BEFORE THE TEACHER STANDARDS AND PRACTICES COMMISSION 1 2 OF THE STATE OF OREGON 3 In the Matter of the STIPULATION OF FACTS, FINAL ORDER OF SUSPENSION) 4 **Educator License of:** 5) PATRICK SCOTT BIRKBY 6 7 On or about February 6, 2014, the Teacher Standards and Practices Commission 8 (Commission) received a report from Wade Smith, Superintendent of the Hermiston School 9 District, indicating that licensed educator Patrick Birkby (Birkby) may have violated 10 professional standards. 11 After review of the matters alleged, Birkby and the Commission agree that their 12 respective interests, together with the public interest, are best served by a stipulation to certain 13 facts and suspension of his Oregon educator license followed by a period of probation and 14 fulfillment of specific probation requirements. 15 This document sets forth the facts upon which the parties have agreed and the stipulated 16 sanction to be imposed. Birkby stipulates that there is sufficient evidence in the Commission's 17 files and records to support the findings of fact, conclusions of law, and order set forth below. 18 By signing below, Birkby acknowledges, understands, stipulates, and agrees to the 19 following: (i) he has been fully advised of his rights to notice and a hearing to contest the 20 findings of fact, conclusions of law, and order set forth below, and fully and finally waives all 21 such rights and any rights to appeal or otherwise challenge this Stipulation of Facts and Final 22 Order of Suspension and Probation (Stipulation and Final Order); (ii) this Stipulation and Final 23 Order is a public document and disclosed to the public upon request by the Commission; (iii) 24 this Stipulation and Final Order is contingent upon and subject to approval and adoption by the 25 Commission. If the Commission does not approve and adopt this Stipulation and Final Order, 26 then neither Birkby nor the Commission are bound by the terms herein; (iv) he has fully read 27 this Stipulation and Final Order, and understands it completely; (v) he voluntarily, without any 28

force or duress, enters into this Stipulation and Final Order and consents to issuance and entry 1 of the Stipulated Final Order below; (vi) he states that no promises or representation has been 2 made to induce him to sign this Stipulation and Final Order; and (vii) he has consulted with an 3 attorney regarding this Stipulation and Final Order and has been fully advised with regard to his 4 rights thereto, or waives any and all rights to consult with an attorney prior to entering into this 5 Stipulation and Final Order and issuance and entry of the Stipulated Final Order below. This 6 Order sets forth the facts upon which the parties have agreed and the sanction to be imposed. 7 In entering into this stipulation, Birkby waives the right to a hearing to contest the findings of 8 9 fact, conclusions of law and order set forth below. STIPULATION OF FACTS 10 1) The Commission has licensed Birkby since July 12, 2006. Birkby currently holds an 11 Initial II Teaching License with endorsements in Advanced Mathematics (HS, ML), 12 Multiple Subjects (MIDLVL), and Physical Education (ML/HS, ECE/ELE L); valid 13 November 28, 2011, through November 27, 2014. On May 22, 2014, Birkby made 14 timely application for renewal of his license. During all relevant times, Birkby was 15 employed by the Hermiston School District. 16 2) On February 6, 2014, the Commission received a complaint from the administration 17 of the Hermiston School District indicating Birkby may have committed acts which 18 19

constitute gross neglect of duty. Subsequent investigation determined the following:

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- a) In January 2012, Birkby was disciplined by his employer for violating district policy regarding electronic communications and appropriate staff and student interactions. This discipline was a result of an incident where Birkby was found to have been texting a female student and counseling her regarding her personal problems. Birkby's discipline included the specific directive to cease all texting and electronic communications with students.
- b) On January 28, 2014, female student MB made a report to local law enforcement alleging Birkby was harassing her by attempting to communicate with her electronically against her wishes and making comments that made her feel uncomfortable. Investigation discovered that Birkby was using social media

programs like Facebook and Snapchat to communicate with students. Birkby's communications took place during school hours and after hours, including school breaks and weekends. Investigation determined that his behavior was in violation of district policies, in violation of the prior written directive. Female students AP and AH told investigators that Birkby was communicating with them as well. During the course of the school district's and Commission's investigation, Birkby admitted to unprofessional electronic communications with students and explained his intentions as attempts to help the involved students who were experiencing problems at home. Birkby also explained that he stopped his electronic communications with MB when he learned that she felt uncomfortable.

Patrick Scott Birdy
Patrick Scott Birdy

H/25/2016

Date

5-16-16

15 Patrick Scott Birkby

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Date

Teacher Standards and Practices Commission

CONCLUSION OF LAW

Patrick Scott Birkby's conduct as described above constitutes gross neglect of duty in violation of ORS 342.175(1)(b); OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5) (Use professional judgment), OAR 584-020-0025(2)(B) (Using and maintaining district property, equipment, and materials appropriately), OAR 584-020-0025 (2)(e) (Using district lawful and reasonable rules and regulations); OAR 584-020-0040(4)(0) as is incorporates OAR 584-020-0035(1)(c)(A) (Not demonstrating or expressing professionally inappropriate interest in a student's personal life), OAR 584-020-0035(1)(c)(B) (Not accepting or giving or exchanging romantic or overly personal gifts or notes with a student), and OAR 584-020-0035(1)(c)(D) (Honoring appropriate adult boundaries with students in conduct and conversation at all times).

1	The Commission's authority to impose discipline in this matter is based upon
2	ORS 342.175.
3	ORDER
4	The Commission hereby adopts and incorporates herein the above stipulation of
5	facts, conclusions of law, and based thereon orders as follows:
6	1) Patrick Scott Birkby's teaching license is hereby suspended for 30 days from the date
7	this order is entered.
8	2) Patrick Scott Birkby is placed on probation for a period of four years following
9	reinstatement of the suspended license. Birkby must apply and qualify for
10	reinstatement of the license as provided under the Commission's rules.
11	3) During the first six months this order is in effect, and as a condition of probation:
12	a) Birkby will successfully complete a 3-month course of weekly counseling
13	sessions; and
14	b) Birkby will successfully complete a course regarding ethical teacher conduct and
15	professional boundaries. The course is subject to Commission approval and must
16	be a minimum of 6 hours or as otherwise approved by the Commission.
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1	4) Birkby shall comply with the Standards for Competent and Ethical Performance of
2	Oregon Educators under Oregon Administrative Rules Chapter 584, Division 020.
3	Violation of any term or condition of probation shall constitute an independent basis
4	for the Commission to revoke Birkby's educator license or otherwise impose
5	discipline, after first providing Birkby with notice and opportunity for hearing.
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7	IT IS SO ORDERED this 2016.
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9	TEACHER STANDARDS AND PRACTICES COMMISSION
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11	By: Manuberlain Executive Director
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that I served the foregoing Stipulation of Facts and Final Order of Suspension and Probation, certified by me as such, by mailing U.S. First Class Mail and U.S. Certified Mail — Return Receipt Requested, addressed to:

Patrick Scott Birkby 70 N 4050 W Cedar City, UT 84720-8088

DATED this _____ day of July, 2016.

By: ______ Patty Sheldon Investigative Assistant

Certificate of Mailing - PATRICK SCOTT BIRKBY