

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

In the Matter of the)
Administrative Teaching License of:) FINAL ORDER
RONALD EDWIN FRIEH)
Office of Administrative)
Hearings Case No. 104788)

On September 5, 2003, Administrative Law Judge Ray Myers issued a Proposed Order in this case.

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

ORDER

The Commission adopts the Proposed Order and imposes a Public Reprimand on Ronald Erwin Frieh.

Dated this 9th day of October 2003.

TEACHER STANDARDS AND PRACTICES COMMISSION

By: Victoria Chamberlain
Victoria Chamberlain, Executive Director

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 service of this order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

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

IN THE MATTER OF

) **PROPOSED ORDER**

)

) OAH Case No. 104788

Ronald E. Frieh

)

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Teacher Standards &
Practices Commission

HISTORY OF THE CASE

On July 18, 2001, the Teacher Standards and Practices Commission (TSPC or the Commission) issued a Notice of Opportunity for Hearing to Mr. Ronald Frieh alleging several violations of Commission Rules. Mr. Frieh requested a hearing. TSPC referred the matter to the Office of Administrative Hearings¹(OAH) on December 4, 2002. The OAH assigned the matter to me to conduct a hearing and to issue a Proposed Order. Hearing convened in Salem, Oregon on July 28, 2003 and continued on July 29, 2003. The record closed on July 29, 2003 at the end of hearing.

ISSUES

The issues are:

1. Whether Mr. Frieh acted in a way that would constitute gross neglect of duty under OAR 584-020-0040(4)(n) and (o) in showing favoritism to a student-athlete, RB².
2. Whether Mr. Frieh acted in a way that would constitute gross neglect of duty under OAR 584-020-0040(n) and (o) in showing favoritism toward a student-athlete, ZM.
3. If Mr. Frieh committed gross negligence under either or both of the above allegations, what is the appropriate sanction for Mr. Frieh's violation.

EVIDENTIARY RULING

TSPC offered Exhibits A1 to A22 into evidence. Mr. Frieh did not object to their admission into evidence with the exception of A18 and A19. Mr. Frieh offered Exhibits R1 through R22 into evidence. TSPC did not object to their admission into evidence with the exception of R16. I offered Exhibits H1 and H2 into evidence. Neither party objected. On

¹ The Office of Administrative Hearings was known as the Hearing Officer Panel at the time of the referral. HB2526, which recently took effect, changed the name.

² For purposes of this proposed order, students are identified by initials in order to protect their privacy.

the record, I overruled Mr. Frieh's objection to A18 and A19 and TSPC's objection to R16. Exhibits A1 through A22, R1 through R22, and H1 and H2 are admitted into evidence.³

The following witnesses testified at hearing: Linda Lenhard, Janice Cagle, Carlita Stutzman, Larry Cote, Art Tassie,⁴ Mr. Frieh, Robert Semon, ZM, Jim Keizur, Wayne Swango, Steve Carothers, RB and Wanda Wenick.

FINDINGS OF FACT

1. Mr. Frieh holds a valid Oregon Administrator's Certificate from the Commission. (Stipulation of the Parties.) Mr. Frieh was the principal at Harrisburg High School from the 1997-98 school year until approximately March 2000. (Testimony of Mr. Frieh and Mr. Cote.) From September 1999 until approximately March 2000, Mr. Frieh also acted as principal of Harrisburg Middle School. (Testimony of Mr. Frieh.)
2. Larry Cote served as High School Vice-Principal under Mr. Frieh during the 1999-2000 school year. Mr. Cote assumed the role, but not the title, of Principal when Mr. Frieh left Harrisburg School District in approximately March 2000. Mr. Cote then became permanent principal at Harrisburg High School. (Testimony of Mr. Frieh and Mr. Cote.)
3. During his hiring interview with the Harrisburg School Board, the Board informed Mr. Frieh that there had been a problem with "sweet deals" for student-athletes. The Board instructed him to deal with that issue. (Testimony of Mr. Frieh.)
4. On August 4, 1997, Harrisburg School District adopted a policy concerning Alternative School and the Trico Learning Center. A committee was required to approve any student's admission into the alternative education program. The policy allowed students enrolled in the regular school program to make up no more than 1 ½ elective credits of alternative school classes. It further provided that no required credits could be made up at the alternative school by regularly enrolled students. (Exhibit A1.)
5. The policy was readopted on May 11, 1998 with no relevant changes. (Exhibit A22.)
6. The policy was amended on February 14, 2000. The amended policy creates a different mechanism for students wishing to make up deficiencies without being enrolled in the program. It allows students to take up to four hours of credit in the alternative program. Enrollment is prearranged and may be for either elective or required classes. (Exhibit A21.)

³ Several exhibits relate to allegations concerning Mr. Frieh's activities at Burns High School. The Commission withdrew all allegations relating to Burns High School at the beginning of the second day of hearing. Exhibits relating to those allegations remain in evidence; however they have not been considered in deciding the issues before me.

⁴ Mr. Tassie's testimony related to events at Burns High School. Inasmuch as allegations concerning Burns High School were withdrawn, Mr. Tassie's testimony is irrelevant.

7. The original policy requires that for a student to be admitted into the alternative education program, the student's application must be reviewed by a committee consisting of the school principal, the school counselor and the alternative education teacher. The committee has the final say whether a student is to be admitted into the alternative education program. (Exhibit A22.)
8. Linda Lenhard, although not licensed as a counselor, performed that function at Harrisburg High School during the 1998-99 school year. As such, she was the "counselor" on the alternative education committee. (Testimony of Linda Lenhard, Wanda Winek and Mr. Frieh.)
9. Under the policy in effect from 1997 through February 13, 2000, a student enrolled in Harrisburg High School who received more than 1½ credits in the alternative program or who received any required credits in the alternative program is not entitled to a regular diploma. Such a student was entitled to receive an alternative education diploma. (Testimony of Mr. Frieh and Mr. Cote)
10. Students enrolled in the alternative education program are not eligible to participate in athletics. (Testimony of Linda Lenhard.)
11. The alternative education program allowed students to earn credits by completing packets of work and then being tested on that work. All grades were pass or fail. The work in the alternative program is not as rigorous as that in the regular school program. (Testimony of Linda Lenhard.)
12. Harrisburg High School does not allow any student who is failing a class to participate in interscholastic sports. (Exhibit A3.)
13. RB was a student at Harrisburg High School from September 1996 until June 1, 2000. (Exhibit A16). ZM was a student at Harrisburg High School during the same period of time. (Exhibit A17.) Both students played on the Harrisburg High Football Team. Mr. Keizur was the coach of the Harrisburg High Football Team.
14. RB failed Algebra I during the Second Semester of the 1997-98 school year. RB also failed US History and Government during the First Semester of the 1998-99 school year. (Exhibit A16.)
15. RB made up the Algebra and US History classes by completing packets and taking tests during the summer of 1999.⁵ RB picked his packets up at the alternative program site and turned them in to Wanda Wenick, an aide in the alternative education program. (Testimony of RB.)

⁵ RB testified that he made up these classes during the summer of 1998; however, I find that it was actually the summer of 1999 based on Exhibit A16, RB's transcript, and the testimony of other witnesses including Linda Lenhard.

16. RB received ½ elective credits for the Math work he did in the alternative program during the summer of 1999. He received ½ required credits for the US History work he did in the alternative program for the summer of 1999. RB received a regular diploma when he graduated in June 2000. (Exhibit A16.)
17. No committee met to determine whether RB was appropriate to be admitted into the alternative education program. (Testimony of Mr. Frieh.)
18. ZM failed four classes during the second semester of the 1998-99 school year. (Exhibit A17.)
19. ZM made up credits in English, Math and Personal Finance during the summer of 1999. Initially ZM attended a summer program run by Janice Cagle, but Ms. Cagle had no work for ZM to do. ZM then began to complete packets given to him by Wanda Wineck. He worked on some packets at the alternative education site and worked on others at home.
20. ZM received ½ credits for each class he did in the alternative program during the summer of 1999. All credits were counted as required credits. ZM received a regular diploma when he graduated in June 2000. (Exhibit A17.)
21. No committee met to determine whether ZM was appropriate to be admitted into the alternative education program. (Testimony of Mr. Frieh.)
22. During the second semester of 1999 approximately fifteen senior students were allowed to take a health class using packets provided through the alternative program. Health is a required course and because of scheduling difficulties these students could not take the class that semester. Without the health credit, the students would not have been able to graduate. A committee including the principal, the counselor and Ms. Wineck made this decision. (Testimony of Wanda Wineck.)

CONCLUSIONS OF LAW

1. Mr. Frieh acted in a way that acted in a way that would constitute gross neglect of duty under OAR 584-020-0040(4)(n) and (o) in showing favoritism to a student-athlete, RB.
2. Mr. Frieh acted in a way that acted in a way that would constitute gross neglect of duty under OAR 584-020-0040(4)(n) and (o) in showing favoritism to a student-athlete, ZM.
3. The appropriate sanction for Mr. Frieh's violations of OAR 584-020-0040(4)(n) and (o) is a public reprimand.

OPINION

Credibility

All witnesses seemed to testify credibly. However, there is a direct contradiction over one significant fact.

Mr. Cote testified that shortly after Mr. Cote went to work at Harrisburg, Mr. Frieh invited him to attend a meeting between Mr. Frieh, Coach Keizur and ZM. He testified that during the meeting, Mr. Frieh first questioned whether ZM had been doing his own work and that ZM admitted it was not his own. According to Mr. Cote, Mr. Frieh then told ZM that he needed to go back and copy it in his own handwriting.

Mr. Frieh recalls the meeting, but flatly denies that such a conversation took place. Coach Keizur does not recall the meeting, but testified that he would certainly have objected had Mr. Frieh made such a statement. ZM recalls the meeting. He testified that no one had done his work for him and that Coach Keizur would never have let him cheat.

I find that the testimony of Mr. Frieh, Mr. Keizur and ZM outweighs Mr. Cote's testimony. Their testimony is consistent but not identical. However, they agree on the main point—none recalls any suggestion from Mr. Frieh that ZM cheat.

Mr. Cote's version, on the other hand, lacks plausibility. It seems unlikely that a new employee, upon seeing his supervisor openly suggest that a student cheat, would not, at least, have documented the incident. Mr. Cote admitted he did not. He also admitted that he was the principal who approved ZM's graduation based in part on the class that he alleges ZM was instructed to cheat on.

On this disputed point, I find that the Commission has failed to prove that Mr. Frieh encouraged ZM to cheat.

Gross Neglect of Duty

The Commission's authority for imposing discipline on Mr. Frieh arises from ORS 342.175 which states:

(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 342.176 based on the following:

(b) Gross neglect of duty.

OAR 584-020-0040(4) defines gross neglect of duty:

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;

The Commission specifically alleges that Mr. Frieh violated the following competency standards:

The teacher or administrator demonstrates a commitment to:

(5) Use professional judgment. OAR 584-020-0010.

(3) The competent administrator demonstrates:

(c) Skill in providing equal opportunity for all students and staff....OAR 584-020-0020.

(3) The competent administrator demonstrates:

(a) 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. OAR 584-020-0025:

The Commission also specifically alleges that Mr. Frieh violated the following ethical standard:

(2) The ethical educator, in fulfilling obligations to the district, will:

(b). Conduct professional business, including grievances, through established lawful and reasonable procedures. OAR 584-020-0035:

In short, the Commission alleges that Mr. Frieh committed gross neglect of duty in his use of professional judgment, his skill at managing the school as required by law and policy, and in failing to conduct professional business through established and reasonable procedures.

The Commission alleges that Mr. Frieh favored two athletes by bypassing established policies to place them in an alternative program. It alleges these actions constitute gross neglect of duty.

I conclude that Mr. Frieh bypassed established policy by failing to consult with a committee before allowing RB and ZM to make up classes through the alternative program. All witnesses who testified concerning students being allowed to make up credits in the alternative education program agreed that a committee was consulted except in the cases of RB, ZM and another student athlete.

I cannot accept Mr. Frieh's contention that the committee process was not necessary because the makeup work was being done in summer school. There was no credible evidence that high school students had ever before been enrolled in the district's summer program. Furthermore, aside from ZM's brief attendance in the summer school program, both boys worked through the alternative education program, not the summer school program.

Based on Mr. Frieh's unilateral decision to place RB and ZM into an alternative program, especially considering Mr. Frieh's admitted knowledge that his decision could have the effect of precluding the boys from graduating with a regular diploma, I conclude that the Commission has proven Mr. Frieh's displayed poor professional judgment. He should, at the very least, have consulted with the committee before placing either RB or ZM into the alternative education program.

I conclude that the Commission has failed to prove its allegation that Mr. Frieh failed to manage "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." OAR 584-020-0025. One instance in which an administrator bypasses a policy is insufficient, in my opinion, to establish that his overall management was deficient.

The Commission has, however, proven that Mr. Frieh violated the ethical requirement that he conduct business through established lawful and reasonable procedures. By failing to consult with the committee as required by the established procedure and practice, Mr. Frieh violated this ethical rule.

Under OAR 584-020-0040, the Commission has the burden of proving that Mr. Frieh committed a serious and material breach of professional responsibilities. Subsections (n) and (o) are examples of ways in which a licensee can commit a serious and material breach of professional responsibilities. Under these two subsections, violation the competency standards and the ethical standards, must be substantial.

Mr. Frieh argues that his breach does not rise to the level of substantial. I disagree. Mr. Frieh himself testified that the Harrisburg School Board had asked him to deal with a problem of "sweet deals" for athletes at Harrisburg High School. His actions in placing ZM and RB into the alternative education program ran directly counter to that mandate. Under that circumstance, I find that his breach of established policy was a substantial violation.

Mr. Frieh also argues that because the Commission alleged in its Notice that he displayed favoritism toward athletes, it must show that athletes were treated differently than non-athletes. I agree. "Favoritism" by definition implies that one person or group is given positive treatment that another person or group does not get. Thus, the Commission must not only prove that Mr. Frieh committed a substantial violation, it must prove that the substantial violation demonstrated favoritism.

I conclude that the Commission has sustained its burden. The evidence in this case establishes that during Mr. Frieh's tenure at Harrisburg High School, there was one other instance when students were allowed to use the alternative education program to make up credits; fifteen seniors were allowed to do health using packets in the alternative school. In that case, just as with RB and ZM, the students were allowed to make up required classes in the alternative program setting without imperiling their regular Harrisburg High School Diploma. The difference is that the committee considered whether to allow the seniors to take health in the alternative program. No committee considered whether to allow RB and ZM to make up classes in the alternative program. Mr. Frieh made that decision on his own. That is disparate treatment and establishes favoritism.

Penalty

Following a hearing, the Commission has authority to either impose the following discipline:

- (a) Issue a public reprimand.
- (b) Place the person on probation for a period not to exceed four years and subject to such conditions as the commission considers necessary.
- (c) Suspend the license of the teacher or administrator for a period not to exceed one year.
- (d) Revoke the license of the teacher or administrator.
- (e) Revoke the privilege to apply for a license. ORS 342.177.

The Commission seeks only a public reprimand in this matter. I agree.

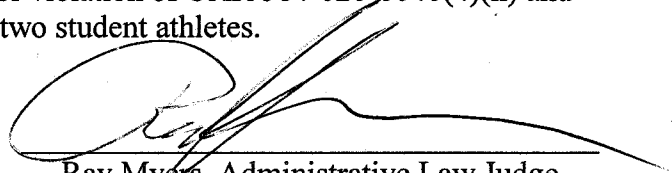
It is true that Mr. Frieh bypassed established policy to allow student-athletes to make up failed classes. However, it is also true that Mr. Frieh was working in an environment in which such policies were frequently bypassed. For example, Mr. Cote approved both RB and ZM for graduation as regular Harrisburg High students even

though he knew that under the alternative education policy in effect when both boys did their makeup work, they should have been granted an alternative education diploma rather than a regular diploma. In another example, the committee allowed several senior students to earn required classes in the alternative program while still being granted a regular diploma. Under these circumstances, I conclude that Mr. Frieh's conduct merits only a public reprimand.

PROPOSED ORDER

I propose that the Commission issue the following final order:

Mr. Frieh is publicly reprimanded for violation of OAR 584-020-0040(4)(n) and (o) by violating established policy to favor two student athletes.



Ray Myers, Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE

September 5, 2003

EXCEPTIONS

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

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

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

CERTIFICATE OF SERVICE

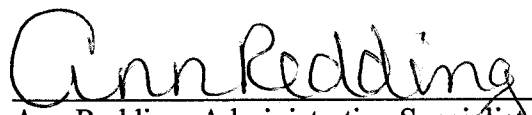
I certify that on September 5, 2003, I served the attached Proposed Order by mailing in a sealed envelope, with first class certified postage prepaid, a copy thereof addressed as follows:

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