

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

In the Matter of the Teaching License of:	)	FINAL ORDER
	)	
GERALD LEROY SPEES	)	Hearing Officer Panel Case
	)	No. 20012876

On March 28, 2002, Administrative Law Judge Ella D. Johnson issued a Proposed Order in this case. On April 10, 2002, Gerald Leroy Spees submitted exceptions to the proposed order through his attorney, Aruna A. Masih. Ms. Masih subsequently presented oral argument to the Commission.

After having considered the Proposed Order and the entire record in this case, the Teacher Standards and Practices Commission adopts the attached Proposed Order dated March 28, 2002 and incorporates by reference the Findings of Fact and Conclusions of Law contained in the Proposed Order, except as modified herein.

Conclusion of Law concerning Mr. Spees' interaction with Student MP

The Commission modifies the language appearing on pages 18 and 19 of the Proposed Order as follows:

With respect to the incident which occurred on October 23, 2000, the Commission finds that Spees' yelling and bumping and violating of the personal space of MP did violate OAR 584-020-0040(4)(d), 584-020-0040(4)(n) and 584-020-0030(2)(b). The physical force was not authorized by school policy and was unreasonable under the circumstances. In addition, Mr. Spees' intimidating verbal behavior violated the requirement under OAR 584-020-0030(2)(b) that a teacher use skill in communicating with students, staff and patrons of the district. MP did not testify at the hearing due to a death in the family. However, the eyewitness testimony of Donna Henry (Henry) establishes that the physical force used by Spees in bumping his chest against MP and screaming and violating the student's personal space in an intimidating manner was willful, unjustified and unauthorized. Moreover, Spees' actions were clearly inappropriate even though MP may have feigned swings at him. Spees did not testify or argue that he was defending himself. He testified that he yelled and poked his finger at MP to make sure the student knew he was serious.

Consequently, the Commission concludes that Spees' conduct in this regard violated OAR 584-020-0040(4)(d) and 584-020-0030(2)(b). Because Spees' verbal interaction with the student was a substantial deviation from

professional standards, it also constitutes gross neglect of duty under OAR 584-020-0040(4)(n).

At the outset of the hearing, the Commission was permitted to amend the allegations in the Notice of Opportunity for Hearing to provide that Mr. Spees' conduct with respect to MP constituted both unreasonable physical force under OAR 584-020-0040(4)(d) and a substantial failure to use skill in communicating with students under OAR 584-020-0030(2)(b). The hearing officer's findings support a conclusion that Spees violated OAR 584-020-0030(2)(b).

There was conflicting testimony as to whether Mr. Spees bumped this student. The Commission concludes by a preponderance of the evidence that that Mr. Spees caused some physical contact with the student; even if physical contact had not occurred, Mr. Spees' behavior was inappropriate and amounted to gross neglect of duty.

Mr. Spees requested the opportunity to present additional evidence because of the failure of MP to appear at the hearing. The hearing record is now closed, and no request for a continuance was made at the time of the hearing. In light of this fact and in light of the Commission's conclusions on this issue, the request to present additional evidence is denied.

#### Conclusion of Law concerning Statements to SR and RB

The Commission modifies the language appearing on page 20 of the Proposed Order by deleting the conclusion that Mr. Spees' statements to these students constituted a violation of Commission standards at the time this conduct occurred.

Mr. Spees made these statements in January 1988. At that time, the Commission had not adopted standards concerning inappropriate verbal conduct of a sexual nature when directed toward a student or students. The Commission's rules prohibited "sexual contact" with a student, but Mr. Spees did not violate this provision.

The Commission nonetheless finds that the sanction contained in the Proposed Order is fully warranted based on Mr. Spees' other violations of professional standards.

ORDER

Based on the foregoing, the Commission adopts the Proposed Order, except as set forth above, and orders that the Oregon Teaching License of Gerald Leroy Spees is suspended for a period of 90 days from the date of the Order.

Dated this 17<sup>th</sup> day of May, 2002.

TEACHER STANDARDS AND PRACTICES COMMISSION

By:   
David V. Myton, 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.



On September 11, 2001, the Commission referred this matter to the Hearing Officer Panel for hearing. On March 11, 12 and 13, 2002, Administrative Law Judge Ella D. Johnson conducted a hearing in Salem, Oregon. The record closed on March 18, 2002 following receipt of the Commission's submission of the 1993 version OAR Chapter 584, division 20 which was in effect during the alleged violation. Assistant Attorney General Joe Gordon McKeever represented the Commission. Testifying on behalf of the Commission were: Russell "Buz" Tautfest, David Myton, Michelle Gaines, Donna Henry, Melissa Ivey, Kathleen Shelly, Kathleen Long, Jim Wilson, JV, MS, SJ, LI, TH, DW, and BP.<sup>3</sup> Attorney Aruna A. Masih represented Respondent. Testifying on behalf of Respondent were: Joyce Parmeter, Karen Murray, Mike Gaines, Dan Halter, Greg Hile, Pam Morris, JG and Gerald Spees.

After review and consideration of the entire record in this matter, I now issue this Proposed Order.

### ISSUES

- 1) Whether Spees violated OAR 584-020-0040(4)(n) relating to Gross Neglect of Duty in seven alleged instances as set forth below and in the Notice.
- 2) Whether the incident which occurred on or about April 2, 1986 wherein Spees allegedly held CP, a male middle school student, in a manner that caused him physical pain, violated OAR 584-020-0040(4)(d).
- 3) Whether the incident which occurred on or about January 21, 1988 wherein Spees allegedly grabbed SR, a female middle school student, by the arm and twisted it behind her back, violated OAR 584-020-0040(4)(d).
- 4) Whether the incident which occurred on or about January 21, 1988 wherein Spees allegedly made suggestive remarks to SR, a female middle school student, and RB, a male middle school student insinuating that they were attracted to each other, violated OAR 584-020-0040(4)(f).
- 5) Whether the incident which occurred on or about April 14, 1989 wherein Spees allegedly grabbed DW, a male middle school student, by the neck and tore his shirt, violated OAR 584-020-0040(4)(d).
- 6) Whether the incident which occurred on or about October 4, 1993 wherein Spees allegedly told a male middle school student in his geography class "If you don't want any more kids, leave your gun in your holster," violated OAR 584-020-0005(5).
- 7) Whether the incident which occurred on or about October 23, 2000 wherein Spees allegedly

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<sup>3</sup> Students who are or were minors at the time of the incidents are identified by initials.

violated the personal space of MP, a male middle school student, screamed and yelled and bumped him with his chest, violated OAR 584-020-0040(4)(d).

- 8) Whether the incident which occurred on or about December 6, 2000 wherein Spees allegedly grabbed JV, a male middle school student, by the arm, shook him and grabbed him by the chin and head, violated OAR 584-020-0040(4)(d).
- 9) If so, whether Respondent's violations warrant a suspension of 90 to 120 days.

### EVIDENTIARY RULING

The Commission's Exhibits 1 through 8, 10 through 16 and 18 through 22 were admitted into the record without objection.<sup>4</sup> The Respondent's Exhibits A through N and P through V were admitted into the record without objection.<sup>5</sup>

The Commission objected to Respondent's Exhibit O, which is an incident report authored by a teacher named Boyson concerning the behavior of one of the students involved in the allegations against Respondent. The Commission argued that Respondent had not provided a foundation for the exhibit. I delayed ruling on the Commission's objection until the evidence had been heard. Following my review of the record, I find that Exhibit O is admissible, inasmuch as all documents, including hearsay, are admissible in administrative hearings if they are relevant, without regard to whether they violate the Oregon Evidence Code (OEC), with the exception of the privileges authorized by law. ORS 183.450(1); OAR 137-003-0610.

Respondent objected to the Commission's Exhibits 9, and 17 (Spees' deposition). Respondent argued that these exhibits were not relevant in that they involved incidents that were not charged and their admission would be unduly prejudicial. In support of his objection, Respondent cited ORS 342.177(1), which states in pertinent part:

The person against who the charge is made shall have the right to be represented by counsel and to present evidence and argument. The evidence must be confined to the charges.

With respect to Exhibit 9, the Commission argued that it was relevant as to whether Spees engaged in a pattern of misconduct, which implicates the level of sanction. I find that the document is relevant under OAR 584-020-0045<sup>6</sup> to the sanction imposed. I also find that Respondent was not unduly prejudiced in that he was on notice that the Commission intended to

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<sup>4</sup> The Commission's Exhibits 22 and 23 were improperly marked and I have renumbered them as Exhibits 21 and 22.

<sup>5</sup> The Commission objected to Respondent's Exhibits M and N but withdrew its objection provided that it was able to cross-examine witnesses concerning the documents. Respondent called the authors of those documents. Consequently Exhibits M and N are also admitted into the record without objection.

<sup>6</sup> See *infra* at page 21.

raise these prior incidents at the deposition and when he received a copy of the Commission's Exhibits and witness list prior to the hearing.

With respect to Respondent's argument that ORS 342.177(1) prohibits admission of the proffered evidence concerning uncharged prior incidents, the Commission argued that this evidence was offered for the purpose of establishing a pattern of conduct that implicates the sanction warranted. Respondent's objection requires me to determine whether the language of ORS 342.177(1) is ambiguous. If the language of the statute is unambiguous, I apply *Springfield Education Assn v. School Dist*, 290 Or 217 (1980) to determine the analysis applied. Here, I find that the statute is unambiguous and apply *Springfield*. In *Springfield*, the Court determined that statutes could be divided into three classes: "exact" terms, where the terms have an exact meaning which require only fact-finding; "inexact" terms where the terms have a less precise meaning and require interpretation by the agency; and "delegative" terms, where the terms express "non-completed legislation in which the agency is given delegative authority to complete." *Id.* at 227-29.

ORS 342.177(1) states in relevant part that, in hearings under ORS 342.176, "[t]he evidence must be confined to the charges." I find this statute contains exact terms. The Commission has applied this statute to find that it is allowed to offer evidence of instances not charged to establish a pattern of conduct for the purpose of determining the sanction. I conclude that the agency's application of the statute to the facts of this case are reasonable in that this evidence is not being offered as proof of other charges. Accordingly, I overrule Respondent's objection to Exhibit 9.

With respect to Exhibit 17, Respondent objected to page 38 line 12 through page 42 line 14 and page 70 line 3 through page 73 line 11. Respondent argued these portions of the deposition were not admissible because they relate to incidents that have not been formally charged. The Commission argued that those portions of the deposition were relevant to show that Respondent had been put on notice concerning his behavior and to establish a pattern of conduct relevant to determining the sanction. I find that page 38 line 12 through page 42 line 14 and page 70 line 3 through page 73 line 11 are relevant in that regard and the Commission's application of ORS 342.177(1) to the facts here is correct. Consequently, I deny Respondent's objection in this regard as well.

Respondent also objected to pages 91 through 100 of Exhibit 17, arguing that it violated the psychotherapist-patient privilege. I deferred ruling on Respondent's objection. ORS 183.450(1) requires agencies and those who conduct administrative hearings "to give effect to the rules of privilege recognized by law." ORS 40.230 (OEC 504) recognizes the psychotherapist-patient privilege. OEC 504(3) states that the privilege to refuse to disclose and prevent others from disclosing confidential communications may be claimed by the patient, which in this case is Respondent. A privilege may be voluntarily waived by the holder of the privilege. ORS 40.280 (OEC 511). Following review of page 91 line 25 through page 100 line of the deposition, I find that Respondent voluntarily waived the privilege by answering the Commission's questions despite his counsel's warnings. Moreover, even if he did not waive the privilege, I find that the information contained in the deposition did not implicate any privileged communication. Consequently, I overrule Respondent's objection based on privilege and admit

page 91 line 25 through page 100 line 17 of Exhibit 17 into the record.

### FINDINGS OF FACT

- 1) Spees has spent 25 years of his life teaching middle school students. He grew up in the Philomath area and graduated from Philomath High School. He attended Oregon State University (OSU) from 1967 to 1970. After serving in the US Army for 18 months, Spees returned to OSU, completed a BS degree, and obtained a teaching license in 1976. His teaching certificate allowed him to teach part-time language arts and part-time social studies. Following graduation from OSU, he and his wife moved to Willamina, Oregon and he became employed by the Willamina School District No. 30J (the district). He taught seventh and eighth grade social studies, math, and science at the Willamina Elementary School.<sup>7</sup> Spees was a "catch-all" teacher for the first 17 or 18 years of teaching, meaning he was assigned to teach any subject area that needed a teacher. He also coached girls' and boys' sports. (Exs. 17-4 through 17-14; Spees' testimony)
- 2) Spees is over six feet tall and weighs approximately 245 pounds. He was routinely assigned to hall, bus, cafeteria, detention, and gym duty where he monitored the students' behavior and intervened in disciplinary problems. Most of the teachers were not assigned to these duties. By routinely assigning him these duties, the school district placed him in the position of being the primary disciplinarian. (Spees' testimony).
- 3) Following his first year of teaching, Spees was rated as an effective teacher and an asset to the elementary school staff by Principal Ted Busselle. (Ex. E).
- 4) During the 1979-80 school year, Spees was employed in the Willamina Junior High School<sup>8</sup> as a social studies teacher. In Spees' performance evaluation for the school year, WJHS Principal Gene Metzzer noted his concern that Spees needed to modify his classroom disciplinary techniques and that he would expect "a more personalized, private mode of disciplinary control techniques" in the next school year. (Ex. 1).
- 5) In 1982, the district adopted a Student Discipline policy. The policy stated that student discipline was based upon a guidance-counseling philosophy designed to produce behavioral changes with three major objectives centered on teaching the fundamental concepts for living, including "[u]nderstanding and respect for the rights, dignity and safety of all individuals." The policy was revised in 1989. (Ex. C).
- 6) In Spees' performance evaluation for the 1982-83 school year, the WJHS principal noted he needed to avoid making inappropriate statements or remarks in the classroom. (Exs. 2, E).

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<sup>7</sup> The elementary school subsequently burned down. In approximately 1982, the middle school moved into its own side of a building it shared with the elementary school. (Exs. 17-8, 17-13).

<sup>8</sup> The Willamina Junior High School subsequently became the Willamina Middle School.



- 7) During the 1984-85 school year, Spees taught language arts and social studies. In his performance evaluation response, Spees stated that his view on the use of physical force differed from that of the principal's and noted that neither method fit all students but that he would do as instructed. (Exs. 3, E).
- 8) In 1984, Dr. Kathleen Shelly, became principal of Willamina Middle School (WMS). In 2000, Dr. Kathleen Long became the principal at WMS. (Exs. 17-32, E; testimony of Dr. Shelly and Dr. Long).
- 9) During the period of time that Dr. Long served as principal, John Wilson served as the "TOSA" or teacher on special assignment. As the TOSA, he was responsible for scheduling. Several parents objected to their children being placed in Spees' class. Up until Dr. Long became principal, the complaints were handled by moving the objecting parent's children to another class. (Ex. U; testimony of Dr. Long).
- 10) Some parents had Spees as a teacher when they attended school in Willamina and they were concerned about him telling dirty jokes, making sexual innuendoes, and making inappropriate racial comments. One parent reported that he had thrown a stapler in class. Other parents thought Spees was a very good teacher who provided their children with the skills they needed to be successful in high school. (Testimony of Dr. Long, Karen Murray).
- 11) On January 9, 1989, the district adopted a policy on Hazing/Sexual Harassment. (Ex. A). The policy defined sexual harassment as "unwelcome conduct, either sexual or non-sexual, that is directed toward a person because of that person's gender." The policy stated that prohibited sexual harassment occurs when "unwelcome sexual or other gender based conduct interferes with a student's performance or creates an intimidating, hostile or offensive school environment," and noted that the conduct could be by a teacher, student, administrator or school staff. The policy also stated that sexual harassment included "[m]aking sexually suggestive remarks, gestures, or jokes, or remarks of a sexual nature about the victim's appearance." A formal complaint process was part of the policy. The policy was revised in 1993. (Ex. B).
- 12) The district adopted a Corporal Punishment policy in 1990, which was defined as "willful infliction of, or willfully causing the infliction of, physical pain." The policy prohibited all corporal punishment and the use of physical force to discipline or punish a student but authorized staff members to use physical force "when, in his or her professional judgment, the physical force is necessary to prevent a student from harming self, others or doing harm to school district property." (Ex. D).
- 13) WMS had a discipline/detention system in place during the period when Dr. Long was principal. If students received a certain number of detention slips, they were placed on a behavior contract, which had three levels with different consequences. A student could be placed in the ABLE class<sup>9</sup> for a period of time, receive in-school suspension, home

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<sup>9</sup> The ABLE class was a class for students with academic and/or behavioral problems.

suspension or expulsion. (Ex. S; testimony of Dr. Long).

- 14) In 1990, Willamina School District Superintendent Gerry Elstun investigated a complaint by a parent that Spees used excessive force and choked FS as he broke up a fight between FS and another middle school student. The superintendent concluded that the facts as reported by the students were inconsistent and that disciplinary action was, therefore, not warranted. The superintendent cautioned Spees that his history and reputation made him more susceptible to these allegations than other staff and that Spees must be more cognizant of why, when, where and how he touched students. (Ex. 9).
- 15) In Spees' teacher evaluation for 1990, Dr. Shelly noted that she appreciated "his efforts to maintain discipline during lunch while allowing students to enjoy this time together. He and the other noon supervisors are to be commended for doing a difficult job well." (Ex. E).
- 16) In Spees' 1994 teacher evaluation, Principal Russell "Buz" Tautfest stated that "Jerry needs to work [on] using good professional judgment when talking about controversial issues. He needs not to give his own personal views on subjects that may offend others, [i]f it is not appropriate to the age of the students." (Ex. E).
- 17) Close to the date of the prom in 2000, LI was in Spees social studies class. Spees made inappropriate comments about "how to get girls drunk." He called LI and some other female students "beautiful." She complained to her mother. LI asked Spees to stop calling her "beautiful." He continued to do so. Spees later told the class about his testicular cancer condition when they were discussing diseases. She complained to her mom again and her mom talked to the interim principal. She later talked to Dr. Long about Spees inappropriate comments. (Testimony of LI and Melissa Ivey).
- 18) In June 1996 and June 2001, Spees received Distinguished Service awards from the school district. (Ex. F).
- 19) Spees used a disciplinary system, which was developed by the entire staff wherein he would write a student's name on the board for disruptive behavior as notice to the student that the behavior needed to be discontinued. Thereafter, Spees would place a check mark next to the student's name if the student continued to disrupt class and directed the student to write a sentence apologizing for the behavior. A second check next to the student's name resulted in an automatic detention slip, which was to be signed by the student. WMS's disciplinary system assigned a number of points to each type of misbehavior. After the student was given a certain number of points within a specified period, the student was placed on a behavior contract with possible placement in the ABLE class. WMS also used a Discipline Matrix governing suspension, restitution, and possible police contact for a variety of offenses based on the number of referrals. (Exs. 17-24, 19, 20; testimony of Spees and Pam Morris).
- 20) Despite complaints about Spees' disciplinary style, WMS continued to assign him to duties, such as monitoring the hall, cafeteria, and gym for disciplinary problems. He was also assigned to oversee students sent to detention for disciplinary problems during the lunch hour. At some point, Spees requested not to be assigned to these duties and was not assigned

that school year. The next school year, the school continued to assign him to those duties. (Exs. 17-28 through 17-32, 17-57, 17-92 , 17-93; testimony of Spees and Pam Morris).

#### April 2, 1986 Incident with CP

- 21) On April 2, 1986 during his fifth period class, CP was noisy and Spees put CP's name on the board. CP then received a check mark for talking. CP stated that he would not accept the resulting detention and refused to sign the detention slip. Spees place another check by CP's name. At the end of the class, CP walked out of class leaving the detention slip and a book at his desk. Spees put his hand on CP's shoulder to "reassure" him and guided him back to the classroom. CP refused to pick up his detention slip and book. Spees moved his hand from CP's shoulder to the nape of CP's neck and raised his voice, directing CP to pick the items up. CP ducked under Spees hand. CP yelled to the incoming sixth period class that they were witnesses to Spees choking him. CP later told his father that Spees had choked him. CP failed to show up for detention and Spees wrote a referral form to the office with a description of the incident. Spees did not choke CP and cause CP physical pain. (Exs. 6, 17-26 through 17-32; testimony of Spees and Dr. Shelly).
- 22) The OEA contract required the administration to hear the teachers' side of the story before taking action on any complaint. Dr. Shelly refused to talk to Spees about the incident before taking disciplinary action. Spees did not file a grievance against Dr. Shelly for her refusal to meet with him.<sup>10</sup> . (Exs. 5, 17-35 through 17-40; testimony of Spees, Pam Morris and BP).
- 23) On April 7, 1986, Spees received a letter of reprimand from Dr. Shelly concerning the incident involving CP. The letter stated that Spees had caused physical pain to the student when the student refused to comply with Spees' directions. The letter also referenced their discussion about a prior incident involving BP, a male middle school student, which occurred on February 25, 1986. BP was teasing JD. JD was very tall at five feet eight inches. BP jumped up like he was going to hit JD and Spees held BP's arms in a bear hug below the rib cage and got between BP and JD. While Spees was holding his arms, JD slapped BP. (*Id.*)
- 24) Dr. Shelly stated in her letter of reprimand that "[p]hysical and/or mental mistreatment of any student by you will not be tolerated in the future. \* \* \* In the future, you are to refrain from touching any student except to protect yourself or another person from physical harm." Spees refused to sign that he had received the reprimand. (Exs. 5; testimony of Spees and Dr. Shelly).
- 25) On April 8, 1986, Spees wrote a letter in response to the letter of reprimand denying that he had caused CP physical pain. He complained that, prior to writing the letter, Dr. Shelly interviewed students but did not meet with him to hear his side of the story. Spees stated that he had only put his hand on CP's shoulder reassuringly and then moved it up to the nape of

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<sup>10</sup> Pam Morris, the OEA representative for the school, stated that it was up to the teacher whether to pursue a grievance and that Spees had six or more grievances against the district but decided not to grieve the letter of reprimand. (Pam Morris' testimony).

the neck when CP ducked from under his hand. Spees also stated that CP had rubbed and twisted his own neck to make it look red. He complained that Dr. Shelly did not support him when parents voiced concerns about their children being in his class. (Exs. 6, H; Spees' testimony).

#### January 21, 1988 incidents with SB and RB

26) On January 21, 1988, in Spees' fourth period geography class, two students, SB, a female seventh grade middle school student, and RB, a male seventh grade middle school student, were teasing each other. RB, who had a history of disruptive behavior both at school and on the school bus, already had his name on the board with one check mark. To avoid a second check mark which would have possibly resulted in a three-day suspension, RB begged Spees to allow him to do push-ups instead. Spees at first declined to allow him to do push ups because it was his understanding that push-ups were no longer allowed as a disciplinary sanction. RB then asked if he could just assume the push up position and hold it. Spees agreed. While RB was holding the push up position, his face became red and another student asked why his face was so red. Spees jokingly said that it was because SB liked RB. SB was a student who had severe mood changes and was easily frustrated. SB kicked Spees and when she tried to kick him a second time, he blocked her kick. When SB tried to hit Spees, he grabbed her wrist. He did not twist her arm behind her back. He told her to stop and she ran out of the classroom. (Exs. 7, 17-43 through 17-51, K; testimony of Spees and Pam Morris).

27) Spees later explained in a meeting with Dr. Shelly, OEA representative Pam Morris and Willamina School District Superintendent Mike Wsiaki that he had merely grabbed her arm. Spees also explained that he sometimes made comments about the students' relationships to test the seriousness of the conflict and to possibly defuse a tense situation when two students were squabbling. (Exs. 7, 17-52).

28) In a letter of reprimand dated January 25, 1988, Dr. Shelly concluded that Spees' comments were inappropriate coming from a teacher because middle school students were very sensitive to personal comments. Dr. Shelly further concluded that, although it was inappropriate for SB to kick him, his remarks contributed to SB's inappropriate behavior. Dr. Shelly noted that Spees was "unnecessarily rough" in responding to SB's actions. She warned him that in the future, if he made inappropriate personal comments to students, used inappropriate physical force with them or required them to do push ups or "burpees"<sup>11</sup> as a form of discipline, he would be subject to disciplinary action which could include termination of his employment as a teacher at WMS. She later clarified that she did not feel that it would be a problem for him to compliment students on their appearance or on appropriate behaviors. Spees signed the reprimand letter<sup>12</sup>. (Exs. 7, J; testimony of Spees and

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<sup>11</sup> Pam Morris, the OEA representative for the school, credibly testified that other teachers were not notified of the change in policy and continued to use push ups as a form of discipline.

<sup>12</sup> Spees testified that he signed the letter of reprimand because he had learned that a refusal to do so constituted insubordination, which could result in his immediate dismissal. By signing the letter, he acknowledged that he received the letter, not that he agreed with it.

Dr. Shelly).

29) By letter dated January 26, 1988, Spees responded to Dr. Shelly's reprimand. He denied that he had twisted SB's arm behind her back. He stated that he only defended himself by restraining her from striking him. He stated his belief was that he was authorized to use physical force to protect other students and himself. (Ex. I).

April 14, 1989 incident with DW

30) On April 14, 1989, Spees was on duty in the gym during the lunch hour when DW, a male seventh grade middle school student, attempted to make a basket in a basketball game he was playing with other students. DW was just a little over five feet tall and weighed about 120 pounds. As he came down from his lay up, DW fell into Spees who was in the out-of bound area approximately five feet behind the basket. Spees saw something coming at him out from the corner of his eye. DW's arm was raised in what looked like a karate position. Spees defended himself by deflecting DW's body away from him and DW's weight and motion carried him off to the side. As a result of the impact, DW's neck was scratched above the collar and below the chin and Spees' hand accidentally caught DW's shirt, ripped it and a button popped off. Spees thought DW had intentionally run into him and ordered him out of the gym. DW told Spees that he would "get him for this." DW and TH, another middle school student, subsequently reported the incident to Dr. Shelly, claiming that Spees had choked DW. (Exs. 8, 17-56 through 17-62; testimony of Spees, DW and TH).

31) Spees was very familiar with DW. DW had a history of doing fake punches and karate-like moves to intimidate teachers and other students. DW wanted to be the center of attention. Karen Murray who ran the ABLE class for student's with academic and/or behavioral problems found DW to be a challenging student who became loud and combative when he did not get his own way. (Ex. 17-59; testimony of Spees and Karen Murray).

32) After the incident, Spees lectured DW's language arts class, which he taught, about the students' responsibility to control the atmosphere of the school in the context of a discussion of the book "Call of the Wild." Spees related the topic to the incident with DW. (Ex. 17-61; Spees' testimony).

33) Willamina High School (WHS) Principal Yates investigated the incident because Principal Shelly was away from the building. Upon investigation of the incident, TH confirmed DW's story that Spees grabbed DW by the neck and tore his shirt and that Spees looked angry. JP, another middle school student, confirmed Spees story that DW made aggressive moves toward Spees but did not think that DW was going to hit him. Thereafter, Spees met with WHS principal Yates and DW's grandmother. DW's grandmother seemed satisfied with Spees explanation, but asked that DW and his brother be removed from Spees' class. Yates told DW that the incident could not have happened the way he described and that Spees did not engage in improper conduct but that he had "overreacted." (Ex. 8; testimony of Spees and Pam Morris).

- 34) Dan Halter (Halter), a physical education (PE) teacher at WMS, provided information to the administration that following the April 4, 1989 incident, DW and another student were in the lunch room rubbing and pinching DW's neck to make it look worse. Halter also observed DW in his PE class over the next two days and recorded the number of times DW initiated physical contact with him and other students. In the two 39 minute periods, DW initiated physical contact nine times with other students and twice with Halter. Halter characterized DW as "very aggressive." (Ex. M; Halter's testimony).
- 35) Greg Hile (Hile), also a teacher at WMS and DW's neighbor, reported to Dr. Shelly that on many occasions, DW had made aggressive and threatening gestures at him which included partially swinging his closed fist at Hile or intentionally running into him. On several occasions, DW had also knocked Hile off his balance and into others. Hile had warned DW that, if he continued to behave in that manner, Hile did have the right to defend himself. Hile further reported that DW always threatened retaliation from his parents when confronted with his own misbehavior. Hile opined that, given DW's behavior in the April 4, 1989 incident, Spees acted in a reasonable manner. (Ex. N; Hile's testimony).
- 36) Another teacher reported an incident with DW and TH on April 6, 1989, where the students intentionally obstructed the crosswalk by stopping in the middle of the crosswalk to tie their shoes and then took baby steps through the crosswalk. This was the second time DW and TH had done this while the teacher was pulling out of the staff parking lot. The teacher raised the concern that the students' actions were harassing and reflected an attitude of intentionally trying to irritate or bait the teacher. (Ex. O).
- 37) In a memorandum dated April 12, 1989 from Dr. Shelly to Spees, Dr. Shelly noted that another teacher had subsequently seen DW and other students in the lunchroom rubbing DW's neck to make it look worse. She acknowledged that DW did make an aggressive feinting move toward Spees and had not been completely honest in describing the incident. However, she concluded that Spees had "overreacted" and directed Spees to use physical restraint only in a situation where physical harm or damage to school property may otherwise occur. Where physical restraint was needed, she directed him to avoid touching the student in the area of the student's head or neck. Dr. Shelley warned Spees that failure to follow this directive would result in disciplinary action, including termination of his employment. (Ex. 8).

#### October 4, 1993 incident

- 38) On October 4, 1993, Spees was discussing the overpopulation of India and the economics of having a large family in his geography class.<sup>13</sup> A student asked how can you prevent having more children. Spees responded, "leave your gun in the holster." His comment was not directed to any one student. (Exs. 10, 17-63 through 17-66; testimony of Spees and Russell

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<sup>13</sup> Russell "Buz" Tatufest (Tatufest), who was the principal at that time, testified that Spees made the comment in his "social studies class" but that and Tatufest could not remember what the context of the comment was.