

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

IN THE MATTER OF: ) **FINAL ORDER ADOPTING**  
 ) **PROPOSED ORDER**  
**DENNIS BANDO** )  
 ) OAH Case No. 2019-ABC-02375

This matter came before the Commission during its meeting of June 19, 2019 to consider the Proposed Order issued by ALJ Samantha Fair on May 13, 2019. Respondent did not file exceptions to the proposed order.

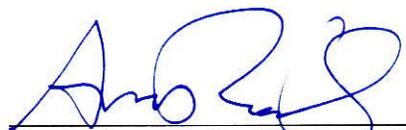
After review of the files and record herein, the Commission hereby adopts the Proposed Order as the Final Order.

**FINAL ORDER**

For the foregoing reason, the Commission Orders as follows:

Respondent's license is hereby suspended for six (6) months effective the date of this Final Order;

It is so Ordered this 19<sup>th</sup> day of June, 2019



Dr. Anthony J. Rosilez, Executive Director  
Teacher Standards and Practices Commission

NOTICE OF APPEAL OR RIGHTS

YOU ARE ENTITLED TO JUDICIAL REVIEW OF THIS ORDER. JUDICIAL REVIEW MAY BE OBTAINED BY FILING A PETITION FOR REVIEW WITHIN 60 DAYS FROM THE 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**  
 )  
**DENNIS BANDO** ) OAH Case No. 2019-ABC-02375  
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**HISTORY OF THE CASE**

On August 23, 2018, the Teacher Standards and Practices Commission (Commission) issued Dennis Bando a Notice of Opportunity for Hearing (Notice), proposing to discipline Mr. Bando’s Oregon teaching license. On September 7, 2018, Mr. Bando filed a request for a hearing with the Commission.

On January 9, 2019, the Commission referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Samantha A. Fair to preside at hearing and scheduled a telephone prehearing conference for February 13, 2019. On February 5, 2019, the Commission filed a request for postponement of the prehearing conference. On that same date, ALJ Richard Barber, on behalf of ALJ Fair, granted the request.

On February 19, 2019, ALJ Fair convened a telephone prehearing conference. Mr. Bando appeared. The Commission appeared and was represented by Senior Assistant Attorney General (AAG) Raul Ramirez. Jeff Van Laanen from the Commission also appeared. ALJ Fair scheduled the hearing for April 24, 2019, and set deadlines for submission of witness lists and exhibits.

On April 24, 2019, ALJ Fair convened a hearing in Salem, Oregon. Mr. Bando appeared and testified on his own behalf. The Commission appeared and was represented by AAG Ramirez.<sup>1</sup> The Commission called two witnesses to testify: Mr. Bando and Ken Bucchi, the director of human resources for the Oregon Trail School District (District). The record closed at the conclusion of the hearing.

**ISSUES**

1. Whether Mr. Bando engaged in conduct that constituted gross neglect of duty. OAR 584-020-0040.
2. Whether the Commission should suspend Mr. Bando’s Oregon teaching license. ORS

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<sup>1</sup> Mikayla Frye, a law clerk from Mr. Ramirez’s office, attended the hearing as an observer.

## EVIDENTIARY RULINGS

Exhibits A1 through A10, offered by the Commission, were admitted into the record without objection.

## FINDINGS OF FACT

1. Mr. Bando was a teacher for approximately 25 years in Texas before he moved to Oregon. He has been teaching as a substitute teacher in Oregon since 2009. (Test. of Bando.) Mr. Bando has not previously been disciplined by either the Commission or the Texas licensing agency. (Ex. A9.)

2. In 2016, the Commission renewed Mr. Bando's substitute teaching license, effective November 24, 2016, through November 23, 2019. (Ex. A7 at 1.) Mr. Bando worked as a substitute teacher for the District as well as other Oregon school districts. While working for the District, Mr. Bando performed substitute teaching at Firwood Elementary School (Firwood). (Test. of Bucchi.)

3. The District has a written student disciplinary policy, entitled "Use of Physical Restraint and Seclusion Policy" (Policy), originally adopted in June 11, 2007, and re-adopted in August 13, 2012. (Ex. A10 at 1.) All District employees, including substitute teachers, are subject to the Policy. (Test. of Bucchi.) The Policy provides:

Seclusion means the involuntary confinement of a student alone in a room from which the student is physically prevented from leaving.

\* \* \* \* \*

The use of physical restraint and/or seclusion is only permitted as part of a behavioral support plan when other less restrictive interventions would not be effective and the student's behavior poses a threat of imminent, serious, physical harm to the student or others.

\* \* \* \* \*

Except in the case of an emergency, only staff current in the required training in accordance with the district-designated physical restraint and seclusion training program will implement physical restraint or seclusion with a student. In an emergency, physical restraint and/or seclusion may also be used by a school administrator, teacher or other school employee as necessary when the student's behavior imposes a reasonable threat of imminent, serious bodily injury to the student or to others. \* \* \*. Staff shall constantly monitor any student being restrained or secluded \* \* \*. Any room used for seclusion of a student must allow staff full view of

the student in all areas of the room and be free of potentially hazardous conditions \* \* \* [.]

(Ex. A10 at 1-3.) The District relied on OAR 581-021-0550 through OAR 581-021-0566 in its creation and adoption of the Policy.<sup>2</sup> (*Id.* at 3.) The language contained in the Policy is standard for school districts in Oregon. The District never authorizes substitute teachers to use seclusion. (Test. of Bucchi.) Mr. Bando was familiar with the District's policies, which were provided to him with his teaching materials whenever he was assigned to teach at one of the District's schools. (Test. of Bando.)

4. As an educator, Mr. Bando knew that it was a standard practice for all school districts to have policies that restricted or prohibited a teacher's use of seclusion as a disciplinary tool. Seclusion of a child in an area where a teacher cannot see the child constitutes a violation of the teacher's professional judgment and would also demonstrate that teacher's lack of skill in supervising students. (Test. of Bando.)

#### May 5, 2017 Incident

5. TD,<sup>3</sup> born in July 2006, attended Firwood. (Ex. A4 at 1-2.) During the 2016-2017 school year, he was in the fifth grade. (Test. of Bando.) He was not on a behavioral support plan. (Test. of Bucchi.)

6. In TD's fifth grade classroom, the students sat in groups around several tables. (Test. of Bando.) The classroom had a closet that was approximately four feet square with a light fixture, a solid door, and no windows. (Exs. A4 at 3; A8 at 1.) The closet's door swung into the closet. Inside the closet, there was shelving with books and supplies against the walls. There was minimal space for any individual to stand in the closet without being in the area where the door would swing. The closet door's handle had a key lock on the side that faced the classroom. The inside handle was a smooth handle that had no visible locking or unlocking mechanism. (Ex. A8 at 1-7.) For safety reasons, the inside handle could not be locked. It would always turn and allow the door to be opened from inside the closet. The students in TD's classroom and Mr. Bando were not aware of this safety feature. (Ex. A1 at 2; test. of Bucchi.)

7. On May 5, 2017, Mr. Bando worked as a substitute teacher in TD's class. On this day, the students were restless, talking and giggling. Towards the end of the day, 12 students from another class joined TD's class, which exacerbated the disruptions. The students continued to chat and giggle with one another. Such behavior was typical for fifth graders. In an effort to decrease the disruptions, Mr. Bando moved the most disruptive students, who did not include TD, to different tables. Despite the shuffling of the students, the disruptions continued. (Ex. A9; test. of Bando.)

8. During the last 15 minutes of the school day while Mr. Bando was performing final

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<sup>2</sup> OAR 581-021-0550 through OAR 581-021-0566 are the administrative rules promulgated by the Commission regarding a school district or educator's use of physical restraint and seclusion on students.

<sup>3</sup> Because TD is a minor, he is identified by the initials the Commission used in its Notice.

review with the students, TD laughed at something another student had done. In response, Mr. Bando directed TD to sit in a chair that faced away from the rest of the class. The other students laughed at TD sitting in the chair. Because of the other students' laughter, Mr. Bando directed TD to enter and remain in the closet. Mr. Bando intended for TD to watch the review from inside the closet with the closet door open. (Exs. A1 at 1-2; A4 at 2-3; A9; test. of Bando.)

9. After directing TD into the closet, Mr. Bando heard the students resume laughing. In frustration with the continued laughter, Mr. Bando immediately shut the closet door, leaving TD alone inside the closet. Mr. Bando was aware there was no window and that TD would not be visible to him and would not be able to watch the review. TD was nervous, scared and sad. He had no idea how long he would be left in the closet. (Exs. A1 at 1-2; A4 at 2-3; A9; test. of Bando.)

10. After shutting TD into the closet, the other students became even more disruptive and began arguing with Mr. Bando. The other students informed Mr. Bando that TD was locked in the closet and asked him if they could let TD out of the closet. From inside the closet, TD heard Mr. Bando telling his classmates not to let TD out of the closet. Mr. Bando did not believe the other students when they told him that TD was locked in the closet. Mr. Bando did not at any time check to see if the door was locked while TD was in the closet. Approximately 10 minutes later, another student, in violation of Mr. Bando's directive, opened the closet door to let TD out of the closet. TD exited the closet. He was visibly upset and sat near the students' backpacks, crying. Mr. Bando saw how upset TD was and realized that his conduct had harmed TD. TD's classmates told Mr. Bando that his actions were child abuse, and Mr. Bando responded to the students that it had been a mistake. TD left the classroom and went to see Firwood's counselor. (Exs. A1 at 1-2; A4 at 2-3; A9; test. of Bando.) Other students in TD's class also contacted Firwood's counselor regarding Mr. Bando's conduct towards TD. (Test. of Bucchi.)

11. When dealing with the disruptions in the classroom on May 5, 2017, Mr. Bando never contacted Firwood's office about the disruptive students and he did not send any of the students to the office. (Test. of Bando.)

12. Later that same day, Firwood's counselor called TD's mother to inform her that TD had been placed in a closet by a substitute teacher. When TD arrived home, TD's mother noticed that her son was very upset. After speaking to TD about the incident, she called the Clackamas County Sheriff's Office (CCSO) to report the incident. After a review of the incident, CCSO determined that no crime had been committed and did not refer the matter for prosecution. (Ex. A4 at 4.)

13. Also later that same day, Firwood's counselor reported the incident to Mr. Bucchi, the District's human resources director. Per Mr. Bucchi's direction, the counselor informed Mr. Bando to contact Mr. Bucchi. Mr. Bando called Mr. Bucchi that same afternoon. Mr. Bucchi informed Mr. Bando that the District would be reporting the incident to the Department of Human Services and the Commission. Mr. Bando confirmed with Mr. Bucchi that he shut TD in the classroom's closet. Mr. Bucchi informed Mr. Bando that he would not be allowed to teach in

the District.<sup>4</sup> During the discussion, Mr. Bando was emotionally distraught and sobbing. (Ex. A1 at 1.) He apologized for his conduct and repeatedly urged Mr. Bucchi to allow him to continue teaching in the District. (*Id.* at 1-2.) Mr. Bando was shocked that the District would not allow him to continue substitute teaching and that he might lose his teaching license because of this “stupid little incident.” (Test. of Bando.) The District formally terminated Mr. Bando’s employment as a substitute teacher, effective May 5, 2017, and reported his conduct to the Commission. (Exs. A3 at 1; A6 at 1.)

14. Also on May 5, 2017, Tara Black, the principal of Firwood, issued an email to all the parents and guardians of Firwood students and informed them that a substitute teacher had inappropriately disciplined a student that day. Ms. Black further informed the parents and guardians that the substitute teacher would be disciplined, would no longer work for the District, and had already been reported to the Department of Human Services and the Commission. Ms. Black concluded her email by advising the parents and guardians that staff would be available to provide any necessary support to students who had witnessed or heard of the incident. (Ex. A2 at 1-2.)

15. On May 7, 2017, Mr. Bando wrote a letter to TD. In the letter, Mr. Bando stated:

I needed to send an apology for what I did to you on Friday. \* \* \*. It was completely wrong and I don’t have any excuse for it. \* \* \*. During the review, when it was getting very noisy, I could have just changed you to a different table, but I made a careless and stupid choice. When the other students said I locked you in there, I denied it because I didn’t know that the door locks from the inside when you close it. That is not an excuse in any way and again, I apologize for it. \* \* \*. I will have to live with this mistake which was a very serious one. I was supposed to sub. for Mrs. Owen next Friday, but I have been informed I cannot substitute at Firwood Elementary or any other schools in Oregon Trail School District. It is painful for me, but I also have to accept the punishment for the terrible choice I made. I don’t expect any forgiveness from you or your parents, but I am praying that it will not affect you.

Again, I am truly sorry to you and your parents. I wish you well in school and in your future[.]

(Ex. A5 at 1-2.) Mr. Bando delivered the letter to Firwood to give to TD. (Test. of Bando.)

16. Mr. Bando has acknowledged that his actions towards TD were a “terrible mistake” and a “bad decision,” and he was sorry for his conduct and had no excuse for it. (Test. of Bando.)

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<sup>4</sup> Because Mr. Bando was a substitute teacher, he was an “at will employee” and subject to immediate dismissal. (Test. of Bucchi.)

## CONCLUSIONS OF LAW

1. Mr. Bando engaged in conduct that constituted gross neglect of duty.
2. The Commission should suspend Mr. Bando's Oregon teaching license.

## OPINION

The Commission proposes to suspend Mr. Bando's Oregon teaching license for six months, based on allegations that he engaged in conduct that constituted gross neglect of duty. As the proponent of the allegations, the Commission has the burden to establish, by a preponderance of the evidence, that the allegations are correct and that it is entitled to impose the discipline. *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (in administrative actions, burden of proof is by a preponderance of the evidence). Proof by a preponderance of the evidence means that 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).

### Gross Neglect of Duty

ORS 342.175(6) provides:

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

OAR 584-020-0040(4) provides, in part:

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[.]

In OAR Chapter 584, Division 20, the Commission promulgated administrative rules to define standards for the competent and ethical performance of the professional duties of Oregon educators. OAR 584-020-0010 titled "The Competent Educator" provides, in part:

The educator demonstrates a commitment to:

\* \* \* \* \*

(1) Recognize the worth and dignity of all persons and respect for each individual;

\* \* \* \* \*

(5) Use professional judgment[.]

OAR 584-020-0020(2) provides, in part:

The competent teacher demonstrates:

\* \* \* \* \*

(d) Skill in the supervision of students[.]

OAR 584-020-0025(2) provides, in part:

The competent teacher demonstrates skills in:

(a) Establishing and maintaining classroom management that is conducive to learning;

\* \* \* \* \*

(e) Using district lawful and reasonable rules and regulations.

The parties did not dispute that, on May 5, 2017, while teaching a fifth grade class at Firwood, Mr. Bando directed TD to enter and remain in a small and windowless closet. He then shut the closet door and left TD, a 10-year-old child, in the closet until another student, against Mr. Bando's directive, let TD out of the closet. TD had remained in the closet, isolated and unsupervised, for approximately 10 minutes. As established by Mr. Bando, a teacher with more than 30 years of experience, such an act demonstrates an educator's lack of professional judgment and lack of skill in the supervision of the student. Additionally, the placement of a child, or any individual, in an enclosed, small and windowless closet for purposes of discipline or punishment is demeaning and disrespectful of that individual. Such an act resulted in significant emotional distress to TD, as shown by TD's subsequent crying upon his release from the closet and his continued distress exhibited to his mother upon his return home. Mr. Bando's act of placing TD in the closet violated OAR 584-020-0010(1) and (5) and OAR 584-020-0020(2)(d).

Mr. Bando's act of placing TD in the closet caused an increase in the other students' disruptive behaviors and the degradation of his control of the classroom. Instead of returning to his final review of educational materials with the students, Mr. Bando argued with the students about whether the closet door was locked, defended his treatment of TD against the students' assertions that it was child abuse, and denied the students' requests to release TD from the closet. Additionally, one student, TD, had been isolated inside a closet from which he could receive no

instruction. Therefore, Mr. Bando's act also demonstrated his inability to maintain classroom management that was conducive to learning. Mr. Bando's act of placing TD in the closet also violated OAR 584-020-0025(2)(a).

The District's Policy allowed the use of seclusion only by specially-trained District staff and only on students with a behavior support plan that provided for such use, except in cases of emergency. Mr. Bando received copies of the District's policies whenever he performed work for the District. Mr. Bando also knew that school districts always restricted or prohibited the use of seclusion against students. As a substitute teacher, Mr. Bando was not authorized by the District to use seclusion on any students. Additionally, TD was not on any behavior support plan, so seclusion could not be utilized as a disciplinary tool on TD unless there was an emergency. Students who talk and giggle with one another are not engaged in behavior that "imposes a reasonable threat of imminent, serious bodily injury to the student or to others." Exhibit A10 at 2. Thus, there was no emergency that would support Mr. Bando's use of seclusion on TD.

On May 5, 2017, Mr. Bando directed TD to enter and remain in the closet. He then proceeded to shut the door. Although the inner door knob has a safety feature that allows anyone inside the closet to open the door, Mr. Bando's actions of directing TD to remain in the closet and then shutting the door on him physically prevented TD from exiting the closet. As subsequently demonstrated by his classmates' statements to Mr. Bando, the students also believed that TD was locked in the closet and could not come out of the closet unless someone opened the door for him. TD was in seclusion in violation of the District's Policy. Mr. Bando was aware that placing TD in a closed and windowless closet was not an appropriate disciplinary tool and a violation of the District's Policy. Mr. Bando's placement of TD in the closed closet violated OAR 584-020-0025(2)(e).

As shown above, Mr. Bando's conduct violated the ethical and competency standards of an educator. His conduct resulted in the removal of a 10-year-old student from any visual supervision. His placement of this student in a small closet packed with supplies exposed the child to potential physical jeopardy and caused TD actual emotional harm. Mr. Bando's conduct was a substantial deviation from the professional standards of competency of an educator. Pursuant to ORS 342.175(6) and OAR 584-020-0040(4), his conduct constituted gross neglect of duty.

### Discipline of Licensee

ORS 342.175(1) provides, in part:

The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator, or suspend or revoke the right of any person to apply for a license or registration, if the licensee, registrant or applicant has held a license or registration 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[.]

ORS 342.177(3) provides:

The commission shall render its decision at its next regular meeting following the hearing. If the decision of the commission is that the charge described in ORS 342.175 (1) has been proven, the commission may take any or all of the following disciplinary action against the person charged:

- (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 or registration of the teacher or administrator for a period not to exceed one year.
- (d) Revoke the license or registration of the teacher or administrator.
- (e) Revoke the right to apply for a license or registration.

Based upon Mr. Bando's conduct that constituted gross neglect of duty, the Commission has the authority under OAR 342.175(1) and OAR 342.177(3) to take disciplinary action against him. Mr. Bando did not dispute that his act of placing TD, one of his students, in the closed and windowless closet was a mistake, an inappropriate use of discipline, and a violation of the standards of an educator. However, he asserted that the six-month suspension of his license, as proposed by the Commission, was excessive.

Mr. Bando has expressed remorse for his actions, and he has demonstrated an understanding of the error of his conduct towards TD. Within days of the incident, he wrote a letter to TD to apologize for his conduct. He took ownership of his error by acknowledging that his conduct "was completely wrong and I don't have any excuse for it." Exhibit A5 at 1. With such language, he removed any blame from TD for the incident. However, his apology letter also focused on the negative impact his actions had on himself. His apology letter to TD included his acknowledgment of the seriousness of the mistake, but he then followed that observation with the statement that the District will no longer employ him as a substitute teacher, a statement that may well have caused TD to feel badly for what had occurred. Additionally, in the apology letter, in his conversation with Mr. Bucchi, and during the hearing, Mr. Bando struggled to understand why his conduct would result in the loss, even if temporarily, of his teaching license.

The level of Mr. Bando's frustration with the disruptive students on May 5, 2017, was

inexplicable. It was the end of the school day, so Mr. Bando was just minutes away from being relieved of his duties of managing the class. The students were talking and laughing with one another, which was not unusual for fifth grade students. TD was not even the most disruptive of the students. However, Mr. Bando became so frustrated that he first placed TD in a chair that faced away from the class, thereby exposing TD to ridicule from his classmates who laughed at him. Mr. Bando then placed TD into the closet and immediately shut the closet door when he heard continued laughing from the students. He did not even pause to discern whether the laughter was due to TD's predicament. And, even more importantly, he never once considered some other form of discipline. He did not move TD to another table in the room, he did not contact the school office for assistance, and he did not send any of the disruptive students to the office. Instead, he chose to seclude a 10-year-old child in a small and windowless closet, which effectively removed that child from all supervision and excluded the child from any further participation in the class. Mr. Bando's reaction to the fifth grade students' behavior was grossly disproportionate to the rather mild nature of the students' disruptive behavior, and his subsequent seclusion of TD in the closet was not only completely unnecessary but actually worsened the students' disruptive behaviors. Mr. Bando compounded his error when he began arguing with TD's classmates. Mr. Bando rejected without any investigation the students' claim that TD was locked in the closet. Mr. Bando denied the students' requests to release TD from the closet and ignored the accusations that he was engaging in child abuse. Mr. Bando had 10 minutes to reconsider his behavior, but he never did. Instead, TD was not released from the closet until one of his classmates, who was willing to ignore Mr. Bando's directive, opened the closet door. As a result of Mr. Bando's actions, TD suffered actual emotional harm. After exiting the closet, he sat and cried. He then went to speak with Firwood's counselor about the incident, and he was still visibly upset by the time he returned to his home. Because of these factors, the Commission's proposed six-month suspension of Mr. Bando's teaching license is appropriate.

### ORDER

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

Dennis Bando's substitute teaching license is suspended for six months, beginning the date the Final Order is issued.

Samantha A. Fair

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Administrative Law Judge  
Office of Administrative Hearings

### EXCEPTIONS

The proposed order is the Administrative Law Judge's recommendation to the 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.