

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

In the Matter of the )  
Teaching License of ) FINAL ORDER  
)  
LUCINDA HITES-CLABAUGH ) Case No. 1102305

On September 7, 2011, Senior Administrative Law Judge John Mann issued a Ruling on Motion for Summary Determination and Proposed Order in this case.

The Teacher Standards and Practices Commission adopts in its entirety the Findings of Fact, Conclusions of Law and Order contained in the attached Ruling on Motion for Summary Determination and Proposed Order.

ORDER

The Commission adopts the Ruling on Motion for Summary Determination and Proposed Order that revokes Lucinda Hites-Clabaugh's teaching license and revokes her right to apply for a license.

Dated this 7<sup>th</sup> day of November 2011.

TEACHER STANDARD AND PRACTICES COMMISSION

By:   
Victoria Chamberlain, Executive Director

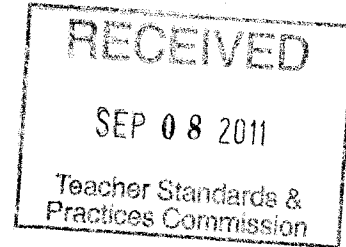
**NOTICE:** You are entitled to judicial review of this Final Order pursuant to the provisions of ORS 183.480. Judicial review may be obtained by filing a petition in the Oregon Court of Appeals. The petition must be filed within 60 days from the date of service of this Final Order.

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

IN THE MATTER OF:

**LUCINDA HITES-CLABAUGH**

) **RULING ON MOTION FOR**  
) **SUMMARY DETERMINATION**  
) **AND PROPOSED ORDER**  
)  
) OAH Case No.: 1102305  
)



**HISTORY OF THE CASE**

On April 2, 2010 the Teacher Standards and Practices Commission (TSPC or the Commission) issued a Notice of Opportunity for Hearing to Lucinda Hites-Clabaugh. On April 22, 2010, Ms. Hites-Clabaugh requested a hearing.

On April 11, 2011, TSPC referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) John Mann to preside at hearing. ALJ Mann held a prehearing conference, by telephone, on June 29, 2011. Mark J. Geiger, attorney at law, represented Ms. Hites-Clabaugh at the hearing. Assistant Attorney General Judith K. Anderson represented TSPC. With the consent of the parties, ALJ Mann scheduled a hearing for September 12, 2011.

TSPC filed a Motion for Summary Determination on August 5, 2011. Ms. Hites-Clabaugh did not file a response. ALJ Mann took the matter under advisement.

**ISSUE**

Whether the Commission is entitled to a favorable ruling as a matter of law that it must revoke Lucinda Hites-Clabaugh's teaching license based upon a criminal conviction. ORS 342.175(3).

**DOCUMENTS CONSIDERED**

ALJ Mann considered the pleadings, the Commission's Motion for Summary Determination, and Exhibits 1 through 3, submitted with the Motion.

**FINDINGS OF FACT**

1. Lucinda Hites-Clabaugh currently holds a standard teaching license issued by the Commission with an effective date of October 11, 2006. The license is scheduled to expire on October 11, 2011. (Ex. 1.)

2. On November 29, 2009, Ms. Hites-Clabaugh was convicted of Sexual Abuse in the First Degree in violation of ORS 163.427. On August 6, 2010, the Marion County Circuit Court sentenced Ms. Hites-Clabaugh to 75 months in prison. (Ex. 2.)

### CONCLUSIONS OF LAW

The Commission is entitled to a favorable ruling as a matter of law that it must revoke Lucinda Hites-Clabaugh's teaching license based upon a criminal conviction.

### OPINION

The Commission filed a motion for summary determination seeking a favorable ruling as a matter of law disposing of all issues in this case. OAR 137-003-0580 sets forth the legal standard that applies to a motion for summary determination. The rule provides, in relevant part:

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

\* \* \* \* \*

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's pleading. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

The Board provided evidence to establish that Ms. Hites-Clabaugh has been convicted of Sexual Abuse in the First Degree in violation of ORS 163.427. Ms. Hites-Clabaugh did not file a response and thus has presented not evidence to dispute the fact of her conviction.

ORS 342.175(3) provides:

The commission shall revoke any license or registration and shall revoke the right of any person to apply for a license or registration if the person has held a license or registration at any time and the holder or applicant has been convicted of any crime described in ORS 342.143 (3).

ORS 342.143(3) provides, in pertinent part:

(3) Without limiting the powers of the Teacher Standards and Practices Commission under subsection (2) of this section:

(a) No teaching, personnel service or administrative license or registration as a public charter school teacher or administrator shall be issued to any person who:

(A) Has been convicted of a crime listed in ORS \* \* \* 163.427 \* \* \*.

Because Ms. Hites-Clabaugh has been convicted of violating ORS 163.427, the Commission is required to revoke her teaching license and her right to reapply in the future. The statute gives the Commission no discretion to forego the suspension or to impose a lesser sanction. Therefore, the evidence demonstrated that the Commission is entitled to a favorable ruling as a matter of law. The hearing scheduled for September 12, 2011 is therefore unnecessary and will be cancelled.

At the prehearing conference, Mr. Geiger conceded that Ms. Hites-Clabaugh had been convicted, but noted that she was still pursuing appeals to try to reverse her conviction. Ms. Hites-Clabaugh has presented no evidence that her appeals have thus far been successful. Nevertheless, ORS 342.175(5) sets forth the Commission's obligations in such an event. The statute provides

The commission shall reconsider immediately a license or registration suspension or revocation or the situation of a person whose privilege to apply for a license or registration has been revoked, upon application therefor, when the license or registration suspension or revocation or the privilege revocation is based on a criminal conviction that is reversed on appeal.

Therefore, if Ms. Hites-Clabaugh is successful in her criminal appeals, the Commission will be required to reconsider the revocation. Unless and until that occurs, however, the Commission is required by law to revoke Ms. Hites-Clabaugh's teaching license and her right to reapply for such a license in the future.

## RULING AND ORDER

The Commission's Motion for Summary Determination is GRANTED. The hearing scheduled for September 12, 2011 is cancelled.

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

Lucinda Hites-Clabaugh's teaching license, and her right to reapply for a license or registration in the future, are revoked pursuant to ORS 342.175(3).

John Mann

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Senior Administrative Law Judge  
Office of Administrative Hearings

## EXCEPTIONS

The proposed order is the Administrative Law Judge's recommendation to the Teacher Standards and Practices Commission. 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  
465 Commercial Street, NE  
Salem, Oregon 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.

**CERTIFICATE OF MAILING**

On September 7, 2011, I mailed the foregoing Ruling on Motion for Summary Determination and Proposed Order issued on this date in OAH Case No. 1102305.

By: First Class and Certified Mail

Certified Mail Receipt # 7011 0470 0002 8820 3544

Mark Geiger  
Attorney at Law  
317 Court St NE Suite 211  
Salem OR 97301

By: First Class Mail

George Finch  
Teacher Standards & Practices Commission  
465 Commercial Street NE  
Salem OR 97301

Judith Anderson  
Assistant Attorney General  
Department of Justice  
1162 Court St NE  
Salem OR 97301

Pam Arcari  
Administrative Specialist  
Hearing Coordinator