

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

IN THE MATTER OF:) **FINAL ORDER**
) **ON REMAND**
LAWRENCE A. LOCKETT)
) OAH Case No. 1403874
)

This matter came before the Teacher Standards and Practices Commission during its regularly scheduled meeting of June 20, 2018 following the Court of Appeals' reversal and remand of the final order issued on July 21, 2015. On remand, the Commission has considered the evidentiary record, as well as Respondent's exceptions filed on June 1, 2015. The Commission does not find Respondent's exceptions persuasive.

The Commission adopts ALJ Rackstraw's findings of fact and conclusions of law, including her credibility determination. The Commission also adopts ALJ Rackstraw's reasoning and recommended sanction as discussed below. The Commission has supplemented this final order to more fully explain how Respondent's conduct constitutes gross neglect of duty, and why revocation of his license is appropriate in this case.

HISTORY OF THE CASE

On April 23, 2014, the Teacher Standards and Practices Commission (TSPC or Commission) issued a Notice of Opportunity for Hearing, proposing to discipline Lawrence A. Lockett for gross neglect of duty based on the conduct alleged therein. On April 30, 2014, Mr. Lockett, through counsel, requested a contested case hearing. On September 26, 2014, TSPC referred the matter to the Office of Administrative Hearings (OAH).

On November 5, 2014, Senior Administrative Law Judge (ALJ) Jennifer H. Rackstraw of the OAH held a telephone prehearing conference. Attorney Blair Henningsgaard represented Mr. Lockett. Senior Assistant Attorney General Raul Ramirez represented TSPC.

On March 31 and April 1, 2015, ALJ Rackstraw held a hearing in Tualatin, Oregon. Mr. Henningsgaard represented Mr. Lockett. Mr. Ramirez represented TSPC. The following persons testified: Mr. Lockett; Peter Jeffrey ("Jeff") Mabry; Donna McDonald; Cindy Belleque; HS;¹ Craig Hoppes; Astoria Police Sergeant Eric Halverson; Marilyn Knowlson; Terry Panowicz; and Julia Mabry. Jeffery VanLaanen, legal liaison for TSPC, and Cheryl Lockett, Mr. Lockett's wife, were present for the entire hearing, but neither provided testimony. Adrienne Delcotto, from the Oregon Department of Justice, observed the hearing on March 31, 2015.

The record closed at the conclusion of the hearing on April 1, 2015.

¹ The Proposed Order will identify this particular individual by her initials.

ISSUES

1. Whether Mr. Lockett committed gross neglect of duty, in violation of ORS 342.175(1)(b); OAR 584-020-0040(4)(m), (n), (o), and (s); OAR 584-020-0010(5); OAR 584-020-0025(3)(a); and 584-020-0035(3)(a).
2. If Mr. Lockett committed gross neglect of duty, what is the appropriate sanction?

EVIDENTIARY RULINGS

TSPC offered Exhibits A1 through A8. Exhibits A1 through A8² were admitted into the record without objection. Exhibit A9 was admitted into the record over Mr. Lockett's objection to the hypothetical questions contained therein.

Mr. Lockett offered Exhibits R1 through R9,³ which were all admitted into the record without objection.

TSPC's Pleadings P1 through P6 and Respondent's Hearing Memorandum are also a part of the record.

CREDIBILITY DETERMINATION

One of the Commission's and the ALJ's chief responsibilities in this matter is to reconcile conflicting statements of the witnesses and determine which evidence is more likely correct. Such a determination requires that the Commission and ALJ assess the credibility of the various witnesses offering testimony.

While a witness is presumed to speak the truth, the presumption may be overcome "by the manner in which the witness testifies, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence." ORS 44.370. A determination of witness credibility may also be based on the inherent probability of the evidence, whether the evidence is corroborated, whether the evidence is contradicted by other testimony or evidence, whether there are internal inconsistencies, and "whether human experience demonstrates that the evidence is logically incredible." *Tew v. DMV*, 179 Or App 443, 449 (2002), citing *Lewis and Clark College v. Bureau of Labor*, 43 Or App 245, 256 (1979) rev den 288 Or 667 (1980) (Richardson, J., concurring in part, dissenting in part).

As to several material facts, Mr. Mabry's testimony differs significantly from that of HS. The disputed facts all relate to Mr. Mabry's relationship with HS, including the timeline of their physical/sexual relationship and whether they engaged in sexual conduct at Astoria High School.

² The Commission corrected a scrivener's error from the proposed order indicating that "Exhibits A1 through A7 were admitted into the record without objection."

³ Exhibit R9 was offered and admitted merely to establish the existence and date of the newspaper article, and not for the content contained therein.

HS testified at hearing that she began a physical/sexual relationship with Mr. Mabry prior to turning 18 years old and moving into the Mabry home. Mr. Mabry, however, testified at hearing that although HS was still a student when they began a sexual relationship, she had already turned 18. This partially contradicts his statement to TSPC Investigator Cristina Edgar on December 20, 2013, when he insisted that he did not have a sexual relationship with HS until after she graduated in June 2004. *See Exhibit A8.*

HS testified at hearing that she and Mr. Mabry first had sexual intercourse when he returned home unexpectedly from a wrestling tournament one evening in mid to late February 2004, while she was housesitting in the Mabry home. Both at hearing and during his interview with Investigator Edgar, Mr. Mabry denied having sexual intercourse when he came home from the wrestling tournament. However, this contradicts a Facebook message he sent to HS in August 2013 when, in response to her question as to when they were “first together,” he replied “I think it was during the state tournament when I came home on a Friday night.” *See Exhibit A2 at 1.* Mr. Mabry told Ms. Edgar in December 2013 that he believed HS was asking him when they were first alone at the Mabry home together, and not when they first got together sexually. *See Exhibit A8.* However, given Mr. Mabry’s other inconsistent statements and the fact that he has significant motive to minimize his conduct,⁴ the Commission concurs with the ALJ’s conclusion that his explanation is unpersuasive.

HS testified at hearing that when she was a student at Astoria High School, Mr. Mabry would occasionally touch and kiss her in his classroom and in the storage room between his classroom and another classroom. She reported the same to the Port Townsend and Astoria Police Departments. *See Exhibits A3 at 8, A4 at 3.* Mr. Mabry, on the other hand, has denied ever engaging in sexual/physical contact with HS at school.

At hearing, HS appeared forthright and her testimony was materially consistent with her previous statements to law enforcement. *See Exhibits A3, A4.* For the reasons already stated, Mr. Mabry’s credibility, however, is suspect.

After weighing the conflicting evidence, the Commission concurs with the ALJ’s conclusion that, more likely than not, Mr. Mabry is not a credible witness. Where his testimony conflicts with other, more reliable evidence, the Commission has accorded greater weight to the other evidence.

FINDINGS OF FACT

Mr. Lockett’s Professional Background

(1) TSPC has licensed Mr. Lockett as an educator since 1974. In 2000, he received his first administrator license. He currently holds a Continuing Administrator License (which expires on March 7, 2018) and a Standard Teaching License (which expires on March 7, 2017). (Test. of Lockett; Ex. R1 at 1-10; Pleading P1 at 1.)

⁴ At the time of the hearing, Mr. Mabry was also facing revocation of his teaching license. (Test. of Mr. Mabry.)

(2) Mr. Lockett's teaching experience includes one year of teaching social science at McMinnville Junior High School, eight years of teaching social science at South Albany High School, and eight years of teaching multiple subjects at Stayton High School. (Ex. R1 at 20.) His administrative experience includes five years as the director of activities/athletics and dean of discipline at Stayton High School, three years as an assistant principal at Stayton High School, and one year as a vice principal at Lebanon High School. (Test. of Lockett; Ex. R1 at 12, 20.)

(3) In September 2000, Mr. Lockett became the principal of Astoria High School (Astoria HS). He held that position until he retired in 2012. (Test. of Lockett; *see* Ex. R1 at 37-39, 44, 47-53, 60-61, 64-67.) As the principal, his duties included the general management of the school, the observation and direct supervision of teachers and staff, the supervision of students, and oversight regarding fiscal matters. In addition, during the 2003-2004 school year, he had responsibilities with regard to a school remodeling project. (Test. of Lockett.) His responsibilities for managing staff included the duty to investigate staff complaints. (Test. of Hoppes.)

(4) While serving as the principal of Astoria HS, Mr. Lockett's performance evaluations were overwhelmingly positive. (*See* Ex. R1 at 123-147.) However, a performance review for the 2010-2011 school year contained, among other things, the following recommendation from Astoria School District Superintendent Craig Hoppes:

I encourage Mr. Lockett to work closer with me on communicating of information that comes out of the high school that has an impact on my work with the community and school board. I would appreciate hearing pertinent information before it is released to the press and to the community. Most items are communicated properly, but there are a couple of instances [where] this occurred this past school year that are a concern.

(Ex. R1 at 125.)

(5) In 2013, Mr. Lockett served as the interim superintendent for the Jewell School District, a position that required licensure. From the fall of 2013 to 2014, he served as the academic manager at the Tongue Point Job Corps Center, a position that did not require licensure or certification. (Test. of Lockett; Ex. A9 at 1.)

(6) Mr. Lockett is very highly regarded as an administrator. (*See* Exs. R1 at 23-35, 155-157; R6 at 1-6; test. of Hoppes.)

Astoria School District Policies

(7) The Astoria School District (District) has a written policy concerning the reporting of suspected child abuse. The original policy was adopted in 1990, and then revised in 2003, 2010, and 2011. (*See* Ex. R2 at 1-5.) The record contains no evidence of the specific policy that was in effect during the 2003-2004 school year. (*See* Evidentiary Record.)

(8) Since June 2010, the District has had a written policy titled “Reporting Requirements Regarding Sexual Contact with Students.” (Ex. R4 at 1-2.) The record contains no evidence of a specific policy that was in effect during the 2003-2004 school year. (*See* Evidentiary Record.)

(9) The District has a written policy concerning sexual harassment of students. The original policy was adopted in 1994, and then revised in August 2003. (Ex. R3 at 11-12.) The specific policy that was in effect during the 2003-2004 school year states, in part:

Building principals, the compliance officer and the superintendent have responsibility for investigations concerning sexual harassment. The investigator(s) shall be a neutral party having had no involvement in the complaint presented.

Step 1[:] Any sexual harassment information (complaints, rumors, etc.) shall be presented to the building principal, compliance officer or superintendent. All such information shall be reduced to writing and will include the specific nature of the sexual harassment and corresponding dates.

Step 2[:] The district official receiving the information or complaint shall promptly initiate an investigation. He/She will arrange such meetings as may be necessary to discuss the issue with all concerned parties within five working days after receipt of the information or complaint. All findings of the investigation, including the response of the alleged harassed, shall be reduced to writing. The district official(s) conducting the investigation shall notify the complainant in writing when the investigation is concluded. The parties will have an opportunity to submit evidence and a list of witnesses.

The date and details of notification to the complainant, together with any other documentation related to the sexual harassment incident, including disciplinary action taken or recommended, shall be forwarded to the superintendent[.]

(*Id.* at 11.)

(10) In 2004, the District had no policy prohibiting a student from living in the home of a teacher. Mr. Lockett’s nephew lived in Mr. Lockett’s home for some period of time while the nephew was a student. (Test. of Lockett.) Superintendent Hoppes is aware of two instances, both of which are unrelated to the present matter, where a student has lived with a teacher. (Test. of Hoppes.)

Astoria HS – 2003-2004 School Year

(11) During the 2003-2004 school year, Mr. Lockett was the principal of Astoria HS. (Test. of Lockett.) Donna McDonald and Cindy Belleque were instructional assistants. (Test. of McDonald, Belleque.) Terry Panowicz was a school counselor and Marilynn Knowlson was the

head of the counseling department. (Test. of Panowicz, Knowlson.) Jeff Mabry taught general and/or biological science. (Test. of Mr. Mabry, Lockett.)

(12) Mr. Lockett had weekly management meetings with Ms. Knowlson, the vice-principal, the office manager, the athletic director, and the activities director. In those meetings, they would discuss various issues, including specific students. (Test. of Lockett, Knowlson.) It was important to the school management team to make students feel connected to the school, as they believed that such a connection led to decreased dropout rates. (Test. of Lockett.)

(13) HS began attending Astoria HS midway through her junior year. She was a senior during the 2003-2004 school year. She was 17 years old during the fall semester of her senior year. She turned 18 on March 3, 2004. (Test. of HS.) She was a “loner” with very few friends. (*Id.*, test. of Lockett; Ex. A3 at 7.) Her parents had problems with alcohol and she had a difficult home life. (Test. of Lockett, Mr. Mabry.) Because she had issues with grades and attendance, and she was socially isolated, the school management team considered her to be “at risk” for dropping out of school. (Test. of Lockett.) For a student labeled “at risk,” there is an increased likelihood that the student is vulnerable and looking for trusting adults. (Test. of Hoppes.) Kids with HS’s characteristics (socially isolated, poor home life, school difficulties, *etc.*) tend to be at higher risk for drug and alcohol abuse and physical danger and abuse. (Test. of Lockett.)

(14) Mr. Lockett had one or more conversations with school counselors regarding HS during the 2003-2004 school year. They discussed, for example, HS’s attendance, grades, and her transition into the school population and a peer group. (Test. of Lockett.)

(15) During the 2003-2004 school year, in addition to teaching science classes, Mr. Mabry was also an assistant wrestling coach. Mr. Lockett was his direct supervisor. (Test. of Lockett, Mr. Mabry.) Mr. Mabry was known to be good at connecting with kids that other people could not. (Test. of Knowlson.)

(16) During the 2003-2004 school year, Mr. Mabry was married to Julia Mabry and they had two young daughters. Mr. and Mrs. Mabry occasionally socialized with certain members of the Astoria HS faculty and staff. (Test. of Ms. Mabry, Mr. Mabry.)

(17) HS met Mr. Mabry in 2003, during the fall semester of her senior year. Mr. Mabry was not one of HS’s teachers. Mr. Mabry would make efforts to greet HS and talk with her in the school halls. Sometime during the latter part of 2003, HS and Mr. Mabry began communicating with each other online via Yahoo Messenger. (Test. of HS, Mr. Mabry; Ex. A4 at 2-3.) HS shared details of her personal life with Mr. Mabry, including the fact that she was sexually abused as a young child and that her parents were alcoholics. (Ex. A4 at 3; test. of Mr. Mabry.)

(18) Mr. Mabry’s communications with HS eventually became flirtatious. (Test. of HS.) At some point during the 2003-2004 school year, HS became Mr. Mabry’s teaching assistant (TA). She would make copies, grade papers, and work at his computer while he taught. After class, she would spend time with him in the classroom, often during lunchtime. (Test. of Mr. Mabry, HS.)

(19) For some period of time during the 2003-2004 school year, HS was taking swimming lessons at a public pool. Mr. Mabry would occasionally meet up with her there. (Test. of HS, Mr. Mabry.) On more than one of those occasions, HS and Mr. Mabry engaged in sexual activity, short of sexual intercourse, in Mr. Mabry's vehicle. (Test. of HS; Exs. A3 at 7, A4 at 3.)

(20) Mr. Mabry would occasionally touch and kiss HS in the storage room located between his classroom and another classroom. On at least one occasion, he kissed and/or touched her in the back corner of his classroom. (Test. of HS; Exs. A3 at 8, A4 at 3.)

(21) Ms. Mabry understood that Mr. Mabry was mentoring HS. Ms. Mabry also understood that Mr. Mabry gave HS some swimming lessons in approximately November and December 2003. Mr. Mabry talked about HS quite a bit at home. (Test. of Ms. Mabry.) HS babysat for the Mabry children a few times. (Test. of HS, Ms. Mabry, Mr. Mabry.) HS never attended school or social functions with Mr. and Ms. Mabry and their children.⁵ (Test. of Ms. Mabry, HS.)

(22) In approximately January 2004, Mr. Mabry broke his leg/ankle. (Test. of Mabry; Ex. A8.) On February 4, 2004, Ms. Mabry and the two Mabry children went to Germany for an extended trip so that Ms. Mabry could assist her sister who had given birth to twins. (Test. of Ms. Mabry, Mr. Mabry.) There was never any question that Ms. Mabry was taking the Mabry children with her on the trip. (Test. of Ms. Mabry.)

(23) In approximately mid to late February 2004, HS was housesitting at the Mabry home and taking care of the Mabry's dog while Mr. Mabry was at a wrestling tournament. Mr. Mabry unexpectedly returned home one evening while HS was at the home, and they had sexual intercourse for the first time. HS was 17 years old. (Test. of HS; Ex. A3 at 7-8, A4 at 4.)

(24) A couple of weeks after Ms. Mabry and the children arrived in Germany, Mr. Mabry asked Ms. Mabry if HS could stay in the Mabry home while Ms. Mabry and the children were away. (Test. of Ms. Mabry, Mr. Mabry.) He told Ms. Mabry that HS needed a place to stay because she was having issues with her parents and that he needed assistance getting around with his broken leg. Ms. Mabry was concerned that such a living arrangement would not look good to other people and she asked Mr. Mabry to check with Mr. Lockett. Mr. Mabry gave Ms. Mabry the impression at that time that either he had already spoken with Mr. Lockett about the arrangement, or that he intended to do so. (Test. of Ms. Mabry.)

(25) Sometime prior to March 3, 2004, Mr. Mabry and HS went to Mr. Lockett's office and explained that they wanted HS to move into the Mabry home while Mr. Mabry's family was

⁵ Although Ms. Knowlson and Ms. Panowicz testified at hearing that they observed the entire Mabry family and HS at sport and other school functions together, the preponderance of the evidence establishes that HS was only with the Mabry family incidentally on such occasions. When Mr. Mabry specifically brought HS to school functions, he did so without Ms. Mabry and the children accompanying them. (Test. of HS, Ms. Mabry.)

away so that HS could assist Mr. Mabry with household tasks.⁶ (Test. of HS.) They explained that HS wanted to move out of her home and that Ms. Mabry had agreed that HS could stay in the Mabry home until she graduated. (Test. of Mr. Mabry.) Mr. Lockett appeared agreeable to the arrangement.⁷ (Test. HS, Mr. Mabry.)

(26) On March 3, 2004, HS turned 18 years old. On or shortly after that date, she moved into the Mabry household. She and Mr. Mabry continued their sexual relationship. HS accompanied Mr. Mabry to a couple of school functions (e.g. pizza parties) that included other faculty members. She did not disclose the nature of her relationship with Mr. Mabry to anyone during this time period, but she worried that other people would find out about it and that Mr. Mabry would get into trouble. (Test. of HS; Ex. A3 at 8.)

(27) During the 2003-2004 school year, the lights in the classrooms at Astoria HS were motion sensitive, and they would turn off by themselves. (Test. of Mr. Mabry, Lockett.) Mr. Mabry's classroom had lots of windows and received a great deal of natural light. Even with the lights off in his classroom, there was generally ample light. (Test. of Mr. Mabry; see Ex. R8 at 1, 4-5.)

(28) Ms. McDonald was assigned to work in the resource room, which was across the hall from Mr. Mabry's classroom. She observed HS in Mr. Mabry's classroom "a lot." (Test. of McDonald.) Ms. McDonald sometimes had a need to go into Mr. Mabry's classroom. On one occasion, during school hours, she unlocked the classroom door and entered the classroom. She observed that the lights were off, HS was sitting in Mr. Mabry's desk chair, and Mr. Mabry was sitting on top of his desk facing HS. In her opinion, Mr. Mabry and HS seemed surprised to see her walk into the classroom. On another occasion, Ms. McDonald walked into the classroom and observed HS and Mr. Mabry walking out of the supply/storage room together. She never observed any physical contact between HS and Mr. Mabry. (*Id.*)

(29) Ms. Belleque also worked across the hall from Mr. Mabry's classroom. On one occasion, she unlocked the locked door to his classroom, and upon entering the room, she observed Mr. Mabry and HS at his desk. She did not observe any physical contact between HS and Mr. Mabry. (Test. of Belleque.)

(30) Sometime between January and June 2004, Ms. McDonald, Ms. Belleque, and another staff person went to Mr. Lockett's office and reported that they were uncomfortable with some things they had observed relating to Mr. Mabry and HS. They specifically mentioned their concerns about Mr. Mabry and HS being alone in Mr. Mabry's classroom with the lights off and the door locked. They expressed that they felt such a situation was inappropriate for a student and a teacher. (Test. of McDonald, Belleque.)

(31) After Ms. McDonald, Ms. Belleque, and the other staff person reported their concerns to Mr. Lockett, Ms. Belleque observed that Mr. Mabry and HS continued to spend time alone in

⁶ Although Mr. Mabry testified at hearing that HS was not with him during this meeting, HS's credible testimony establishes, more likely than not, that she was present.

⁷ At hearing, HS testified, "I don't recall that he [Mr. Lockett] made a big deal out of it."

his classroom under the same circumstances. Ms. Belleque also heard rumors that HS was living with Mr. Mabry. On more than one occasion, she observed HS and Mr. Mabry arriving at school together on Mr. Mabry's motorcycle. Because she continued to observe the same classroom behavior involving HS and Mr. Mabry, she went to Mr. Lockett a second time (alone) and conveyed that she continued to have concerns about the situation. (Test. of Belleque.)

(32) Mr. Lockett considered Mr. Mabry to be "a very good family man." (Test. of Lockett.) Mr. Lockett did not conceive of the possibility that Mr. Mabry would engage in a sexual relationship outside of his marriage. (*Id.*)

(33) Neither Ms. Knowlson nor Ms. Panowicz ever received a complaint regarding Mr. Mabry and HS. (Test. of Knowlson, Panowicz.) Ms. Knowlson observed that Mr. Mabry appeared to be a mentor to HS, and she knew that HS babysat for the Mabry family on occasion. (Test. of Knowlson.)

(34) Ms. Panowicz knew that HS had some "home issues," and that HS did some babysitting for the Mabry family. Ms. Panowicz observed that HS and Mr. Mabry "seemed to have a positive relationship." (Test. of Panowicz.) She was not concerned about their relationship and she did not believe that anything inappropriate was occurring. She knew that HS was living in the Mabry home, but she believed that Ms. Mabry and the children were also in the home at the time.⁸ (*Id.*)

(35) On at least one occasion, Ms. Panowicz observed Mr. Mabry bring HS to school on the back of his motorcycle. She believed that such conduct had an appearance of impropriety, and she told Alan Garvin, a colleague and friend of Mr. Mabry, to talk to Mr. Mabry about it. (Test. of Panowicz.)

(36) HS left Oregon on or around June 6, 2004. Her sexual relationship with Mr. Mabry ended at that time. From June 6, 2004 to September 17, 2004, she served as a volunteer deckhand on a ship docked out of Pennsylvania. (Ex. A1 at 1.)

(37) Ms. Mabry and the children returned home to Astoria in mid-June 2004. Ms. Mabry believed that it was reasonably well known among the school faculty that she and the children were away in Germany for an extended period of time. (Test. of Ms. Mabry.)

(38) Ms. Mabry was not aware that Mr. Mabry had engaged in a sexual relationship with HS until September 2013. Mr. and Mrs. Mabry divorced in October 2013. (Test. of Ms. Mabry.)

Law Enforcement and TSPC Involvement

(39) In August 2013, HS and Mr. Mabry had the following exchanges via Facebook:

⁸ Ms. Panowicz testified at hearing that the living arrangement "wasn't a secret," and "everyone knew about it." However, she further testified as to her belief that Ms. Mabry and the children were in the home while HS was living there. (Test. of Panowicz.)

HS: Do you remember what month you broke your ankle? Back in '04?

Mabry: I believe it was January. Why?

HS: Just trying to piece together my memories from that year. I hope it's OK to ask you this here, do you remember when we were first together? I can't remember if your leg was busted at that time or not.

Mabry: Already broken before you moved in. I think it was during the state tournament when I came home on Friday night. You had moved in that weekend, or you were "house sitting" the dog and all because I thought I was going to be gone the whole weekend but came home and went back the next day.

HS: Was that before my birthday or after?

HS: I'm just surprised that I can't remember my 18th birthday.

Mabry: When is your birthday? The state tournament was probably the 2nd or third week in February.

(Ex. A2 at 1-2.)

(40) In approximately August 2013, HS disclosed to her marriage counselor that she had been sexually involved with Mr. Mabry when she was 17 years old. (Exs. A3 at 2, test. of HS.) In turn, the counselor, a mandatory reporter of child abuse, reported the information to law enforcement on August 29, 2013. (Ex. A3 at 2-3.) On September 5, 2013, HS and her counselor met with Detective J. Greenspane of the Port Townsend Police Department. (*Id.* at 5-10.) In his Investigative Report, Detective Greenspane summarized the meeting, in part, as follows:

[HS] said that in Astoria, she did not have a lot of friends and remembers going to school and being closer to the teachers than kids her own age. She said that over time, she became really close with one of the teachers. * * *. [She] said she eventually became a teacher's aide for Mabry and he started showing her a lot of attention that she was lacking from any other source. She said that she met his wife and kids and she believed he portrayed her as the troubled kid whom he was helping.

[She] said that as they communicated more frequently, they would do so via instant messaging over the internet[.]

[She] said she started meeting him outside of school in public locations like the swimming pool. [HS] said she has vague memories of getting into the back of his Volkswagen bus and having sexual encounters with him short of actual intercourse.

[She] said that Mabry broke his ankle around February of 2004 and this was during a time that his wife and kids were going to be going on vacation to Germany. She said that they were concerned about leaving him and [she] was not sure how it came up but the idea came up that she could move in with them and help with housework and such while they were away. [She] said that Larry Lockett was the school principal at the time and when the living arrangements were brought up with him, he approved it. [She] did not believe he was aware of a sexual relationship between Mabry and her[.]

[She] said she did move in with Mabry and it was towards the end of February of 2004 when Mabry came home from a wrestling tournament early. She said this was the first night they slept together. She said she was 17 years old at the time. [She] said they continued having a consensual sexual relationship but she was always concerned that others would find out[.] She said that Mabry never seemed concerned about this * * * [and] he would be physical with her at the school by touching her and this made her extremely nervous[.]

[She] said she left in June after she graduated high school [and] * * * the day she left is when the sexual relationship between she and Mabry stopped[.]

[She] told me that she went to see her family in the area in the summer of 2012 [and] * * * she went to see him * * * [but] they did not have a sexual encounter at her request.

[She] told me that she saw Mabry again on July 26, 2013 * * * [and] Mabry was very “handsy” with her and tried kissing her and talking her into having a sexual encounter. [She] said she resisted this and did not have a sexual encounter with him.

(Id. at 7-8.)

(41) On September 17, 2013, Oregon State Police Detective Matt Beeson and Astoria Police Department Sergeant Eric Halverson interviewed HS. (Ex. A4 at 1-18; test. of Halverson.) In their incident reports, Detective Beeson and Sergeant Halvorson noted that HS reported, in part, the following:

- She came to Astoria HS in 2003, in approximately the middle of the school year. She was behind in school, and she did not really have any friends in her age group. Mr. Mabry would engage her in conversations, and she eventually became his biology class teaching assistant.
- She and Mr. Mabry began communicating with one another, after school hours, through a messenger-type chat program.

- She disclosed to Mr. Mabry that she had been a victim of sexual abuse as a young child.
- Her friendship with Mr. Mabry developed into a physical relationship approximately two months after meeting him.
- When she was taking swimming lessons, Mr. Mabry would meet her at the Astoria swimming pool, and then they would have sexual contact, short of intercourse, in his van.
- She had concerns that someone would discover their relationship, but Mr. Mabry seemed unconcerned about it.
- Teaching staff at Astoria HS knew she and Mr. Mabry were “friends,” but she does not believe any of them suspected that she and Mr. Mabry had a relationship that went beyond that of a student and a teacher. (*Id.* at 3.)
- While she was Mr. Mabry’s teaching assistant, they had physical encounters, including kissing and touching, in the storage closet of his classroom. On one occasion, after students left the classroom, Mr. Mabry picked her up, placed her on a counter in the room, and began kissing her and touching her thighs. Although she was concerned that someone would walk in and discover them, Mr. Mabry seemed unconcerned about it.
- During the 2004 wrestling season, Mr. Mabry broke his ankle around the same time his wife and kids were due to leave the country for three months. It was decided that she would stay at the Mabry residence while they were gone to help care for Mr. Mabry in exchange for him helping her with school work issues.
- She and Mr. Mabry met with Mr. Lockett regarding the plan for her to stay at the Mabry home. Mr. Lockett approved of the plan.
- She first had sexual intercourse with Mr. Mabry when he came home from a wrestling tournament early in the second or third week of February 2004. She was 17 years old at the time. She turned 18 years old on March 3, 2004.
- During the time period while she was living at the Mabry residence, she and Mr. Mabry would sometimes go out in public together. On one occasion, before going out to a restaurant, Mr. Mabry told her to be careful not to engage in any conduct that would lead people to believe they had a relationship beyond that of a student and teacher.
- She accompanied Mr. Mabry to weekly staff dinners at a pizza place that included other teachers. Mr. Mabry would take her on motorcycle rides. Another teacher, Alan Garvin, sometimes went on the rides.

(Ex. A4 at 3.) The statute of limitations prevented any criminal charges against Mr. Mabry for his sexual contact with HS. (Test. of Halverson; Ex. A4 at 8.)

(42) On or about September 30, 2013, Superintendent Hoppes received a police report regarding the HS/Mabry matter. (Test. of Hoppes.) By letter to TSPC dated October 7, 2013, Superintendent Hoppes stated, in part:

This correspondence is to report a possible violation involving a licensed administrator.

Based on information I recently received from the Astoria Police Department, [Mr.] Lockett, a former administrator in the Astoria School District, apparently was aware that a 17[-]year-old female student moved in with a male teacher during the school year, while his wife and children were out of the country. The occurrence took place in 2004. We have since been made aware that the teacher allegedly had an inappropriate sexual relationship with the student during this time. According to the police report, Mr. Lockett was fully aware of the living arrangements as it was reported to him by the teacher. Astoria School District does not have any documentation showing [that] Mr. Lockett attempted to communicate with the student's parents or Children[']s Services regarding the living arrangements[.]

(Ex. A5 at 1; test. of Hoppes.)

(43) If Mr. Hoppes heard that a student was living alone with a teacher, it would raise red flags for him and he would investigate the matter. In such a scenario, it would be relevant to Mr. Hoppes that the teacher was male and the student female. (Test. of Hoppes.)

(44) On October 16, 2013, the *Daily Astorian* newspaper published an article titled "Woman tells police details of prior sexual conduct with Astoria educator." (Ex. R9 at 1-3.) The article named Mr. Mabry as the educator alleged to have engaged in a sexual relationship with the woman. The article did not mention HS by name. (*Id.*)

(45) Sometime after October 16, 2013,⁹ Superintendent Hoppes spoke with Ms. Belleque and summarized their conversation in writing. According to that summary, Ms. Belleque reported the following to him:

- Mr. Mabry would have the lights out in his classroom and lock the door while inside with a student. She did not see anything inappropriate occurring between the student and Mr. Mabry, other than that they were alone under those circumstances.
- On at least two occasions in the early spring of 2004, she told Mr. Lockett that she had concerns regarding a possible inappropriate situation occurring in Mr. Mabry's classroom.
- She went to Mr. Lockett the second time because the situation did not stop after her first conversation with him. The situation also did not stop after her second conversation with him.
- She also spoke about her concerns with Alan Garvin, but she does not remember his response.

(Ex. A6 at 1.)

⁹ Although Exhibits A6 and A7 list October 8, 2013 as the date that Superintendent Hoppes spoke with Ms. Belleque and Ms. McDonald, the preponderance of evidence indicates that he spoke with the women after the *Daily Astorian* article was published on October 16, 2013.

(46) Sometime after October 16, 2013, Superintendent Hoppes also spoke with Ms. McDonald and summarized their conversation in writing. According to that summary, Ms. McDonald reported the following to him:

- She worked across the hall from Mr. Mabry's classroom.
- During lunch and tutorials in the afternoon, Mr. Mabry would have the classroom lights off and the door locked while inside with a student. The student was often sitting at Mr. Mabry's desk while he sat on the desk and faced her.
- On two occasions in the early spring of 2004, she told Mr. Lockett that she had concerns regarding a possible inappropriate situation in Mr. Mabry's classroom.
- The situation continued after her two conversations with Mr. Lockett.

(Ex. A7 at 1.)

(47) In general, a school principal has discretion as to the manner of handling verbal complaints/concerns from school faculty or staff. If Superintendent Hoppes had been the principal who had received the reports from the three instructional assistants, he would have documented their concerns, as well as any investigation he conducted and the relevant findings. (Test. of Hoppes.)

(48) On November 2, 2013, TSPC Investigator Cristina Edgar interviewed Mr. Lockett via telephone. (Ex. A9.) During the interview, Ms. Edgar asked Mr. Lockett if Mr. Mabry and HS ever approached him "about a living arrangement" or "anything else." (*Id.* at 2.) Mr. Lockett responded as follows:

No. No. I have a very...very vague recollection that occurred only after conversations that I tried to...tried to remember what was going on with this thing. A very, very vague, vague recollection about * * * Mr. Mabry hiring her as a nanny. But I...I don't recall any...any other conversation. And I don't know if I manufactured that memory through conversations that occurred after[]wards.

(*Id.*) Ms. Edgar also asked Mr. Lockett what course of action he would have taken if Mr. Mabry had come to him and suggested that HS "move in with him for a few months while his ankle was broken." (*Id.*) Mr. Lockett responded as follows:

Well...I...I probably would have laughed, ahh...would have been my official response. That he, he couldn't possibly be serious. Umm...My second response would have probably been umm...you know you probably should look at other options. Might want to consider other things that might work for you.

(*Id.*)

(49) During the interview, when Ms. Edgar asked Mr. Lockett whether he remembered anyone approaching him regarding concerns about Mr. Mabry and HS, Mr. Lockett replied, "I do not remember anyone approaching me. * * * * *. I don't recall anybody coming to me and having that conversation." (*Id.* at 2-3.) Ms. Edgar and Mr. Lockett then had the following exchange:

Edgar: What [the witnesses] claimed is that they came to you and reported to you that [Mr.] Mabry during lunch and tutorial time * * * would close and lock his door and turn the light off. And would be in there alone with a female student.

Lockett: [T]hat would be an absolute huge, red flag. And I would absolutely have responded to that. I have no recollection of that. [I] know how I would respond to that situation. I cannot imagine that conversation happening. That would be huge for me.

* * * * *

I know exactly how I would have responded. If I had heard that a teacher was locking his door or her door, with another student in there and turning the lights off. I'd know exactly how I would respond. That would have been highly inappropriate. It would upset me tremendously. [I] would have responded to that immediately. And I cannot imagine having been told that and not responding immediately.

(*Id.* at 3.) Mr. Lockett also told Ms. Edgar the following:

I had to * * * search back in the memory banks long and hard to try to even figure out any conversations or remember anything about this incident. And * * * my recollections are * * * vague. But * * * I take great pride in protecting my kids. If I had suspected that something was going on I would have reacted immediately. [I] just can't imagine how this slipped through the network.

(*Id.*)

(50) On December 20, 2013, Mr. Mabry participated in an interview with Ms. Edgar. (Ex. A8.) During the interview, Mr. Mabry reported the following:

- HS was not his student.
- HS told him that her parents were alcoholics and that she wanted to move out of her parents' home once she turned 18 years old.
- He broke his leg/ankle in January 2004.
- His wife and kids initially planned to be in Germany in April and May 2004. However, they ended up leaving for Germany in February and stayed until June 2004.

- Sometime in February 2004, after his wife and kids were gone, HS was house-sitting at the Mabry home while he was at a wrestling tournament. He came home unexpected for a night because of leg pain. He and HS did not have sexual contact or intercourse that night.
- HS moved into the Mabry home in early March 2004, after she turned 18.
- It was no secret in the school community that HS was living in the Mabry home. He had even talked to the principal about it.
- HS slept in his daughter's room until the final week she stayed in the Mabry home. During that final week, she slept in his bed with him.
- He and HS did not have sexual contact until after HS graduated and she was 18 years old. The sexual relationship was "mutual" and consensual."
- He never had sexual contact with HS at the school.
- He never locked the classroom door or intentionally turned off the classroom lights while alone in the classroom with HS.
- When HS asked him when they were "first together" via Facebook, he intended for his response (*i.e.* "I think it was during the state tournament when I came home on a Friday night.")¹⁰ to refer to the first time they were alone together in the Mabry home. He did not intend his response to refer to the first time they had sexual intercourse.

(*Id.*)

CONCLUSIONS OF LAW

1. Mr. Lockett committed gross neglect of duty, in violation of ORS 342.175(1)(b) and OAR 584-020-0040(4)(n), as it incorporates OAR 584-020-0010(5) and 584-020-0025(3)(a).
2. Revocation of Mr. Lockett's educator license is the appropriate sanction.

OPINION

TSPC has proposed to revoke Mr. Lockett's educator license for gross neglect of duty, in violation of 342.175(1)(b); OAR 584-020-0040(4)(m), (n), (o), and (s); OAR 584-020-0010(5); OAR 584-020-0025(3)(a); and 584-020-0035(3)(a). TSPC must prove its allegations by a preponderance of the evidence, and it must also establish that the proposed sanction is authorized under the Commission's statutes and rules. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is 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 than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

¹⁰ See Exhibit A2 at 1.

