

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

IN THE MATTER OF:

) **FINAL ORDER ADOPTING**

) **PROPOSED ORDER**

) OAH Case No.: 2017-ABC-00302

)

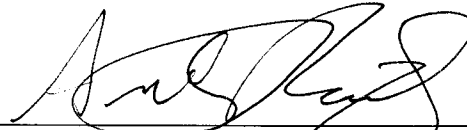
JON L. BISHOP

Respondent

This matter came before the Teacher Standards and Practices Commission during its public meeting of November 3, 2017 to consider the Proposed Order issued by Administrative Law Judge Joe Allen on August 25, 2017. Respondent¹ did not file exceptions to the Proposed Order.

The Commission adopts the attached Proposed Order as the Final Order and hereby denies Respondent's request to reinstate his teaching license. Respondent will be eligible to reapply for reinstatement after one year from the date of this Final Order.

It is so Ordered this 22 day of February 2018.



Dr. Anthony J. Rosilez, 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.

¹ The Proposed order refers to Mr. Bishop as "Appellant." Any references to "Appellant" in the proposed order should be considered the same as "Respondent."

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

IN THE MATTER OF:) **PROPOSED ORDER**
)
JON L. BISHOP) OAH Case No. 2017-ABC-00302
)

HISTORY OF THE CASE

On November 28, 2016, the Teacher Standards and Practices Commission (TSPC or Commission) issued a Notice of Denial of License Reinstatement and Opportunity for Hearing (Notice) to Jon Loren Bishop (Appellant). On December 14, 2016, Appellant requested a hearing.

On February 2, 2017, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Joe L. Allen to preside at hearing. A prehearing conference was convened on March 17, 2017. The purpose of the prehearing conference was to establish the issues for hearing and set deadlines for prehearing procedures as well as a date for hearing.

A hearing was held on June 22, 2017, in Salem, Oregon. Appellant appeared without counsel and testified on his own behalf. TSPC was represented by Senior Assistant Attorney General (AAG) Raul Ramirez. Testifying on behalf of Appellant were Jerry Bishop¹, Mitchell Janisse², Joni Balli, and Cassandra Ahrens.³ Testifying on behalf of the TSPC were William Starkweather and Jeffrey Van Laanen. The record closed at the conclusion of the hearing on June 22, 2017.

ISSUE

Whether the Commission may deny Appellant's application for reinstatement of his teaching license because he failed to provide satisfactory evidence of good moral character, mental fitness, and/or trustworthiness. ORS 342.143(2), ORS 342.175(4)(c), and OAR 584-050-0018(4)(d).

EVIDENTIARY RULINGS

Exhibits A1 through A15, offered by the Commission, were admitted into the record

¹ Jerry Bishop is Appellant's father.

² Mr. Janisse is Appellant's brother-in-law.

³ Ms. Ahrens' maiden name is Bishop. She is Appellant's biological daughter.

without objection. Exhibits R1 and R2⁴, offered by Appellant, were also admitted into the record without objection.

FINDINGS OF FACT

1. TSPC licensed Appellant as a teacher from June 1988 until August 6, 2014. (Ex. A3 at 2.) During the 2012-2013 schoolyear, Appellant was employed with the Riddle School District (the District). (Test. of Appellant; Ex. A3.)

2. Between October 27, 2012 and November 7, 2012, Appellant sent approximately 177 text messages to a 13-year-old female student, AR. Appellant's text messages occurred before, during, and after school hours and included a request for AR to send him a picture of her outfit and comments such as "luv you" and "sexy shorts, LOL." (Exs. A3 at 2 and A8 at 3.)

3. In November 2012, the District conducted an investigation into Appellant's text messages with AR. Appellant asserted that his only purpose in texting students was to provide assistance in a counseling capacity. The District determined Appellant acted inappropriately, issued a written reprimand, and instructed Appellant to "cease and desist from all electronic communication including but not limited to text messaging, Facebook communications, or e-mailing students at Riddle School District." (Ex. A6 at 1; test. of Starkweather.) The District reported the written reprimand to the TSPC on November 15, 2012. (Ex. A10.)

4. In March 2013, the District received a complaint from the principal at Roseburg High School alleging Appellant was engaged in communication via text messages with an eleventh grade student (KB), who had recently transferred out of the District. (Test. of Starkweather; Ex. A3 at 3.) Appellant's text messages included comments such as, "when do I get a hug * * *" and "glad we get to talk again, told you I wasn't going away...luv ya* * *." (Ex. A3 at 3.)

5. During the District's investigation of the KB complaint, Appellant stated that he believed it was acceptable for him to text KB because she was no longer a student of the District. (Test. of Bishop and Starkweather.) Appellant also expressed an interest in taking KB to a pub for dinner. (Ex. A11 at 6.) After her departure from the District, Appellant learned of KB's whereabouts through the Riddle High School attendance office. (Test. of Bishop.)

6. In addition, the District discovered that Appellant had been engaging in text messages, since at least 2010, with a then eighth grade student, KR. At the time of the District's investigation in 2013, KR was in the eleventh grade at Riddle High School. Appellant's text messages included questions regarding whether KR had kissed another student. The investigation revealed that KR had asked Appellant to

⁴ Appellant marked as Ex. R1 his witness list. Ex. R2 consists of a flash drive with multiple video recordings attesting to Appellant's character. While Appellant's witness list is not properly considered an exhibit in this matter, the designation as Ex. R1 had not been changed.

stop sending her text messages on at least two separate occasions. (Ex. A14; test. of Starkweather and Bishop.)

7. The District terminated Appellant's employment effective June 19, 2013. (Ex. A15 at 1.) Appellant's termination was upheld after a hearing before the Fair Dismissal Appeals Board. (Ex. A15.)

8. On May 9, 2014, Appellant signed a Stipulation of Facts and Final Order of Revocation (revocation) from TSPC. The revocation order determined that Appellant engaged in unprofessional conduct constituting gross neglect of duty and revoked his teaching license, effective August 6, 2014. (Ex. A3 at 3 and 4.)

9. On October 13, 2015, Appellant submitted an application to TSPC seeking reinstatement of his teaching license. (Ex. A1; test. of Bishop.) On or about August 11, 2016, Appellant met with Jeffrey Van Laanen, legal liaison for TSPC. During that interview, Mr. Van Laanen suggested that it might be beneficial for Appellant to have a mental health evaluation performed by a licensed professional to support his application. (Test. of Bishop and Van Laanen.)

10. On or about June 10, 2016, Appellant obtained a mental health evaluation from Anthony Gagliardo, LCSW. As a result of the evaluation, Mr. Gagliardo opined that Appellant was not a danger to himself or others. Mr. Gagliardo stated his belief that Appellant be permitted to reapply for his teaching license but also recommended that Appellant "seek out some form of instruction and or counseling to address boundaries and co-dependency." (Ex. A2 at 1.)

11. Appellant provided the written evaluation report to TSPC but did not seek out or participate in instruction or counseling to address boundary issues or co-dependency. (Test. of Bishop.)

CONCLUSION OF LAW

The Commission may deny Appellant's application for reinstatement of his teaching license because he failed to provide satisfactory evidence of good moral character, mental fitness, and trustworthiness.

OPINION

TSPC asserts Appellant's application for reinstatement of his teaching license should be denied because Appellant failed to establish satisfactory evidence of good moral character, mental fitness, and trustworthiness. As the applicant for licensure, Appellant bears the burden of proving, by a preponderance of the evidence, that he meets the minimum qualifications established by statute or rule. *Sobel v. Board of Pharmacy*, 130 Or App 374, 380 (1994), *rev den* 320 Or 588 (1995) (in an application proceeding, it is the applicant who has the burden of establishing eligibility, qualifications and fitness). As the proponent of his own qualifications for licensure, Appellant bears the burden of presenting evidence. ORS 183.450(2); *Harris v. SAIF*,

292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *see also, Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard of proof in administrative hearings is a preponderance of the evidence). Proof by a preponderance of the evidence means the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

ORS 342.143(2) permits the Commission to require certain evidence regarding an applicant's fitness for a teaching license and provides, in relevant part:

The Teacher Standards and Practices Commission may require an applicant for a teaching * * * license * * * to furnish evidence satisfactory to the commission of good moral character, mental and physical health, and such other evidence as the commission may deem necessary to establish the applicant's fitness to serve as a teacher or administrator.

ORS 342.175 provides grounds for discipline of a licensee and reinstatement of licensure and provides, in pertinent part:

(4)(a) Except for convictions for crimes listed in ORS 342.143 (3) and subject to subsection (5) of this section, any person whose license or registration has been revoked, or whose right to apply for a license or registration has been revoked, may apply to the commission for reinstatement of the license or registration after one year from the date of the revocation.

(b) Any person whose license or registration has been suspended, or whose right to apply for a license or registration has been suspended, may apply to the commission for reinstatement of the license or registration.

(c) *The commission may require an applicant for reinstatement to furnish evidence satisfactory to the commission of good moral character, mental and physical health and such other evidence as the commission may consider necessary to establish the applicant's fitness.* The commission may impose a probationary period and such conditions as the commission considers necessary upon approving an application for reinstatement.

(Emphasis added.)

Similarly, OAR 584-050-0015 provides for reinstatement of a suspended, revoked, or surrendered teaching license, and provides, in part:

(1) A suspended, revoked, or surrendered license, charter school registration, or school nurse certificate may be reinstated if the applicant is otherwise qualified and complies with the other applicable provisions of rules in this division.

(2) Licenses, certificates or registrations that are revoked, suspended, or

surrendered and eligible for reinstatement will be reinstated for the same period of time as an application for a new or renewed license or registration of that type if the license is a non-provisional license.

(3) The fee to reinstate a license is in addition to the application fee required to issue a new license. See OAR 584-036-0055.

(4) A denial of an application for reinstatement of a suspended or revoked license, certificate or registration is considered a suspension or revocation of that applicant's right to apply for one year.

Finally, OAR 584-050-0018 provides guidance for reinstatement of a revoked teaching license, including circumstances where revocation is permanent, and provides in part:

(1) Any revocation for conviction for crimes listed in ORS 342.143(3) is permanent and the license, certificate or registration is not eligible for reinstatement. All other revocations of a license, certificate or registration or right to apply for a license, certificate or registration are eligible for application for reinstatement.

(2) A first application for reinstatement of a license, certificate or registration revoked for any reason other than those cited in ORS 342.143(3) may be submitted at any time after the period of revocation has expired.

(3) *The burden will be on the educator to establish fitness for reinstatement.*

(4) The application for reinstatement must include:

* * * * *

(d) Any additional documentation, sufficient to establish convincingly that the educator possesses all of the qualifications required for first licensure or reinstatement of a license, certificate or registration. Letters of recommendations from educator colleagues are insufficient alone to establish fitness for licensure following a revocation. *The educator must be clear regarding what proactive steps have been taken to ensure to the Commission that the conduct that resulted in the revocation is highly unlikely to occur again.*

(5) Following review of the application for reinstatement pursuant to this section, the Executive Director may make a recommendation to the Commission regarding whether to approve or deny the application.

* * * * *

(9) The Commission's denial of reinstatement pursuant to this rule is considered a revocation of the applicant's right to apply and is effective for one full year from

the date of the Commission's final order of denial. The applicant may apply for reinstatement of the right to apply for licensure, certification or registration after one year from the date of the Commission's final order of denial.

(Emphasis added.)

The record in this matter establishes that TSPC revoked Appellant's teaching license for multiple instances of excessive electronic communications with underaged female students with whom he came into contact through his position as a licensed teacher. Those communications began when at least two of the students were in eighth grade and continued until they were in eleventh grade, the year the District discovered Appellant's conduct. The record also demonstrates that, while Appellant acknowledged that his conduct could be construed negatively, he insisted his contact was strictly for the purposes of counseling students. Appellant's justifications for his conduct demonstrate that he fails to grasp the impropriety of texting young female students.

As part of the application for reinstatement, Appellant participated in a mental health evaluation. The evaluator recommended that Appellant seek out and participate in instruction and/or counseling regarding appropriate boundaries and codependency. Despite those recommendations, Appellant did not seek out any instruction or counseling. In fact, the record demonstrates Appellant took no steps to address his patterns of conduct or thinking that resulted in revocation of his license.

According to ORS 342.143(2) and ORS 342.175(4)(c), the Commission may require an applicant to furnish evidence of good moral character, mental health, and such other evidence as the Commission may consider necessary to establish the applicant's fitness for licensure. Pursuant to that authority, the Commission has promulgated OAR 584-050-0018. According to OAR 584-050-0018(4)(d), Appellant's application must be clear regarding what proactive steps he has taken to show the Commission that the conduct that resulted in the revocation is highly unlikely to occur again. Appellant provided no such evidence at hearing. Rather, Appellant provided only character statements from family and close friends regarding their opinions of his fitness for licensure. Under the relevant rules, such evidence is insufficient, by itself, to establish fitness for licensure.

On this record, Appellant failed to establish he has taken proactive steps to address the conduct that resulted in revocation of his license. Accordingly, Appellant failed to meet his burden demonstrating his fitness for reinstatement as required by OAR 584-050-0018(3). Pursuant to OAR 584-050-0018(9), Appellant is ineligible to reapply for reinstatement for one year from the date of the Commission's final order denying his October 13, 2015 application.

ORDER

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

The Notice issued November 28, 2016 is AFFIRMED. Appellant's application for reinstatement of his teaching license is DENIED. Pursuant to OAR 584-050-0018(9), Appellant may not reapply for reinstatement of licensure for one year from the date of the Commission's final order of denial.

Joe L. Allen

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.