

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

IN THE MATTER OF

CHARLES S. TALBOTT

FINAL ORDER

OAH Case No. 900885

This matter came before the Commission to consider the Proposed Order issued by Administrative Law Judge Steven Elmore on February 24, 2010. Licensee did not file exceptions to the Proposed Order. After review of the records and files herein, the Commission issued an Amended Proposed Order that adopted in part and rejected in part the Proposed Order. Licensee filed exceptions to the Amended Proposed Order and was allowed to appear through counsel at the Commission meeting of August 6, 2010, to present oral argument on the exceptions.

After considering the record, the Commission now enters this Final Order. This Final Order incorporates the Amended Proposed Order but has modified the sanction to a six-month suspension and 4 years probation.

HISTORY OF THE CASE

By Notice of Opportunity for Hearing issued on January 6, 2009, the Oregon Teacher Standards and Practices Commission notified Charles S. Talbott that it was revoking his right to apply for a teaching license and denying his application for a Standard Teaching License. By letter received by the Commission January 12, 2009, the respondent requested a hearing through his attorney, Barbara J. Diamond. The Commission referred the case to the Office of Administrative Hearings, where it was received on January 23, 2009.

Administrative Law Judge Dove Gutman was assigned to the case, and she conducted a prehearing conference on May 5, 2009. ALJ Gutman issued a prehearing order on May 6, 2009, delineating the issues for hearing, setting a discovery deadline, setting a deadline for the exchange of exhibits and witness lists, and setting the hearing date and time. On July 22, 2009, at the request of the respondent's attorney, the hearing and exchange deadlines were rescheduled.

Administrative Law Judge Stephen H. Elmore was assigned to the case on November 17, 2009. ALJ Elmore conducted a hearing at the Office of Administrative Hearings offices in Salem on November 30 and December 1, 2, and 3, 2009. The Commission was represented by Assistant Attorney General Raul Ramirez. Lynn Beaton of the Commission was present throughout the hearing. The respondent was called as a witness by the Commission, as were Terry Butler and Merrill Adams of the North Santiam School District, and Julie Knoedler of the Central Linn School District. The respondent testified on his own behalf, as did Frank Ragulsky, a retired journalism professor, James Sundell, a consultant with the Oregon Education Association, James Kizur, a former football coach at Central Linn, and Matthew Burlingame, Michael Ellis, Donald Boyd, and Emily Snider, all former teachers at Central Linn.

Testimony was closed at the end of the hearing on December 3, 2009, and ALJ Elmore set a schedule for the submission of limited, written arguments. The Commission requested by electronic mail to extend the time limit for submitting argument. The request was treated as a motion, and was granted by order on January 4, 2010. The respondent moved to extend the page limit for written argument on January 6, 2010, and the motion was denied the same day. Both parties submitted their written closing arguments within the time allowed, and the record closed on January 12, 2010.

ISSUES

(1) Whether the Commission should deny the respondent's application for a Standard Teaching License. ORS 342.143.

(2) Whether the Commission should revoke the respondent's right to apply for a teaching license. ORS 342.175.

EVIDENTIARY RULINGS

All exhibits beginning with the prefix "A" were submitted by the Commission. All exhibits beginning with the prefix "R" were submitted by the respondent.

Exhibits A2, A3, A4, A6, A7, A8, A12, A14, A16, A17, A18, A20, A21, A23, A25, A26, and A27 were admitted to the record without objection. Exhibit A9 was admitted without objection except for one sentence, which is indicated by brackets on the exhibit. The respondent's objection to that sentence was sustained, and the sentence was excluded. Page 2 of exhibit A15 was admitted without objection, but the respondent's objection to pages 1, 3, and 4 was sustained, and the pages were excluded. Exhibits A1, A10, A11, A13, and A19 were admitted to the record over the respondent's objections. Exhibit A24 was admitted to the record as a rebuttal exhibit over the respondent's objection. The respondent's objections to Exhibits A5 and A22 were sustained, and the exhibits were excluded from the record.

Exhibits R1, R2, R3, R4, R6, R7, R8, R13, R14, R15, R16, R17, R19, R23, R25, R26, R27, R28, and pages 1 through 6 of exhibit R24 were admitted to the record without objection. Exhibits R5 and R10 were admitted to the record over the Commission's objection. The Commission's objection to pages 7 through 12 of exhibit R24 was sustained, and the pages were excluded from the record. The respondent also filed exhibits R9, R11, R12, R18, R20, R21, and R22, but never sought to admit them into evidence, so they were not admitted to the record.

STIPULATIONS

The Commission and the respondent stipulate that Julie Knoedler obtained her Initial Administrator License in July 2006, and the Commission's records so reflect, even though the Commission's web site does not.

FINDINGS OF FACT

(1) Charles S. Talbott was granted his first Basic Teaching License in Oregon in 1986. He taught at Boardman during the 1986 – 1987 school year, and taught at Lebanon during the 1987 – 1988, 1988 – 1989, and 1989 – 1990 school years. He left teaching after that and worked as a sales representative for Josten's from 1990 through 2001, working with students on yearbook training. He returned to teaching during the 2002 – 2003 school year in Idaho, but then went to work for a different yearbook company until 2005, when he enrolled in the University of Oregon's Administrator Licensure Program. While in the university program, he worked as a substitute teacher in Springfield. He next was hired as a full-time teacher in the Central Linn School District for the 2006 – 2007 school year, and then worked for the North Santiam School District during the 2007 – 2008 school year. (Test. of Talbott.)

(2) Central Linn was in continuing transition during the 2006 – 2007 school year. The principal at the respondent's school was fired early in the autumn of 2006. He was replaced by the assistant principal, who was fired shortly after, and then by Julie Knoedler, the respondent's principal for the remainder of the school year. (Test. of Kizur, Knoedler.)

(3) The athletic director was fired at the same time the first principal was fired, but he was not replaced until after Knoedler became principal. At the school year's first in-service training day in August 2006, Knoedler and the district's superintendent asked the respondent to serve as the interim athletic director, and he accepted. Subsequently, the respondent applied for the permanent position as well, but was not selected. Instead, Knoedler solicited Donald Boyd's application for the athletic-director position, and selected him to replace the respondent in September 2006. (Test. of Knoedler, Boyd, Talbott.)

(4) James Kizur was hired as football coach at the beginning of the school year, but was asked to resign shortly before the respondent's term as interim athletic director was ended. He was asked to continue coaching for the remainder of the year, however, and agreed to do so. The respondent was hired as the girls' basketball coach for the school year, but agreed to resign in early January 2007. Within a month he also had agreed to resign his teaching position at the end of the school year. At about the same time in late January or early February, the district's superintendent resigned. (Test. of Kizur, Knoedler, Talbott; Exs. A2, R23.)

(5) In mid-September 2006, during his tenure as interim athletic director, the respondent was approached by football coach Kizur only a few minutes before a game. Kizur asked whether one of the players, whom the respondent concluded was facing suspension, could play. The respondent granted Kizur's request to allow the player to play. A few nights later, Knoedler and the then-superintendent told the respondent that Kizur had "tried to work" him. Knoedler had no other reaction at the time, but after the respondent testified before the school board, their relationship soured. (Test. of Talbott.)

(6) In mid-January 2007, Knoedler offered the respondent a "Program of Assistance for Improvement" to address his perceived weaknesses as a teacher, and the district hired an outside consultant to work with the respondent in the classroom. The consultant found the respondent receptive to new ideas and eager to work with her, but the respondent's resignation agreement

nevertheless was executed within the next few weeks. The respondent had discussed his and Knoedler's working relationship with his union's consultant. They determined that it would be best for the respondent to seek work elsewhere, rather than try to salvage the soured relationship, so the respondent agreed to resign. (Test. of Sundell; Ex. R8.)

(7)¹ During the spring of 2007, a parent who also worked at the school complained to Knoedler about the respondent's teaching processes and classroom environment. Knoedler responded by asking for copies of the respondent's lesson plans and grade book, both by email and in person, but he never provided them. Knoedler placed the respondent on unpaid administrative leave with only five days remaining in the school year. After being placed on administrative leave, Respondent requested an informal grievance meeting to resolve the issue of being paid on administrative leave. On June 25, 2007, the district informed Respondent's union representative that the allegations of illegal or unjust suspension were unfounded, and directed respondent to file a level I grievance. On July 6, 2007, Ms. Knoedler received Respondent's level I grievance, which she denied as untimely. In denying Respondent's level I grievance, Ms. Knoedler also indicated that the grievance would be denied even if timely because the district had not violated any articles of the collective bargaining agreement. On July 19, 2007, Superintendent Ed Curtis received a purported appeal of a level I grievance. Curtis responded that, notwithstanding the untimeliness of the level I grievance, he was willing to hear a grievance presentation on August 7, 2007. On August 28, 2007, the District executed an Agreement to withdraw grievance with Respondent, by which (1) Respondent agreed to withdraw his "unpaid administrative leave" grievance; (2) the district agreed to pay Respondent for five days of unpaid leave; and (3) Respondent and the District released each other from further claims arising out of Respondent's employment. (Ex R27)

(8) The respondent applied for other teaching jobs, seeking employment for the 2007 – 2008 school year. In the late spring of 2007, he submitted a common application used by a number of school districts. The application included questions about whether the respondent had ever left education employment while the subject of investigation, whether he was currently the subject of investigation, and whether he had ever failed to complete an education-employment contract. The respondent answered "no" to each of the questions. He had not yet left employment at Central Linn, and he was unaware of any current investigation at the time he completed the form. (Test. of Talbott; Ex. A19.)

¹ The Commission has rejected the following language from this finding of fact:

"After discussions with Central Linn's attorney and the union's consultant, Central Linn relented, and paid the respondent the entire remainder of his contract."

The Commission rejects this portion of the finding of fact because it is not supported by a preponderance of the evidence. It is a commentary on the evidence that is not a proper finding of fact. The Commission has supplemented finding of fact #7 with the chronology underlying the unsupported conclusion.

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(9)² The respondent completed a similar form for the North Santiam School District, signing it on July 29, 2007, shortly before beginning work at North Santiam. Before completing his responses, the respondent called his union's consultant to discuss the questions. The consultant told Respondent to be "honest" and "upfront" on the application for North Santiam. He answered "no" to the question about leaving education employment while under investigation because he had completed his contract with Central Linn and was unaware of any investigation at the end of the contract. He also answered "no" to the question about whether he had failed to complete an education-employment contract. The consultant viewed the respondent as having completed the school year and his contract. He answered "yes" to the question about whether he currently was the subject of investigation because by the time he filled out the North Santiam form he was aware of the Commission's investigation. The superintendent would have expected his staff to investigate if any of the questions had been answered "yes," and the district's human resources director did so. She discussed the "yes" answer with the respondent, and with the union consultant who had advised the respondent. She did not contact Central Linn to discuss it. She could not recall, however, where her notes from the meeting were. She drafted a summary memorandum of the meeting, but gave it to the Commission. (Test. of Sundell, Talbott, Adams, Butler; Ex. A19.)

(10) The 2007 – 2008 school year began at Central Linn on September 4, 2007. Although the respondent already had resigned at Central Linn and been hired at North Santiam, he returned to his old school at Central Linn. He first dropped off gifts for four former students. He then delivered a "graded" copy of the previous spring's complaint letter from the parent who also worked at the school. Where the parent had misspelled "complaint," the respondent had scrawled, "Please see [the parent's daughter] for correct spelling!" At the end, next to the parent's signature, the respondent had "graded" the letter, assessing a "'B+' for a 7th-grade score, and assessing an "'F' – (misspelling)" as a supposed U.O. School of Journalism grade. His explanation at hearing for scrawling the response and delivering it to the parent, whom he described as Knoedler's "right-hand man," was, "I thought I owed it" to the parent." (Test. of Talbott; Ex. A23.)

(11) The respondent then asked to talk with Knoedler in her office. He waited a few minutes, and then she saw him in. He asked her for a reference letter that each of them thought she was obligated to supply. He then told her his low opinion of her work as principal because he "felt he owed it" to others who still were employed there. The respondent also gave Knoedler a book entitled, "THE GIRL'S GUIDE TO BEING A BOSS (WITHOUT BEING A BITCH)," book-marking the chapter "*Don't Try This at Work: Ten Ways to Alienate Your Staff*" and the section "*Bad Boss Behavior 10: Being a Jealous Julie*" ("Julie" is Knoedler's first name). (Test. of Knoedler, Talbott; Ex. A24.)

² The Commission has rejected the following language from this finding of fact:

“ and answered the questions as the consultant recommended”

The Commission rejects this portion of the finding of fact because it is not supported by the evidence. It is a commentary on the evidence that is not a proper finding of fact.

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CONCLUSIONS OF LAW³

1. Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(1) on two occasions by leaving offensive written material for Julie Knoedler and Kim Smith.
2. Respondent engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(c) by answering "no" on each of two questions on North Santiam employment application.
3. Respondent's application for a Standard Teaching License should be allowed, but his license should be suspended for six months from the date of issuance.
4. Respondent should be placed on probation for four years after Respondent successfully reinstates the suspended license.

OPINION

The Commission rejects the ALJ's conclusions of law as they relate to allegations 5 and 6 of the Notice of Opportunity for Hearing. The ALJ's analysis of allegations 1 to 6 is italicized below. The Commission's modifications to the conclusions of law as they relate to allegations 5 and 6 are explained below the ALJ's opinion.

In a contested case, according to the provisions of ORS 183.450(5):

No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence.

In this case, the record includes little reliable, probative or substantial evidence relevant to the issues to be decided. The clear import of the testimony of the two chief witnesses, the respondent and principal Knoedler, is that they have an abiding dislike for one another—a dislike that overwhelmed the credibility of their testimony.

Knoedler testified that she had not performed a teacher-evaluation of the respondent. Then: "I'd like to change my answer to that last question—I did evaluate him." Shortly afterward, she testified that she had recommended the respondent's immediate termination "several times." Then she stated, "I can't say that I recommended termination." Finally she testified that she had never recommended termination. Despite not knowing how long the respondent had served as interim athletic director, teacher, and cross-country coach, she testified that his was not a heavy workload. Then she admitted that it was a heavy workload for a first-year teacher. Knoedler testified that one of the respondent's resignation agreements required her to write a reference for him, then she testified that it did not. She testified that teachers were required to use physical grade books, then testified that a physical grade book was not required. Her testimony was inconsistent, evasive, and unconvincing on contested issues.

³ The Commission has rejected the ALJ's conclusions of law as explained in the Commission's reasoning. In the Matter of Charles S. Talbott, OAH No. 900885
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Regarding the complaint of the district employee and parent whom he described as Knoedler's "right-hand man," the respondent testified that he had dropped off the copy on which he had scrawled snide comments and purported "grades" because he "thought he owed it" to the parent. He testified that he came to Knoedler's office to criticize her because he "felt he owed it" to others who still were employed there. The record included no evidence that the respondent had ever previously demonstrated any such altruistic concerns for the parent and the other teachers. The respondent also testified that he had not delivered a copy of "THE GIRL'S GUIDE TO BEING A BOSS (WITHOUT BEING A BITCH)" to Knoedler. Instead, he testified, he had provided her a different copy of the book—entitled simply "THE GIRL'S GUIDE TO BEING A BOSS"—that he thought he possibly bought that summer. The latter book, however, was a British edition, and the record is silent as to how or why he would have acquired it.

The Commission's Notice alleges that the respondent failed to provide grades to the principal when asked, failed to produce proof of grade keeping, and raised his voice to the principal. It concludes that the respondent therefore grossly neglected his duty to communicate with others and maintain student records. The duties established by the provisions of OAR 584-020-0040(4) may be clear, but evidence of their neglect is not. The testimony of both the principal and the respondent was not credible on the issue, and the record included no other credible evidence. Hence, it cannot be determined that the respondent violated his duties.

The Commission also alleges that the respondent violated OAR 584-020-0025 by failing to establish and maintain classroom management conducive to learning. The allegations were based on "complaints from parents of students," "[a]dministrator interviews with students," and reports from students in the respondent's class. No parents or students testified, however, and the record includes no credible evidence supporting the allegations, so no violation can be found.

*The final allegation related to Central Linn was that during the respondent's return visit after he had begun work at North Santiam, the respondent had "caused a disturbance * * * and used harassing and disrespectful language toward the building principal [and] left crude and disrespectful written material for a staff member." Neither the principal nor the respondent testified credibly about the return visit, and no one else testified at all. Hence, the record includes no credible evidence of any "disturbance" or of any "harassing and disrespectful language" during his visit. The copy of "THE GIRL'S GUIDE TO BEING A BOSS (WITHOUT BEING A BITCH)" that the respondent gave to the principal certainly suggests his lack of respect for her, and his graded and annotated response to the parent complaint clearly was disrespectful. The Commission alleges that the disrespect violated the respondent's duty to "[r]ecognize the worth and dignity of all persons and respect for each individual." Clearly it does. The allegation, however, is that the respondent's disrespect constituted a "gross neglect of duty in violation of OAR 584-020-0040(4)(n)," which requires a "[s]ubstantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030." The record includes no credible evidence that the respondent previously had violated his duty to recognize the worth and dignity of all persons. In light of their mutual dislike of one another, the interaction between the principal and the respondent did not rise to the level of a "substantial deviation." Neither did the respondent's snide response to the parent whom he considered to be the principal's "right-hand man"—in that context, it was part of the same transaction. The lack of respect between the principal and the*

respondent clouded both their actions, but a single manifestation of their mutual enmity does not demonstrate a "substantial" deviation by the respondent.

The Commission's Notice further alleges that the respondent lied on his July 29, 2007, application to North Santiam by answering "no" to these two questions:

Have you ever left any education or school-related employment, voluntarily or involuntarily, while the subject of an inquiry, review or investigation of alleged misconduct or alleged violation of professional standards of conduct, or when you had reason to believe such investigation was imminent?

Have you ever failed to complete a contract for educational services in any educational or school-related position, or for any alleged misconduct or alleged violation of professional standards of conduct been placed on leave by your employer or left such employment prior to the end of the contract term?

The respondent answered "no" to both questions, but before doing so he called his union's consultant to discuss the questions. He then answered the questions as the consultant recommended. He answered "no" to the question about leaving education employment while under investigation because he had completed his contract with Central Linn and was unaware of any investigation at the end of the contract. He also answered "no" to the question about whether he had failed to complete an education-employment contract. The consultant recommended the answer because he viewed the respondent as having completed both the school year and his contract. The record does not establish that he lied in answering the questions. Within the context and timing, the answers were accurate.⁴

The Notice also alleges that the respondent admitted to the North Santiam superintendent that he had lied on his answers to the questions. The evidence does not bear that out. The superintendent did testify that the respondent admitted to him that the answers were changed in order to increase the respondent's chances of getting hired. He could not explain, however, why the respondent would lie on those two questions but would answer "yes" to the question about whether he currently was the subject of investigation. The superintendent would have expected his staff to investigate any "yes" answer to the questions, and the human resources director did. She does not know where her notes from the meeting with the respondent were, however, and the summary memorandum she drafted after the meeting was never offered as evidence at the hearing. It may be that both the superintendent and human resources director concluded that the respondent had admitted to lying, but the record does not support such a finding. It makes no sense that he would lie on his answers to two questions but answer truthfully to the third.

The allegations of the Commission's Notice are not supported by reliable, probative and substantial evidence in the record. The Commission therefore should not revoke the respondent's right to apply for a teaching license and should not deny his application for a Standard Teaching License. The Commission's Notice therefore should be reversed.

⁴ Even if the answers had been inaccurate, however, the record still would establish that the respondent's seeking the consultant's advice was a good-faith attempt simply to answer the questions correctly, not to deceive the school district.

Modification regarding Allegations 4 and 5:

The ALJ found that Licensee did not violate OAR 584-020-0040(4)(c) in answering questions for the North Santiam School District because Licensee perceived that he had completed his contract, and because he believed he was not under investigation when he left his employment with Central Linn School District. The Commission rejects this reasoning and finds that in answering each question, Licensee committed gross neglect of duty by knowing falsifying or misrepresenting a matter directly related to employment.

The Commission first addresses Respondent's response to the following question:

Have you ever failed to complete a contract for educational services in any educational or school-related position, or for any alleged misconduct or alleged violation of professional standards of conduct been placed on leave by your employer or left such employment prior to the end of the contract term?

The flaw in Respondent's argument that he had completed his employment contract is that Respondent relied on the agreement reached with North Santiam on August 28, 2007. But Respondent's application for employment with the district, and his answers to the question about leaving employment without completing a contract was signed by Respondent on July 27, 2007. As of that date, Respondent was aware that he had been placed on unpaid administrative leave five days before the end of the school year. He was also aware as of July 27 that his level I grievance had been denied as untimely by Ms. Knoedler on July 6. As of July 27, the issues of his grievance had not been resolved, and Respondent still had not been paid for the last five days of school.

The question also asked whether:

"for any alleged misconduct or alleged violation of professional standards of conduct been placed on leave by your employer or left such employment prior to the end of the contract term?"

Respondent knew as of June 1, 2007, that he had been placed on unpaid administrative leave prior to the end of the contract term for non-performance of his duties because Ms. Knoedler wrote Respondent a letter to that effect. He was also advised by the letter that his conduct would be reported to the Commission for allegations of gross neglect of duty. The fact that Respondent called his union consultant does not negate Respondent's awareness about being on administrative leave or having failed to complete the contract. His union representative instructed him to be honest and upfront on the application, although he opined that Respondent had completed the contract. That is not sufficient to overcome Respondent's knowledge of the facts as of the date he answered this question. Moreover, the application instructed Respondent "IF IN DOUBT, PLEASE EXPLAIN YOUR ANSWER". Thus, Respondent had an opportunity to explain his beliefs but chose not to do so.

The Commission concludes that a “knowing” misrepresentation only requires that the individual be aware of the facts and circumstances; it does not require a specific intent to deceive as the ALJ reasoned in footnote 4 of his reasoning above.

When examining the text of administrative rules, “words of common usage typically should be given their plain, natural, and ordinary meaning.” See *Osborn v. PSRB*, 325 Or 135, 145-46, 934 P2d 391 (1997), relying on *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-11, 859 P2d 1143 (1993). The usual definition of “knowing” is:

1 a: having or reflecting knowledge, information, or insight : marked by understanding and intelligence : well informed and marked by a ready capacity for further learning[.]

Webster's Third New Int'l Dictionary 1252 (unabridged ed 1993). *Webster's* also defines “knowingly” as acting with an “awareness.” Such a definition is consistent with the application in other licensing contexts. See, e.g., *In re Conduct of Fitzhenry*, 343 Or 86, 101, 162 P3d 260 (2007) (“Unlike violations that require a lawyer to act with intent, ‘[a] lawyer acts knowingly by being consciously aware of the nature or attendant circumstances of the conduct, but not having a conscious objective to accomplish a particular result.’”).

Similarly, *Webster's* defines “misrepresentation” as “an untrue, incorrect, or misleading representation (as of a fact, event, or person); specifically: a representation by words or other means that under the existing circumstances amounts to an assertion not in accordance with the facts.” *Webster's Third New Int'l Dictionary* 1445 (unabridged ed 2002).

Thus consistently with the plain meaning of the phrase, the Commission concludes that a knowing misrepresentation merely requires an “awareness that the individual is providing misleading or incorrect information. This interpretation is consistent with the Commission’s historical application of the rule.

For example, in *In re Glenna Marie Zarnekee*, TSPC Final Order No. 119059 (March 2005), the Commission determined that the license applicant had *not* “knowingly” misrepresented facts when she neglected to include a criminal charge against her because there was insufficient circumstantial evidence to demonstrate that applicant was “aware” of that charge. *In Re Glenna Marie Zarnekee* at 6; see also *In re Teaching License of Jerome Arthur Anderson*, TSPC Default Order (Jan 2006) (licensee’s “failure to report” conviction constituted “knowing” misrepresentation of facts); *In the Matter of the Teaching License of Lori Jean Bacon*, Default Order of Revocation (July 2008) (licensee’s falsification of circumstances leading to conviction constituted a knowing misrepresentation).

It is clear from the record that Respondent was fully aware of the fact that he was on administrative leave at the time he answered the questions on the North Santiam application. It is also clear that Respondent was aware he been placed on leave before the end of his contract.

The Commission also rejects the ALJ’s dismissal of Dr. Adams’ un rebutted testimony that Respondent admitted to him on March 14 that Respondent had falsified his employment

application. The ALJ dismissed Dr. Adams' testimony because "he could not explain why the respondent would lie on those two questions but would answer "yes" to the question about whether he currently was the subject of investigation". Whether or not Dr. Adams could explain why Respondent answered "yes" on a different question does not negate his credible testimony that Respondent admitted falsifying his employment application. Moreover, Terry Butler was present at the meeting where Respondent made the admission, and Respondent explained that he answered "yes" on a third question about being under investigation because he was aware of a Commission investigation. Under the circumstances, the Commission finds that Respondent violated OAR 584-020-0040(4)(c) by answering "no" on the question.

The Commission next addresses Respondent's answer to the following question on the North Santiam employment application:

Have you ever left any education or school-related employment, voluntarily or involuntarily, while the subject of an inquiry, review or investigation of alleged misconduct or alleged violation of professional standards of conduct, or when you had reason to believe such investigation was imminent?

On this question, the ALJ reasoned that Respondent did not violate OAR 584-020-0040(4)(c) because Respondent believed he had completed his contract and was unaware of any pending investigation. The record, however, indicates that as of June 1, 2007, Licensee was on notice that the Central Linn School District believed Respondent had engaged in misconduct, and that his conduct would be reported to the Commission for suspected gross neglect of duty. On these facts, Respondent had reason to believe that an investigation of his conduct was imminent. His assertions to the contrary are given no weight, as the ALJ also determined that Respondent had not provided reliable testimony. The Commission therefore concludes that Respondent violated OAR 584-020-0040(4)(c).

Modification regarding Allegation 6

The ALJ reasoned that Licensee's conduct in leaving Ms. Knoedler the book *THE GIRLS GUIDE TO BEING A BOSS (WITHOUT BEING A BITCH)* did not constitute gross neglect of duty because "the record includes no credible evidence that the respondent previously had violated his duty to recognize the worth and dignity of all persons". The ALJ therefore concluded that Respondent's conduct was not a substantial deviation from professional standards as set out in OAR 584-020-0010(1). The Commission rejects the ALJ's interpretation of OAR 584-020-0010(1) and OAR 584-020-0040(4)(n) because neither rule requires a prior act before the Commission can find a violation.

In the present case, the ALJ found that Respondent dropping off the book was "clearly disrespectful" and the Commission makes that finding as well. By bringing the book to Ms. Knoedler, Respondent substantially deviated from what is expected of licensed educators on respecting the worth and dignity of others. Respondent had not left the district on good terms so he knew or should have known that engaging in this conduct could only aggravate the relationship between him and Ms. Knoedler. Also, Respondent chose a book with an offensive

title that conveyed Respondent's message that Ms. Knoedler was not a good boss because she was a woman or because she was a "bitch".

The ALJ dismissed Respondent's actions of leaving a 'graded' copy of Ms. Smith's complaint for her to read. The ALJ reasoned that this was part of the "same transaction" and concluded that a "single manifestation of their mutual enmity" did not demonstrate a substantial deviation by Respondent. The Commission rejects this reasoning. First, the Commission disagrees that this was a single act. Respondent had intentions of conveying messages to Ms. Knoedler and Ms. Smith. He chose specific methods for doing so and left distinct material intended for Ms. Knoedler and for Ms. Smith. Ms. Smith was an employee of the district, but she was also a patron. In either capacity, she was entitled to professional respect for Respondent even if Respondent did not believe there was merit to her complaint. Rather than address the complaint on the merits, Respondent wrote condescending "grades" on her complaint and further humiliated Ms. Smith by critiquing her composition of the complaint. There is no reasonable inference that can be drawn from Respondent's conduct other than he wanted to insult and demean Ms. Smith. This conduct, in the Commission's opinion, clearly rises to the level of a substantial deviation from the professional standard of recognizing the worth and dignity of all persons and respect for each individual.

The Commission finds that although Respondent dropped off the written material on the same visit, each act is a substantial deviation from the professional standard and constitutes gross neglect of duty under OAR 584-020-0010(1).

ORDER

Based on the foregoing, the Commission hereby orders as follows:

1. The Commission grants Respondent's application for a ~~Standard~~ ^{Basic} Teaching License.
2. The teaching license is suspended for six months from the date of issuance of the license.
3. Respondent must fulfill any reinstatement requirements as provided in OAR 584-50-0016.
4. After Respondent reinstates the suspended license, Respondent will be placed on four years probation. During the period of probation, Licensee will comply with the Standards for Competent and Ethical Performance of Oregon Educators under Oregon Administrative Rules, Chapter 584, Division 020.

It is so Ordered this 13th day of ~~November~~ ^{December} 2010.

Talbott may
obtain Standard Teaching
license upon proof of
appropriate
experience.
12-13-10 *lc*

TEACHER STANDARDS AND PRACTICES COMMISSION

By *Victoria Chamberlain*
Victoria Chamberlain, Executive Director

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provision of ORS 183.482 to the Oregon Court of Appeals.

CERTIFICATE OF MAILING

On December 14th, 2010, I mailed the foregoing Final Order in OAH Case No. 9000885.

By: First Class Mail

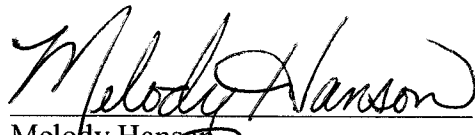
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