

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

IN THE MATTER OF LORI FAYE GREENFIELD	FINAL ORDER OAH No. 118684
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On March 16, 2005, Administrative Law Judge (ALJ) Andrea H. Sloan issued a Proposed Order for the suspension of the Oregon Teaching License of Lori Faye Greenfield for the remainder of the 2004-2005 school year. The Proposed Order was considered by the Commission at its meeting on April 28, 2005. At that time the Commission rejected portions of the ALJ's Proposed Order and directed the Commission staff to draft a new proposed order. On August 3, 2005, the Commission reconsidered this matter. After a review of the record and consultation with legal counsel, and being fully advised, the Commission adopts this order that incorporates the findings of fact, conclusions of law and proposed sanction of the Administrative Law Judge as set forth below.

HISTORY OF THE CASE

On October 19, 2004, the Teacher Standards and Practices Commission (TSPC) issued a notice to Ms. Greenfield, advising her that the Alsea School District had requested that Ms. Greenfield's teaching license be suspended for the remainder of the 2004-2005 school year. On October 25, 2004, Ms. Greenfield requested a hearing.

On November 15, 2004, TSPC referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Andrea H. Sloan was assigned to preside at hearing. A prehearing conference was convened on January 26, 2005. The purpose of the prehearing conference was to rule on a pending Motion to Quash Subpoena, brought by the Alsea School District, and to resolve other issues relating to witnesses.

A hearing was held on January 27, 2005, in Salem, Oregon. Ms. Greenfield appeared with counsel, Thomas K. Doyle. The Alsea School District was represented by Bruce Zagar. TSPC did not participate in the hearing. Testifying on behalf of Ms. Greenfield were Joni Olson, Chava Neuhaus and Steven Kinney. Ms. Greenfield also testified at the hearing. Testifying on behalf of the Alsea School District were Brian Leavitt and Del Coursey (appearing by telephone). The record closed February 18, 2005, following submission of closing briefs.

On February 2, 2005, I transmitted an inquiry to TSPC, requesting the commission's interpretation of the phrase "satisfactory justification" as used in OAR 584-050-0020(3). On February 14, 2005, I received a response from TSPC indicating that the commission had not issued any policy statements or interpretations of that phrase. Included with the letter were the following: a list of TSPC orders for failure to give 60 days' notice (1997 to 2004); the final and proposed order issued in case number 20013525; and three confidential investigation reports and recommendations. On February 14, 2005 I sent copies of these documents to the parties. The record was not reopened.

ISSUES

1. Whether Ms. Greenfield violated ORS 342.553 and OAR 584-050-0020 by resigning her position with the Alsea School District without providing the district with 60 days' written notice.
2. If so, whether Ms. Greenfield had satisfactory justification for resigning with less than 60 days' written notice.

EVIDENTIARY RULING

Exhibits D1 through D7, offered by the Alsea School District, were admitted into the record without objection. Exhibits A8 through A18, offered by Ms. Greenfield, were admitted into the record without objection. The Alsea School District objected to Exhibits A1 through A7, arguing relevancy. The exhibits were provisionally admitted at the hearing.

Exhibits A1 through A7 deal with the issue of teacher layoffs by the Alsea School District during the spring of 2004. For example, Exhibit A1 is a letter to the community from the Alsea Education Association, explaining the union's opposition to layoffs. Exhibit A2 is a letter to the association from the School Board, expressing the Board's negative reaction to Exhibit A1. Exhibits A3 and A5 are letters from the community to the School Board, and Exhibits A4, A6 and A7 are letters from the School Board.

Ms. Greenfield argued that these exhibits are relevant to show that she was justified in giving less than 60 days' notice of her resignation, because her position with the district was not secure, given recent layoffs of experienced teachers.

The district argued that the exhibits are irrelevant because the evidence adduced at hearing established that Ms. Greenfield was not subject to layoff. Further, the district argued that prior layoffs were not relevant to the limited issue of whether or not Ms. Greenfield gave the district the required notice prior to her resignation.

In a contested case hearing, evidence is admissible if it is relevant, material and not unduly repetitious. Moreover, all other "evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs" is admissible. ORS 183.450(1) and OAR 137-003-0610(1)(2).

Relevant evidence is evidence that tends to establish the point for which it was offered. Material evidence is evidence that tends to establish a point that bears on issues in the case. In practice, the two concepts are often difficult to distinguish. The Oregon Evidence Code, although technically not applicable to administrative proceedings, defines relevant evidence to incorporate both concepts:

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.¹

Oregon Attorney General's Administrative Law Manual 129 (2004).

In this case, the issues are narrow: did Ms. Greenfield give the Alsea School District the required notice prior to her resignation, and if not, did she have satisfactory justification for her failure to do so? The fact that the district had laid-off teachers the prior spring is not relevant to whether or not Ms. Greenfield gave the required notice prior to resigning. The evidence about the lay-offs may, however, be relevant in establishing Ms. Greenfield's affirmative defense -- that her justification for resigning was satisfactory.

Consequently, I will admit Exhibits A1 through A7.

FINDINGS OF FACT

1. Lori Faye Greenfield worked as a teacher for the Alsea School District for ten years until August 2004. (Testimony of Ms. Greenfield, Mr. Coursey and Mr. Leavitt.) Ms. Greenfield held a Standard Elementary 016 Teacher's Certificate. (Ex. D5.) On March 17, 2004, Ms. Greenfield entered into a contract with the Alsea School District to teach during the 2004-2006 school years. (Ex. D6.) On June 21, 2004, the District mailed a letter to parents of incoming third, fourth and fifth grade students, announcing that Ms. Greenfield would be teaching third grade during the 2004-2005 school year. (Ex. A8.) Ms. Greenfield was not in danger of lay-off during the 2004-2005 school year. (Testimony of Mr. Coursey and Mr. Leavitt.)

2. In July 2004, Ms. Greenfield spoke with her friend, Wanda Carter, a teacher at the Inavale School in the Corvallis School District. Ms. Greenfield and Ms. Carter had taught at the same school once before. Ms. Carter told Ms. Greenfield that the Inavale School was hiring two teachers for the coming school year, and encouraged Ms. Greenfield to apply for one of the open positions. Ms. Carter spoke again with Ms. Greenfield later in the summer, and again encouraged her to apply with the Corvallis School District. Ms. Carter suggested that she and Ms. Greenfield might arrange to team teach in the future. Ms. Greenfield wanted to teach with Ms. Carter again, and wanted an opportunity to team teach in a couple of years. In mid-August 2004, Ms. Greenfield applied online with the Corvallis School District. She was invited to interview later in August. (Testimony of Ms. Greenfield.) While she was making her application, Ms. Greenfield spoke with Karen Smith, principal of the Inavale School. Ms. Smith and Ms. Greenfield discussed the 60 days' notice requirement at that time. (Testimony of Ms. Smith.)

3. Ms. Greenfield planned to attend a family reunion event in the Cascades during the week of August 23, 2004. Her interview was scheduled at the Inavale School on August 24, 2004. On her way to the interview, Ms. Greenfield placed a letter of resignation, dated August 23, 2004, in her desk drawer in her classroom at the Alsea School. (Testimony of Ms.

¹ OEC 410 (ORS 40.150).

Greenfield.) The letter was addressed to the Alsea School Board of Directors. In her letter, Ms. Greenfield announced her resignation, explaining that she had "been offered another teaching position" that would provide her "with certain opportunities and benefits that are not available at Alsea School." (Ex. A9.) Ms. Greenfield left her resignation letter in her desk at the school because she was leaving town following the interview, and she knew that, if she was offered the position, she would be giving the Alsea School District short notice. (Testimony of Ms. Greenfield.)

4. On Tuesday, August 24, 2004, Ms. Greenfield was one of seven applicants to be interviewed by Ms. Smith. On August 25, 2004, Ms. Smith offered Ms. Greenfield a position with the Inavale School, teaching a combination fifth and sixth grade class. Ms. Greenfield accepted the offer and told Ms. Smith that she would check with the Alsea School District about being released from her contract, and then let her know if there was a problem. (Testimony of Ms. Greenfield and Ms. Smith.)

5. Following her conversation with Ms. Smith, Ms. Greenfield called the Alsea School District and spoke with Dale Coursey, interim District Superintendent. Ms. Greenfield told Mr. Coursey that she had accepted a position with another school district. Mr. Coursey said that he could not stop her from leaving, or could not keep her there if she wanted to leave, or words to that effect.² Ms. Greenfield told Mr. Coursey that her letter of resignation was in her desk drawer. (Testimony of Mr. Coursey and Ms. Greenfield.)

6. Ms. Greenfield did not ask Mr. Coursey to waive the 60 days' notice requirement. Mr. Coursey did not tell Ms. Greenfield that he was waiving the 60 days' notice requirement. (Testimony of Mr. Coursey and Ms. Greenfield.)

7. At this time, Mr. Coursey had been the interim superintendent of the Alsea School District for about seven weeks. (Testimony of Mr. Coursey.)

8. After speaking with Ms. Greenfield, Mr. Coursey retrieved her letter of resignation from her desk. He later spoke with other teachers at the school, who agreed to change their class assignments for the upcoming year. The teachers agreed to teach combined first-second, third-fourth, and fifth-sixth grade classes. (Testimony of Mr. Coursey and Mr. Leavitt.)

9. Mr. Coursey notified Brian Leavitt, the chair of the Alsea School District Board of Directors, about Ms. Greenfield's resignation. He also reported that other teachers had agreed to consolidate their classes to accommodate Ms. Greenfield's departure. (Testimony of Mr. Coursey and Mr. Leavitt.)

10. At the regular school board meeting on August 30, 2004, Mr. Coursey announced Ms. Greenfield's resignation and presented her letter to the Board. The Board accepted Ms. Greenfield's resignation. The Board members were surprised by Ms. Greenfield's decision to

² Ms. Greenfield recalled Mr. Coursey saying that he would not try to keep her if she did not want to be at the Alsea School. Mr. Coursey recalled saying that he could not stop Ms. Greenfield from leaving, but that the decision was not his to make. The Commission finds that neither statement is a sufficient waiver of the 60 days' notice requirement, the distinction between the statements is of little consequence.

leave so close to the start of the school year. (Ex. D3.) In executive session, the Board agreed, without formal voting, to forward a complaint regarding Ms. Greenfield to TSPC. (Testimony of Mr. Leavitt.)

11. Prior to Ms. Greenfield's resignation, there were only four elementary grade teachers at the school. Teachers were scheduled to report to work on Monday, August 30, 2004. Students were scheduled to start their school year on September 7, 2004. (Testimony of Mr. Coursey.)

12. On September 8, 2004, Mr. Leavitt wrote Ms. Greenfield, giving her notice that the Alsea School District was forwarding a complaint to TSPC. (Ex. D2/A11.) On September 9, 2004, Mr. Coursey wrote a letter to TSPC regarding Ms. Greenfield's resignation. (Ex. D4/A12.)

13. On November 16, 2004, the Alsea School District Board of Directors issued resolution number 04-38, regarding Ms. Greenfield's resignation. (Ex. D1/A16.) The resolution was made following discussion with the assistant attorney general for TSPC about the need for a formal resolution. (Testimony of Mr. Leavitt.)

14. The "Alsea School District 7J Certified Staff Master Contract for 2003-2006" provides in Article 7, Section D(3) as follows: "Any contract teacher is considered to have a continuing contract but must sign an annual contract. *By state law he/she must give the District sixty (60) days' notice if he/she wishes to resign his/her position.*" (Ex. D7, emphasis added.)

CONCLUSIONS OF LAW

1. Ms. Greenfield violated ORS 342.553 and OAR 584-050-0020 by resigning her position with the Alsea School District without providing the District with 60 days' written notice.

2. Ms. Greenfield did not have satisfactory justification for resigning her position with less than 60 days' written notice.

OPINION

"The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position." ORS 183.450(2). Here, the Alsea School District has the burden of proving that Ms. Greenfield resigned her position without first giving 60 days' written notice. Ms. Greenfield has the burden of proving that she had a satisfactory justification for failing to give the required notice. *See, 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); *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 persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

The District argued that Ms. Greenfield did not give the required notice before tendering her resignation, and that the timing of her departure created a hardship for the district. Ms. Greenfield argued that she was justified in giving the district less than 60 days' written notice for the following reasons: the district had laid-off teachers a few months before, and she did not believe that her position was safe; she wanted to work with Ms. Carter again; and she wanted to work for a district that would allow her the opportunity to team teach. Finally, Ms. Greenfield argued that TSPC could not suspend her teaching license because the School Board did not comply with the requirements of OAR 584-050-0020(1). For the reasons discussed below, I find that the Alsea School District has met its burden, and Ms. Greenfield has not.

Resignation. ORS 342.553 provides, in part, as follows:

(1) Any elementary or secondary teacher who has entered into a contract to teach in any public school and who resigns the position without first providing 60 days' written notice to the district superintendent or the notice required in the applicable collective bargaining agreement may have the teaching license of the teacher suspended for the remainder of the school year by the Teacher Standards and Practices Commission upon notice of the resignation from the district school board to the commission.

Article 7 of the "Alsea School District 7J Certified Staff Master Contract 2003-2006" provides, in relevant part, as follows: "Any contract teacher is considered as having a continuing contract but must sign an annual contract. *By state law, he/she must give the District sixty (60) days' notice if he/she wishes to resign his/her position.*" (Ex. D7, emphasis added.)

There is no factual dispute regarding this issue: Ms. Greenfield resigned her teaching position with the Alsea School District without first providing 60 days' written notice.

Satisfactory justification. The remaining question is whether Ms. Greenfield had satisfactory justification for her violation of ORS 342.553 and her collective bargaining agreement.

Ms. Greenfield contended that she was justified in resigning with less than 60 days' written notice because the district released her from the notice requirement. Specifically, she argued that Mr. Coursey waived the notice requirement by not demanding that Ms. Greenfield continue to teach for the Alsea School District for 60 days. Additionally, Ms. Greenfield argued that her decision was justified because she was fearful of lay-offs, she wanted to teach again with her friend, Ms. Carter, and she wanted to work in a district that would give her the opportunity to team teach.

The district proffered several arguments on this issue. First, the district contended that it never waived the 60 days' notice requirement. Second, it argued that the "satisfactory justification" provision in OAR 584-050-0020(3)³ is an *ultra vires* extension of ORS 342.553.

³ OAR 584-050-0020(3) provides: "If TSPC decides that the charge has been proven and the justification for violating the contract is not satisfactory, TSPC will suspend the teacher's license for the remainder of the school year. The decision of TSPC is final. * * *."

In other words, the statute does not provide for any defenses to resigning without the required notice. The district argued that, by including the "satisfactory justification" language in its administrative rule, TSPC exceeded the scope of the applicable statute. Finally, the district contended that, even if the rule was valid, none of Ms. Greenfield's explanations for her late resignation would be satisfactory justifications for resigning her teaching position so close to the start of the school year.

I will address each of these arguments in turn.

Ultra vires. The district argued that TSPC exceeded the scope of the ORS 342.553 when it provided a defense to a teacher's failure to give the requisite notice prior to resigning. Because the issue was raised in closing briefs, Ms. Greenfield did not address this argument. *University of Oregon Co-Operative v. Dept. of Rev.*, 273 Or. 539, 550 (1975).

The terms of ORS 342.553 clearly establish that TSPC has discretion to suspend a teacher's license for resigning without giving 60 days' written notice to his or her district. The statute provides that TSPC *may* suspend a teaching license upon notice of the resignation from the school board to TSPC. And, at ORS 342.165, the legislature granted TSPC authority to "adopt rules necessary for the issuance, denial, continuation, renewal, lapse, revocation, suspension or reinstatement of licenses or registrations issued under ORS 342.120 to 342.430."⁴ Given this discretionary language, I find that TSPC did not exceed its authority by providing a defense for teachers threatened with suspension under ORS 342.553. The "satisfactory justification" provision of OAR 584-050-0020 is not *ultra vires*.

Other reasons for leaving. TSPC provided no guidance concerning its interpretation of the "satisfactory justification" provision of OAR 584-050-0020, and I was unable to find any appellate decisions which addressed this issue. In the absence of any authority, I will determine the reasonable meaning of this phrase.

"Justification" is defined as "the condition or fact of being justified." To "justify" in a legal sense means to "demonstrate sufficient legal reason for an action taken." *American Heritage College Dictionary* 738 (3rd ed 1997). "Satisfactory" is defined to mean "adequate." *American Heritage College Dictionary* 1213 (3rd ed 1997). In this context, a "satisfactory justification" would be an adequate legal reason for taking an action.

Ms. Greenfield resigned her teaching position on August 25, 2004. Teachers were required to report to work on August 30, 2004, and students reported for school on September 7, 2004. Ms. Greenfield left the Alsea School District so that she could once again teach with her friend, Ms. Carter. In addition, Ms. Greenfield thought that she would have future opportunities to team teach if she worked for the Corvallis School District. And, Ms. Greenfield testified that she was concerned that her teaching position was in jeopardy because the Alsea School District had laid-off teachers during the previous school year.

There is evidence in this record that, despite her concern to the contrary, Ms. Greenfield's position was not in jeopardy. Following the lay-offs, the Alsea School District entered into a

⁴ ORS 342.120 to ORS 342.430 address teaching licenses and certifications.

contract with Ms. Greenfield to teach for the 2004-2005 school year. The district sent a letter to school families announcing that Ms. Greenfield would be teaching third grade that year. And, both Mr. Coursey and Mr. Leavitt testified that Ms. Greenfield's job was secure. Under these circumstances, Ms. Greenfield's subjective belief that she would lose her job was not an adequate legal reason for her to resign her position in violation of ORS 342.553.

In addition, Ms. Greenfield did not face an emergency that required her to leave the district abruptly. She simply wanted to have "certain opportunities and benefits that [were] not available at Alsea School." (Ex. A9.) If Ms. Greenfield had resigned because her husband had been transferred to another area of the state, or because she needed to care for an ailing family member, I would be persuaded that her justification for leaving the district just days before the start of the school year was satisfactory. Outside forces did not compel her decision. Her abrupt departure reduced the teaching staff at Alsea School by 25 percent. Based on this record, I cannot find that Ms. Greenfield had an adequate legal reason for violating ORS 342.553.

Moreover, Ms. Greenfield's argument that the district could have re-hired a teacher laid-off the previous year is irrelevant. The district made a decision to consolidate classes at the Alsea School within days of the beginning of the school year. The fact that there might have been other options for dealing with Ms. Greenfield's sudden departure does not provide her with satisfactory justification for her actions.

Compliance with administrative rules. Finally, Ms. Greenfield argued that TSPC could not suspend her license for the remainder of the school year because the Alsea School Board did not comply with the document requirements of OAR 584-050-0020(1). This rule provides as follows:

If a school board charges a teacher with violation of a contract under ORS 342.553, for failure to provide sixty days' notice prior to resignation, the Board must submit all of the following documents: a copy of the Board's resolution containing the teacher's notice of resignation and the Board's request for suspension of licensure, a copy of the teacher's contract, a copy of the applicable collective bargaining agreement, and a statement from the superintendent describing the provisions of the agreement for resignations.

Ms. Greenfield contends that the Board did not comply with these requirements because it did not pass a resolution before TSPC advised Ms. Greenfield that her license was in jeopardy. Additionally, the Board did not provide TSPC with a copy of the applicable collective bargaining agreement until December 2004.

The administrative rule in question does not establish timelines for the submission of required documents. Indeed, the rule simply lists the documents that must be submitted by a school board seeking suspension of a teacher's license. Here, the record contains all required documents. I am not persuaded that the suspension action is invalid because TSPC advised Ms. Greenfield that the district was seeking suspension of her license before the district submitted the required resolution and collective bargaining agreement.

Waiver. Ms. Greenfield testified that, after she told Mr. Coursey that she was resigning, he told her that he would not try to keep her if she did not want to be at the school. Ms. Greenfield interpreted this statement to mean that Mr. Coursey was releasing her from the 60 days' notice requirement. Mr. Coursey testified that he told Ms. Greenfield that he could not stop her from leaving, but that the decision was not his to make. Mr. Coursey testified that he did not intend to release Ms. Greenfield from the notice requirement. Both Ms. Greenfield and Mr. Coursey testified that she did not directly ask to be released, and he never specifically told her that she was released from the notice requirement. The 60 days' notice requirement was never addressed in their conversation on August 25, 2004.


Counsel for Ms. Greenfield urged that I find that Ms. Greenfield's testimony was more credible than Mr. Coursey's testimony. Specifically, he argued that Mr. Coursey's testimony was "disingenuous," "false" and "lacking credibility." Despite these characterizations, I decline to make a credibility determination. If an ALJ declines to find in accordance with evidence because it comes from a source that the ALJ finds mistaken or untruthful, then an express finding of such fact should be made. *See Dennis v. Employment Division*, 302 Or 160 (1986). Here, I find that the statements attributed to Mr. Coursey by Ms. Greenfield and Mr. Coursey are substantially similar. I further find that neither statement is clear enough to be a waiver of the 60 days' notice requirement. Indeed, there is a significant difference between telling someone that you cannot prevent them from quitting, and telling someone that you will waive the required notice. Mr. Coursey's statement to Ms. Greenfield cannot reasonably be interpreted as a waiver of the 60 days' notice requirement.

ORDER

ORS 342.553 authorizes the Commission to suspend the teaching license of a licensed teacher who has entered into a contract and resigns his or her position without providing 60 days' written notice. The suspension shall be for the remainder of the school year. In ordinary circumstances, the Commission would suspend the license of Lori Faye Greenfield for the remainder of the 2005-2005 school year. However, because the 2004-2005 school year is now over, no suspension will be issued.

DATED this 9 day of August, 2005.

TEACHER STANDARDS AND PRACTICES COMMISSION


Victoria Chamberlain, Executive Director

Notice: You are entitled to judicial review of this order. Filing a Petition for Reconsideration or Rehearing shall be a condition of judicial review of any Final Order of the Commission pursuant to OAR 584-019-0045. If the Commission does not act on your petition for reconsideration or rehearing, the petition shall be deemed denied the 60th day following the date the petition was filed. ORS 183.482. In such case, a petition for judicial review shall be filed within 60 days only following this date. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals

**APPENDIX A
LIST OF EXHIBITS CITED**

- Ex. A8: Letter to parents regarding teaching assignments
- Ex. A9: Ms. Greenfield's resignation letter
- Ex. D1/A16: Alsea School Board resolution regarding Ms. Greenfield's resignation
- Ex. D2/A11: Letter to Ms. Greenfield from Mr. Leavitt
- Ex. D3: Minutes of August 30, 2004 Alsea School Board meeting
- Ex. D5: Ms. Greenfield's licensed teacher's contract
- Ex. D6: Alsea School District 7J Notice of Intent Contract Teacher dated March 17, 2004
- Ex. D7: Alsea School District 7J Certified Staff Master Contract 2003-2006