She added that she needed to know right away if she did not have the Board’s trust. (Ex. A16.)

11. After the October 18, 2007 District Board meeting, Respondent called a meeting with her assistant, Ms. Dever. They met on October 22, 2007. Ms. Dever asked that another school employee, Tina Fisher, be present at the meeting and take notes, because by that time the work relationship between Respondent and Ms. Dever had soured. During the meeting, Respondent said she felt “blindsided” by Ms. Dever’s information and comments during the Board meeting. (Ex. A2 at 1.) Respondent was upset that Ms. Dever had not told her about the email from the Oregon Department of Education before the Board meeting. Ms. Dever told Respondent that she had tried to tell Respondent several times that Ms. Santos was not qualified to teach math or science, but Respondent always dismissed the information. In response, Respondent told Ms. Dever that her way of operating was “people before policy.” (Ex. A2 at 2.) Ms. Dever again expressed her concern that Ms. Santos was teaching courses without proper licensure. Ms. Dever added that she was unwilling to do or support anything that was illegal or unethical. Respondent replied, “Who is gonna know, Jeanine?” (Ex. A13.) Ms. Dever explained to Respondent that she had to report everything to the state so that the school could receive its federal funding. Respondent then noted that the school only received about \$50,000 in federal funding. Respondent also told Ms. Dever that if she would not do what Respondent asked, Ms. Dever would be charged with insubordination. (Test. of Dever; Exs. A2 and A13.)

12. For a time after the October 18, 2007 District Board meeting, Respondent had Ms. Santos teaching the pre-algebra class in the school library under Mr. Morris’ supervision. Eventually, however, Ms. Santos’ pre-algebra class moved back into a separate classroom. Ms. Santos did some research and learned that the District could issue her a “conditional assignment permit” which would allow her to teach the math and science courses with the expectation that she would obtain her endorsement within three years. Ms. Santos told Respondent about the

² At the time, Ms. Santos was teaching a pre-algebra class in a classroom separate from Mr. Morris’ algebra class that same period. (Test. of Dever.)

conditional assignment permit program, but Respondent did not complete the paperwork necessary for Ms. Santos to obtain her permit during the fall 2007 term.³ (Test. of Santos.)

13. Meanwhile, in early October 2007, Respondent issued a directive to the teaching staff that students should not receive failing grades. Respondent explained that she had promised the District Board that student grades would improve. She told the teachers that, given the charter school's small size, no student should fail out of the school. Respondent then asked that each teacher provide her with a list of students who were in danger of failing a class. When the teachers provided their lists, Respondent asked that, instead of assigning a failing grade, the teacher give the student an "Incomplete" or "NG" (no grade) and allow the student to make up the work later. (Test. of Roque; test. of Lee; test. of Bringhurst.) Several teachers were concerned about this directive because historically, incompletes or NGs were issued infrequently and only under extenuating circumstances, such as when the student had an extended illness or unforeseen emergency. Also, per past practice and District policy, a student receiving an incomplete had to make up the work within two weeks. *Id.*

14. Wendy Roque is a business, technology, home economics and robotics teacher at Camas Valley School. She holds a middle school and high school teaching license. In the fall term 2007, Respondent assigned Ms. Roque several elective classes because there were students who wanted to take courses in quilting, car stereos, landscaping and fly tying. Ms. Roque soon realized that she could not supervise or evaluate these elective class students, because they were either working off campus or taking the course on-line. For example, the quilting students were working on projects at a private home in the community, the car stereo students were working on cars in the school's parking lot or at a nearby shop, and the student who wanted the fly tying elective was working from a CD and booklet during class time in the computer lab. (Test. of Roque.)

15. On October 22, 2007, Ms. Roque emailed Respondent with the names of students who were taking these elective courses and asked that Respondent remove these students from her roster. On October 24, 2007, Respondent replied that because Ms. Roque was the one with the business/home economics teaching license, it made the most sense for her to grade these students. Respondent added, "I will officially give them a grade with the input of the people they are working with and then pass it on to you. You don't have to worry about their attendance. I have them signing-in in my office." (Ex. A19.) In response to this email, Ms. Roque expressed concern about her responsibility and liability because the grades would be under her name on the students' records. Respondent replied, "I will accept all responsibility and liability for their actions during the day." *Id.*

16. On November 1, 2007, Ms. Dever contacted the Oregon Department of Education on Respondent's behalf and asked whether Respondent, with a Transitional Administrator license, could teach a technology class and grade a student for being her assistant. The Department of Education replied in the negative, explaining that Respondent's license was not valid for teaching. (Ex. A4.)

³ In January or February 2008, interim superintendent Joe Harris completed the paperwork necessary for Ms. Santos' to teach agriculture under a conditional assignment permit. (Test. of Santos.)

17. At all times pertinent to this action, Richard Wolfe was a member of the Camas Valley School Board. He is also the father of Dennis Wolfe who, in the fall of 2007, was enrolled as a student at Camas Valley School. Dennis suffers from bone cancer. During the fall of 2007, Dennis had to take time off school to travel out of town for treatment for his condition. (Test. of Roque; test. of Bringhurst.)

18. Richard Wolfe attended a school staff meeting on November 6, 2007, to update the staff on his son's treatment progress. At that time, Dennis was receiving chemotherapy in Portland. During the meeting, Respondent offered Mr. Wolfe use of a School District credit card to help with the family's lodging expenses while in Portland. Mr. Wolfe declined to take the card. Respondent insisted that Mr. Wolfe take the card and use it. She suggested that he call his use of the funds "a leadership conference." (Ex. A5.) Mr. Wolfe again declined to take the card. Respondent insisted that Mr. Wolfe take and use the card. She put the card down on the desk in front of Mr. Wolfe. Mr. Wolfe took the card with him when he left the meeting, but did not use it. He later returned it to the school office. (Test. of Dever; test. of Bringhurst; Ex. A5.)

19. During the fall term of 2007, Respondent had several students working under her direction and supervision in "independent study activities" during various class periods throughout the day. For first period, she had one student taking a Leadership study program. During third period she had two students studying Leadership/Mentoring and three students studying "Career Development." (Ex. A7.) For fifth period, she had two students doing Leadership/Mentoring, and for sixth period she had three students doing Leadership/Mentoring. She also had another student with three periods as a Technology Assistant. *Id.*

20. On November 15, 2007, Respondent sent a memorandum to Patrick Lee, an English teacher at Camas Valley School. At that time, Mr. Lee was also the school's head teacher. Respondent provided Mr. Lee with a list of the students working under her direction and supervision in independent study activities. She provided a grade for each student, and asked Mr. Lee to assign that student the listed grade. Respondent explained that because she was not a licensed teacher, she could not assign the students' grades. She told Mr. Lee to assign these grades under his name so that the students could receive credit for the courses. (Test. of Lee; Ex. A7.)

21. Although uncomfortable with the situation, Mr. Lee agreed to assign the grades. When he told Respondent that he did not want to be responsible and would prefer not to have the grades assigned under his name, Respondent told him it was his only option. She reminded him that, as the school's head teacher, he had to support her and assign the grades to these students. Respondent assigned the grades under his name fearing that if he refused to do so, Respondent would charge him with insubordination. (Test. of Lee; Ex. A12.)

22. On November 13, 2007, Ms. Roque emailed Respondent and expressed concern about giving one of her students (CD) an Incomplete or NG grade instead of an F. Ms. Roque wrote: "If I give [CD] a "NG" or "I" on his trimester report card he would have to make-up the work. Since this class was based on participation how would he make-up the work?" (Ex. A6.) Ms. Roque also noted that she was not comfortable being responsible for another student's attendance and success in an on-line course, because she did not have control of that student.

Ms. Roque later learned that Respondent gave three of Ms. Roque's students, including CD, a grade of Incomplete for her class.⁴ (Exs. A6 and A21; test. of Roque.) In an email dated December 6, 2007 regarding "Incomplete grades," Ms. Roque wrote Ms. Dever as follows:

As per our conversation this morning I feel that the incomplete grades for these students should be changed to the following:

[Student CD]: F or NP, Chris was present 13 out of 38 class days. He was reluctant to participate when he was present.

[Student BR]: C, Breeanne was present 17 days out of 38 class days. Breeanne worked very hard when she was present and therefore I feel she earned a C.

[Student BS]: C, Brenda was present 25 out of 38 class days. She became an aide for Mr. Rash toward the end of the trimester, but Jane instructed me to count those days as leadership participation.

This class was based on participation so it is my opinion that attendance affects their grades.

(Ex. A21.)

23. During the 2007 fall term, Mary Bringhurst taught social studies and history at Camas Valley Charter School. When Ms. Bringhurst provided Respondent with the list of students failing her classes, Respondent directed Ms. Bringhurst not to give the students failing grades, and asked that they be allowed make up the work. Ms. Bringhurst expressed concern that these students would just copy the work of other students, because the assignments had already been graded and returned, but she agreed to let these students make up the work. Student CD was enrolled in one of Ms. Bringhurst's US History classes that fall. CD was failing the class because of absences and not turning in his work. On the day grades were due, Ms. Bringhurst gave CD the opportunity to complete some of the assignments he had missed. CD chose to take his driving test instead. Ms. Bringhurst gave him a grade of F because he chose not to do the work. Respondent later asked Ms. Bringhurst to change CD's grade, but Ms. Bringhurst refused to do so. (Test. of Bringhurst.)

24. During the 2007 fall term, Ms. Bringhurst also had students in a "community involvement" class. This class had high school students supervising the younger students on the playground or helping out in the lunch room. Respondent contacted Ms. Bringhurst and told her to give all the students in the community involvement class a grade of A. Ms. Bringhurst told Respondent that at least two of the students did not deserve an A because they missed several classes. Respondent told Ms. Bringhurst what grades the students should have and Ms. Bringhurst assigned the grades based on Respondent's direction. (Test. of Bringhurst.)

25. During the 2007 fall term, Ms. Bringhurst also gave student BR a failing grade in US History. After the term was over, Ms. Bringhurst discovered that BR's records showed she had been given a grade of C for that class. She immediately brought the changed grade to the attention of the interim principal/superintendent, Mr. Harris. (Test. of Bringhurst.)

⁴ On November 25, 2007, Respondent emailed her assistant, Ms. Dever, the following message: "Jeanine, I want to go over the grades of the upperschool with you since I noted some changes that need to be made. I also need to add the on-line grades for my students." (Ex. A8.)

26. During the 2007 fall term, Respondent also allowed one or more students to access the school computer in her office. At that time, Respondent's office computer contained confidential information, including student records and grades and employee information and evaluations. On one occasion, Ms. Dever saw two students printing off copies of Respondent's emails. The students were doing so at Respondent's direction and request. Respondent either logged on to the computer herself or gave the students her password so that they could access and print her emails. Following this incident, a District Board member advised Respondent that she was not to have students in her office unsupervised. Even after Respondent was so advised, however, she allowed students to work at the table in her office unsupervised. (Test. of Dever.)

27. At its December 13, 2007 meeting, the District Board proposed to discharge Respondent as Superintendent and Principal. The Board identified the reasons for the proposed discharge and gave examples of Respondent's conduct. The Board alleged that Respondent had: (1) failed to be an effective educational leader to the Board, school and community; (2) failed to maintain communications with the Board; (3) failed to protect confidential records; (4) failed to maintain academic standards; (5) failed to respond to complaints; and (6) failed to exercise proper fiscal controls. (Ex. A9.) The Board gave Respondent the opportunity to meet with the Board in executive session, and make a presentation to the Board and community. Respondent waived her right to meet with the Board in executive session. Instead, she responded to the Board's allegations during the public meeting. (Ex. A10.)

28. On December 19, 2007, Respondent submitted a written response to the Board's allegations. Among other things, Respondent offered an explanation for allowing a student access to her office in her absence, and allowing a student to access to her computer under her supervision. She explained that she was unable to get her email to go to her home, so she designated a student to print her emails and leave the paper on the printer. With regard to the allegation that she failed to exercise proper fiscal controls by offering Mr. Wolfe use of a district credit card for private use, Respondent asserted that the Board had approved a \$4000 "leadership fund" that she could use at her discretion to improve morale at the school and in the community. She asserted that the Board approved this fund without attaching any stipulations, so she was unaware that she had to use money for educational purposes only. (Ex. A11.)

29. At its December 20, 2007 meeting, the District Board voted to terminate Respondent's contract effective December 21, 2007. (Ex. A18.)

30. Respondent's Restricted Transitional Administrator license expired effective August 26, 2009.

CONCLUSIONS OF LAW

1. Respondent assigned a teacher to teach an agriculture or math course when the teacher did not hold the proper endorsement to teach either course. Respondent's conduct constituted gross neglect of duty in violation of ORS 342.175(1)(b).

2. Respondent asked or directed teachers to assign or change student grades to prevent students from failing a class. Respondent's conduct constituted gross neglect of duty in violation of ORS 342.175(1)(b).

3. Respondent allowed one or more students to access her school computer and email, which contained confidential information about students. Respondent's conduct constituted gross neglect of duty in violation of ORS 342.175(1)(b).

4. Respondent offered a school board member access to the school credit card for the private expense of the board member's family. Respondent's conduct constituted gross neglect of duty in violation of ORS 342.175(1)(b).

5. The appropriate sanction is revocation of Respondent's right to apply for an educator license in Oregon.

OPINION

TSPC bears the burden of proving the allegations by a preponderance of the evidence. ORS 183.450(2) and (5); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of 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).

ORS 342.175 authorizes TSPC to discipline educators licensed in the State of Oregon. It provides in pertinent part, as follows:

(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 if the person has held a license at any time within five years prior to issuance of the notice of charges under ORS 342.176⁵ based on the following:

* * *

(b) Gross neglect of duty;

* * *

(5) Violation of rules adopted by the commission relating to competent and ethical performance of professional duties shall be admissible as evidence of gross neglect of duty or gross unfitness.

⁵ ORS 342.176(1) provides: "Upon receipt of a complaint or information that a person has violated ORS 342.143 or 342.175, the Teacher Standards and Practices Commission shall promptly undertake an investigation."

OAR 584-020-0040(4) describes “gross neglect of duty” as “any serious and material inattention to or breach of professional responsibilities.” Under subparagraph (n), a “substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030” may be admissible as evidence of gross neglect of duty. Under subparagraph (o), a “substantial deviation from professional standards of ethics set forth in OAR 584-020-0035” may also be admissible.

TSPC has also adopted Standards for Competent and Ethical Performance of Oregon Educators. OAR chapter 584, division 20. TSPC will determine whether an educator’s performance is ethical or competent in light of all the facts and circumstances surrounding the educator’s performance as a whole. OAR 584-020-0000(3). For example, OAR 584-020-0010(5) requires that a teacher or administrator demonstrate a commitment to “use professional judgment.” OAR 584-020-0025 addresses competency in terms of management skills. Pursuant to subsection (3) of this rule, the competent administrator demonstrates, among other things, skills in managing the school, its students, staff and programs, along with skills in planning and staff utilization. OAR 584-020-0035 addresses ethics. Pursuant to the rule, the ethical educator is one who acts ethically at all times and who considers the needs of the students, the district and the profession. OAR 584-020-0035(2)(a) requires that an ethical educator “[a]pply for, accept, offer or assign a position of responsibility only on the basis of professional qualifications.”

As noted above, the “gross neglect of duty” standard requires a “serious and material” breach of professional responsibilities. A “substantial deviation” from professional standards of competency or ethics may constitute gross neglect of duty. OAR 584-020-0040(4)(n) and (o). Based on the plain language of the rule, therefore, not all breaches or deviations from professional standards constitute “gross neglect of duty.” Only serious and material breaches give rise to TSPC discipline. *See Britton v. Board of Podiatry Examiners*, 53 Or App 544 (1981) (recognizing that gross negligence connotes an act beyond mere inadvertence or error in judgment).

1. *Assigning an educator without an appropriate teaching license*

As set out above, TSPC alleges that Respondent assigned Analicia Santos to teach agriculture or math courses when Ms. Santos did not hold the proper endorsement to teach either course. (Pleading 1.) TSPC asserts that this conduct constitutes gross neglect of duty in violation of OAR 584-020-0040(4)(o) as incorporated by OAR 584-020-0035(2)(a). As set out above, this ethical standard provides, in pertinent part, that “[t]he ethical educator, in fulfilling obligations to the district, will: (a) * * * assign a position of responsibility only on the basis of professional qualifications.”

As the Superintendent/Principal, Respondent was responsible for assigning the school’s teaching staff. Respondent assigned Ms. Santos to teach agriculture and pre-algebra, science and math courses that Ms. Santos was not licensed to teach with only a health endorsement.

Respondent did not testify at hearing, and did not offer other evidence to contradict Ms. Dever’s testimony that, even before the October 18, 2007 District Board meeting, Respondent was aware that Ms. Santos was not legally qualified to teach agriculture or math with only a

health endorsement on her teaching license. By her own words to Ms. Dever on October 22, 2007, Respondent elected to put "people before policy." (Ex. A2.) In other words, she knowingly assigned Ms. Santos to teach classes that Ms. Santos did not have the professional qualifications to teach. Furthermore, even after Respondent discussed Ms. Santos' licensing problem with the District Board, she did not remedy the situation in a timely or appropriate manner. Although Respondent had Ms. Santos and the qualified math teacher teaching in the library at the same time, that arrangement was only temporary. Also, Respondent did not complete and submit the necessary paperwork to the Department of Education for Ms. Santos to teach agriculture under a conditional assignment permit.

Under these circumstances, Respondent's conduct, namely offering Ms. Santos the agriculture teacher position, assigning Ms. Santos courses that Ms. Santos was not professionally qualified to teach, and then failing to timely and appropriately remedy the situation, constitutes a violation of OAR 584-020-0035(2)(a), and a serious and material breach of Respondent's professional responsibilities as a licensed administrator. Also, by not respecting the Department of Education's policies and standards for professional qualifications in making Ms. Santos' teaching assignments Respondent failed to use professional judgment under OAR 584-020-0010. This violation has been proven.

2. Asking or directing teachers to assign or change student grades to prevent students from failing

TSPC next alleges that Respondent "asked or directed two different teachers to assign or change student grades to prevent students from having a failing grade." (Pleading 1.) TSPC contends that this conduct also constitutes gross neglect of duty, as the rule incorporates OAR 584-020-0010(5) (use professional judgment) and OAR 584-020-0025(3)(a) (skill in managing the school, its students, staff and programs) and (3)(b) (skills in planning and staff utilization).⁶

The evidence establishes as follows: Respondent issued a directive to the teaching staff that students should not receive failing grades. For the students who were failing, Respondent strongly encouraged the teachers to give the student an Incomplete and allow the student to make up the work at a later date. Respondent also directed Mr. Lee, an English teacher, to assign grades to students taking independent study activities (Leadership, Mentoring and Career Development) who were working under Respondent's direction and supervision, and told Ms. Bringhurst the grades to assign the students in the community involvement class. In addition, Respondent changed three of Ms. Roque's students' failing grades to Incomplete.⁷ When Ms.

⁶ OAR 584-020-0025(3) provides:

- (3) The competent administrator demonstrates:
 - (a) Leadership skills in managing the school, its students, staff, and programs as required by lawful and reasonable district policies, rules, and regulations, state and federal laws and regulations, and other programs as assigned, and assures that staff is informed of these requirements; and
 - (b) Skills in planning and staff assignment.

⁷ In her closing argument, Respondent contended that she did not change the student grades, she only recommended that the students be given a longer time to complete the coursework. But, again,