

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

In the Matter of the Teaching License of:     )     FINAL ORDER  
   )  
JAMES REESE NORTON                             )     Office of Administrative  
   )     Hearings Case No. 120719

On August 2, 2005, Administrative Law Judge Ken. L. Betterton issued a Proposed Order in this case.


The Teacher Standards and Practices Commission adopts the Findings of Fact, Conclusions of Law and sanction contained in the attached Proposed Order.

ORDER

The Commission adopts the Proposed Order denying James Reese Norton’s renewal of his teaching license.

Dated this 7<sup>th</sup> day of November 2005.

TEACHER STANDARDS AND PRACTICES COMMISSION

By:   
Victoria Chamberlain, Executive Director

NOTICE: If you are dissatisfied with this Order you may not appeal it until you have asked the agency to rehear the case or to reconsider the Order. To obtain agency rehearing or reconsideration you must file a petition for rehearing or reconsideration pursuant to OAR 584-019-0045 within 60 days from the day this Order was served on you. If this Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the date of service was the day it was *mailed*, not the day you received it. If you do not file a petition for rehearing or reconsideration within the time limits provided, you will lose your opportunity for rehearing or reconsideration and you will lose your right to appeal to the Oregon Court of Appeals.

If, after you have filed a petition for rehearing or reconsideration, the agency issues an Order that you are dissatisfied with, you have a right to appeal that Order to the Oregon Court of Appeals pursuant to ORS 183.482.

If, 60 days after you have filed a petition for rehearing or reconsideration, the agency has not issued an Order, your petition will be considered denied and at that time you will have the right to appeal the original Order to the Oregon Court of Appeals pursuant to ORS 183.480 and ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day that your petition for rehearing or reconsideration is deemed denied. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

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

IN THE MATTER OF THE TEACHING ) **PROPOSED ORDER**  
LICENSE OF: )  
 ) OAH Case No. 120719  
JAMES REESE NORTON, )

<b>RECEIVED</b>  AUG 03 2005  Teacher Standards & Practices Commission
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**HISTORY OF THE CASE**

On February 10, 2005, the Teacher Standards and Practices Commission (TSPC) issued a Notice of Denial of Teaching License to James Reese Norton. On February 24, 2005, James Reese Norton requested a hearing.

On March 11, 2005, the TSPC referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned the case to Administrative Law Judge (ALJ) Ken L. Betterton.

A hearing was held on June 28, 2005, in Salem, Oregon, before ALJ Ken L. Betterton. Joe Gordon McKeever, Assistant Attorney General, represented TSPC. Timothy Pizzo, Attorney at Law, represented James Reese Norton. James Reese Norton, Cameron Lane, TSPC Investigator, and William Napieralski, Tigard Police Officer, testified as witnesses for TSPC. The record closed at the end of the hearing on June 28, 2005.

On July 8, 2005, I received a letter dated July 4, 2005 from James R. Norton. In his letter, which does not indicate that he mailed a copy of it to his attorney or to the assistant attorney general, Mr. Norton requested that I declare a "mistrial" of his June 28, 2005 hearing, because it violated "double jeopardy."<sup>1</sup> Mr. Norton also accused in his letter the police officer of committing perjury against him at the June 28 hearing.

Mr. Norton's complaint in his letter about the testimony at his hearing will not be considered. The record closed upon the end of the hearing on June 28. The principles of double jeopardy and mistrial are criminal law concepts which do not apply to civil actions or to an administrative proceeding like this matter. Mr. Norton's request for a "mistrial" is denied.

**ISSUES**

1. Did James R. Norton's failure to disclose prior criminal convictions on his application for renewal of his teaching license constitute gross neglect of duty? OAR 584-020-0040(4)(c).

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<sup>1</sup> I mailed a copy of Mr. Norton's letter both to his attorney, Timothy Pizzo, and to Assistant Attorney General Joe Gordon McKeever on July 12, 2005.

2. Did James R. Norton's convictions for misdemeanor crimes constitute gross unfitness? OAR 584-020-0040(5)(c).

### EVIDENTIARY RULING

Exhibits A1 through A14 offered by TSPC were admitted into evidence without objection.

### FINDINGS OF FACT

(1) James R. Norton (Norton) has been a school teacher for about 38 years. (Norton's testimony.) He has taught in high schools in Oregon, Washington, and California. (*Id.*) Most recently Norton has taught high school math in Livermore, California, for the last five years. (*Id.*)

(2) In August 1999, Norton was in the process of moving from Vancouver, Washington to Rockaway, Oregon to take a teaching position in a high school in Rockaway. (*Id.*) In the process of moving some of his personal property in his car on August 30, 1999, Norton stopped at a restaurant in Tigard, Oregon, to eat. (*Id.*) He parked his car in the restaurant's parking lot; part of the parking lot is on a slight incline. (*Id.*)

(3) While Norton was in the restaurant, his unoccupied car rolled from its parking place to come to rest against rear of another unoccupied car in the parking lot. That car belonged to a couple who was eating in the restaurant. (Ex. A3 at 1.) The owner of the other car, Walter Warren, and his wife, left the restaurant and saw Norton's car resting against the rear of their car, which caused slight damage to the Warren car. (*Id.*)

(4) Walter Warren returned to the restaurant to locate the owner of the car resting against his car. (*Id.*) Warren located the owner, Norton, told him about the problem with the cars, and asked Norton to move his car. (*Id.*) Norton angrily left the restaurant, got into his car and drove it wildly around the parking lot, and then parked his car in another parking space. (Ex. A3 at 1.)

(5) Warren approached Norton to get his driver's license and insurance information. (*Id.*) Norton got upset at Warren, yelled profanity at him, and struck Warren several times with a closed fist. (*Id.*) The skin on the right side of Warren's nose was broken from at least one of the blows from Norton's fist. (Ex. A12.) Restaurant employees and other patrons pulled Norton away from Warren and called the Tigard Police. (Ex. A5 at 1.) Norton returned to the restaurant. (Norton's testimony.)

(6) Several Tigard Police officers responded to the scene a short time later, and talked to Warren, his wife, and some other individuals who witnessed the incident in the parking lot. (Officer William Napieralski's testimony.) Two police officers, James Passadore and William Napieralski, entered the restaurant to locate Norton and to ask him to go outside to talk to them about the incident. (Officer Napieralski's testimony.)

(7) When approached by the officers, Norton acted angry and walked quickly ahead of the officers toward the restaurant door. (*Id.*) Once outside the restaurant, Norton acted agitated and upset. (Ex. A3 at 2.) Officer Napieralski asked Norton several times to calm down. (*Id.*) Norton admitted to Napieralski that he had “rage problems.” (*Id.*) Norton accused Warren of yelling at him and first kicking him (Norton) in the groin, and that he acted to defend himself from Warren. (*Id.*) At one point, Norton boasted to a police officer that, “if anyone gets in my face, I will kick their fucking ass.” (Ex. A6 at 1.)

(8) Because Norton’s version of the incident conflicted sharply with the versions provided by Warren, Warren’s wife, and a restaurant employee, who saw the entire incident in the parking lot between Warren and Norton, Officer Napieralski told Norton he was under arrest for assault in the fourth degree and harassment, and to put his hands behind his back. (Ex. A3 at 2.) Norton refused to put his hands behind his back. (Ex. A3 at 3.) Napieralski asked Norton two more times to put his hands behind his back. The third time, Officer Napieralski told Norton to “make no mistake that he was under arrest and to place his hands behind his back.” (*Id.*; Officer Napieralski’s testimony.) After the third command from Officer Napieralski, Norton started to clench his hands into fists and raise them in the air in a threatening manner. Napieralski grabbed Norton’s arm to control him. Norton pulled away and started to strike at Officer Passadore’s chest area. (*Id.*) Norton ripped a button on Officer Passadore’s police shirt. (Officer Napieralski’s testimony; Ex. A13.) Officers Napieralski and Passadore struggled with Norton, as Norton continued to flail his arms and struggle with the officers. (Officer Napieralski’s testimony.) Finally, Officer Napieralski used pepper spray to subdue Norton. (*Id.*) The officers handcuffed Norton and transported him to jail. (*Id.*) Officer Napieralski did not believe that Norton was intoxicated during their encounter. (*Id.*) Officer Napieralski experienced pain in his left knee from his encounter with Norton. Officer Passadore experienced back pain from his encounter with Norton. (Ex. A3 at 3-4.)

(9) On or about September 9, 1999, the Washington County District Attorney’s Office filed a criminal complaint against Norton in Washington County Circuit Court. (Ex. A14.) The complaint accused Norton of 11 counts of committing misdemeanors, including assaulting a public safety officer (Class A Misdemeanor—Counts 1 and 2), assault in the fourth degree (Class A Misdemeanor—Counts 3, 4 and 5), harassment (Class B Misdemeanor—Counts 6, 7 and 8), resisting arrest (Class A Misdemeanor—Count 9), criminal mischief in the third degree (Class C Misdemeanor—Count 10), and disorderly conduct (Class B Misdemeanor—Count 11). (*Id.*)

(10) Norton appeared in Washington County Circuit Court with an attorney on February 3, 2000, and entered guilty pleas to Counts 2, 5, and 6. The remaining counts were dismissed pursuant to a plea agreement reached between Norton’s attorney and the district attorney’s office. (Ex. A7; Norton’s testimony.) The court suspended imposition of sentence and placed Norton on court probation for two years, ordered him to complete community service, and imposed a fine and court costs. (Ex. A7 at 1-2.) Norton successfully completed his probation. (Norton’s testimony.)

(11) Norton applied for renewal of his Oregon teaching license with TSPC in July 2004, as his license was set to expire in October 2004. (Norton’s testimony.) TSPC mailed Norton a four page application form for him to complete in order to renew his license. (Ex. A8.)

Question 8 on the application asked:

“Have you ever been convicted or been granted conditional by any court for: (a) any felony; (b) misdemeanor; (c) any major traffic violation, such as: driving under the influence of intoxicants or drugs; reckless driving; fleeing from or attempting to elude a police officer; driving while your license was suspended, revoked or used in violation of any license restriction; or failure to perform the duties of a driver or witness at an accident?” “Yes” “No”. Norton circled “No” as his response.

(*Id.* at 4.)

Question 10 on the application asked:

“Have you ever entered a plea of guilty or No Contest relative to any charge for an offense listed in Question #8 above?” “Yes” “No”. Again, Norton circled “No” as his response.

(*Id.*)

(12) Norton then signed and dated his application form July 20, 2004, and returned it to TSPC. (*Id.*; Norton’s testimony.) Directly above his signature is a statement that TSPC can revoke any license upon the showing of that the holder knowingly makes any false statement in the application process. (Ex. A8 at 4.) Norton did not submit any written statement with his application to explain his answers to Questions 8 and 10. (Norton’s testimony.)

(13) At the time Norton answered Questions 8 and 10 on the renewal application form, he knew and understood that he had been convicted of the misdemeanor crimes in Washington County Circuit Court. (*Id.*) Although Norton understood that he had been “legally” convicted when he answered the two questions, he did not and still does not accept the convictions as “morally” just. (*Id.*)

(14) Norton accused and continues to accuse the Tigard Police officers, as well as the other witnesses at the restaurant, of lying and fabricating evidence against him. (*Id.*) Norton also accused and continues to accuse the Tigard Police Department and the Washington County Court system of “being corrupt.” (*Id.*)

#### CONCLUSIONS OF LAW

1. James R. Norton engaged in gross neglect of duty.
2. James R. Norton engaged in gross unfitness.

## OPINION

TSPC has accused James R. Norton of gross neglect of duty and gross unfitness for duty, based on his convictions for crimes and his failure to truthfully answer questions on his application for renewal of his teaching license regarding his convictions for crimes.

TSPC has the burden of proof to establish that Norton committed the violations of law that TSPC has accused him of violating. ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683 (1980). TSPC must prove its case by a preponderance of the evidence. *Cook v. Employment Division*, 47 Or App 437 (1980). 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 Contractors v. Tandy Corp.*, 303 Or 390 (1989). TSPC has met its burden.

ORS 342.143(2) authorizes TSPC to require an applicant for a teaching license to furnish evidence of good moral character.<sup>2</sup>

OAR 584-020-0040 provides, in part:

(3) The Commission [*i.e.*, TSPC] may initiate proceedings to \* \* \* deny a license \* \* \* to an applicant under ORS 342.143 who:

\* \* \* \* \*

(c) Is charged with gross neglect of duty; and

(d) Is charged with gross unfitness.

(4) 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:

\* \* \* \* \*

(c) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

\* \* \* \* \*

(5) Gross unfitness is any conduct which renders an educator unqualified to perform his or her professional responsibilities. Conduct constituting gross unfitness may include conduct occurring outside of school hours and off school premises when such conduct bears a demonstrable relationship to the educator's ability to fulfill professional responsibilities effectively. The following may be admissible as evidence of gross unfitness. Consideration may include but is not limited to:

\* \* \* \* \*

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<sup>2</sup> ORS 342.143(2) states:

The Teacher Standards and Practices Commission may also require an applicant for a teaching, personnel service or administrative license to furnish evidence satisfactory to the commission of good moral character, mental and physical health, and such other evidence as to may deem necessary to establish the applicant's fitness to serve as a teacher.

(c) Conviction of violating any federal, state, or local law. A conviction includes any final judgment or conviction by a court whether as a result of guilty plea, no contest plea or any other means.

\* \* \* \* \*

*(1) Gross Neglect of Duty*

Norton was convicted of three misdemeanor crimes in February 2000, assault in the fourth degree, assaulting a public safety officer and criminal mischief, based on his guilty plea to those crimes. Norton knew when he completed his application for renewal of his teaching license in July 2004, with his answers to Questions 8 and 10, that he had been convicted of those crimes. Norton acknowledged in his testimony at his hearing that he knew he had been convicted of those crimes. Norton knowingly falsified the application to renew his license, which relates directly to his licensure as a teacher. Norton violated OAR 584-020-0040(4)(c).

Norton argues that although he knew at the time he completed the application, and still knows now, that he was legally convicted, he does not accept that his convictions as "moral." Norton is free to have his personal opinion, but the fact remains that he was convicted, based on his guilty pleas, of three crimes. Norton was represented by an attorney when he entered his guilty pleas to three crimes in court in February 2000. Norton and his attorney negotiated a settlement with the prosecutor to get eight of the charges dismissed in exchange for his guilty pleas. The questions on the application form Norton completed are clear and unambiguous. The statement above his signature cautioned him of the consequences for knowingly providing false answers. Norton could have answered the questions truthfully and provided an explanation that might have insulated him against the allegation that he knowingly falsified his application.

*(2) Gross Unfitness*

TSPC accuses Norton of gross unfitness as a teacher as unqualified to perform his professional responsibilities under OAR 584-020-0040(5), based in part on his convictions. Gross unfitness includes conduct occurring outside of school hours and off school premises when such conduct bears a demonstrable relationship to the teacher's ability to perform that teacher's professional duties effectively. TSPC reasonably expects teachers to maintain composure and display professionalism in the presence of their students and in their work environment.

Norton physically assaulted a patron, unknown to him at the time, at a restaurant, when the victim only wanted to get information from Norton for insurance purposes. Norton had to be separated from the victim by bystanders. Norton drove his car wildly in the parking lot. He got into a physical altercation with at least two police officers, after being told repeatedly that he was under arrest, then had to be subdued with pepper spray before the police could get handcuffs on him. Norton admitted to the police that he had a "rage problem" and boasted of his physical prowess if individuals crossed him.

Norton accused everyone else of fabricating their statements and testimony and lying about his conduct, in the face of police reports from several officers, and statements from the



victim and witnesses who did not know Norton at the time or have any known reason to make up their stories. The evidence of Norton's conduct at the restaurant on August 30, 1999 from these various sources is more persuasive than Norton's self-serving denials.

Norton continues, nearly six years later, to accuse everyone else of fabricating evidence against him for the crimes to which he voluntarily entered guilty pleas. He continues to refuse to accept the fact of his convictions to the point that he knowingly refused to report those convictions on his application to renew his teaching license. Norton's conduct on August 30, 1999, his convictions, and his continued failure to acknowledge the seriousness and consequences of his actions demonstrate gross unfitness to perform his professional responsibilities.

The allegations of gross neglect and gross unfitness against Norton, taken separately, and taken together, demonstrate that the renewal of his teaching license should be denied.

### PROPOSED ORDER

I propose that TSPC issue the following order:

Denying James Reese Norton's renewal of his teaching license.



KEN L. BETTERTON, Administrative Law Judge  
Office of Administrative Hearings

MAILING AND ISSUE DATE: August 2, 2005

### 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.

**APPENDIX**

**LIST OF EXHIBITS CITED**

- Ex. A3: Tigard Police Department Report. Officer Napieralski. August 31, 1999.
- Ex. A5: Tigard Police Department Report. Officer Andersen. August 31, 1999.
- Ex. A7: Judgment Order, Washington County Circuit Court. February 3, 2000.
- Ex. A8: Application for License Renewal with TSPC. July 20, 2004.
- Ex. A12: Photos of Walter Warren.
- Ex. A13: Photos of Officer Passadore's shirt.
- Ex. A14: Misdemeanor Complaint, Washington County Circuit Court. September 9, 1999.

## CERTIFICATE OF SERVICE

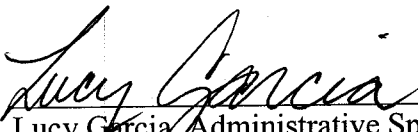
I certify that on August 2, 2005, I served the attached Proposed Order by mailing in a sealed envelope, with first class certified postage prepaid, a copy thereof addressed as follows:

JAMES REESE NORTON  
1530 LA PRADA CT  
LIVERMORE CA 94550-5922

TIMOTHY PIZZO  
ATTORNEY AT LAW  
260 S 2ND ST  
ST HELENS OR 97051

SUSAN NISBET  
TEACHERS STANDARDS AND PRACTICES  
465 COMMERCIAL ST NE  
SALEM OR 97301

JOE GORDON McKEEVER  
ASSISTANT ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE  
1162 COURT ST NE  
SALEM OR 97301-4096

  
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Lucy Garcia, Administrative Specialist  
Office of Administrative Hearings  
Transportation Hearings Division