

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

In the Matter of the Teaching License of:) FINAL ORDER
)
THOMAS PHILLIP DREWEK) Office of Administrative
) Hearings Case No. 122818

On December 23, 2005, Administrative Law Judge Andrea H. Sloan issued a Proposed Order in this case.

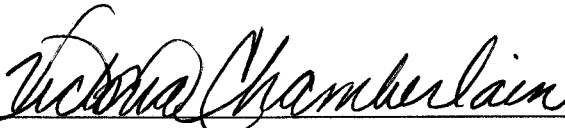
The Teacher Standards and Practices Commission adopts the Findings of Fact, Conclusions of Law and sanction contained in the attached Proposed Order.

ORDER

The Commission adopts the Proposed Order and revokes Thomas Phillip Drewek's right to apply for reinstatement of his teaching license.

Dated this 30 day of January 2006.

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) PROPOSED ORDER
)
THOMAS PHILLIP DREWEK,)
Respondent) OAH No. 122818

HISTORY OF THE CASE

The Teacher Standards and Practices Commission (TSPC or Commission) issued a Notice of Opportunity for Hearing to Thomas Phillip Drewek on May 6, 2005. Mr. Drewek requested a hearing on May 12, 2005. The Commission amended its Notice of Hearing on October 28, 2005. The Commission orally amended the Notice of Hearing at the outset of the hearing on November 17, 2005.¹ Mr. Drewek did not object to this amendment.

The Commission referred Mr. Drewek's request for hearing to the Office of Administrative Hearings (OAH) on July 20, 2005. The OAH assigned Administrative Law Judge (ALJ) Andrea H. Sloan to preside at hearing. ALJ Sloan convened a prehearing conference on October 27, 2005, to resolve discovery issues.

A hearing was held on November 17 and 18, 2005, in the OAH offices in Beaverton, Oregon. Mr. Drewek appeared without counsel and testified at the hearing. The Commission was represented by Senior Assistant Attorney General Joe Gordon McKeever. Testifying on behalf of the Commission were: Joseph Malone, principal of Ockley Green Middle School; Lucinda Peterson, teacher at Ockley Green Middle School; Dawn Jackson, program chair at Rosemont DART School; Sandra Geiacalone, para-educator at Bridger Elementary School; Barbara Stonecypher, teacher at Rosemont DART School; Eileen Weidrich, teacher at Mt. Tabor Middle School; Rachele Lizio-Katzen, teacher at Northwest Academy; Morrie Allen Sails, II, student at Benson Polytechnic High School; Tai Said-Hall, teacher at Lane Middle School; Cynthia Gilliam, principal at Mt. Tabor Middle School; Cathy Nichols, para-educator at Lewis Elementary School; Lynn Beudefeldt, principal on special assignment to the Portland Public School District; Juan Cortez, student at Focus Program/Madison High School; and Matthew Moule, teacher at Beaumont Middle School. The record closed on November 18, 2005.

¹ The Commission amended the Amended Notice of Hearing to include the following language at the end of Section 7(d): "and OAR 584-020-0040(4)(n) as that rule incorporates OAR 584-020-0030(1)(2)."

ISSUES

1. Whether Mr. Drewek committed acts which constitute gross neglect of duty. ORS 342.175 and OAR 584-020-0040(4)(d), 584-020-0040(4)(l), 584-020-0040(4)(n) and 584-020-0040(4)(o).²
2. If so, what is the appropriate sanction? ORS 342.175.

EVIDENTIARY RULING

Exhibits A1 through A20, offered by the Commission, were admitted into the record. Exhibits R1 through R12, offered by Mr. Drewek, were admitted into the record.

FINDINGS OF FACT

1. Mr. Drewek has been a licensed teacher in the State of Oregon since 1987. (Testimony of Mr. Drewek.) His most recent teaching license, number 262526, expired on November 18, 2005. (Ex. A1 at 1 and 2.) Mr. Drewek has worked as a substitute teacher for the Portland Public Schools since 1988. (Ex. A15 at 1.) By his own estimation, Mr. Drewek worked as a substitute teacher 150 to 160 days each school year. (*Id.*)
2. The Rosemont DART (Day and Residential Treatment) school is a secure, lockup treatment facility for girls age 12 to 18. The Rosemont DART school operates within the Morrison Center, a mental health treatment agency. Counselors from the Morrison Agency staff an office at the school and are available to see students who need assistance throughout the day. All of the girls who attend school at Rosemont DART are wards of the court. All of the girls have been victims of sexual and/or physical abuse, and approximately 50 percent of the girls have drug and/or alcohol issues. (Ex. A3 at 3; testimony of Dawn Jackson.)
3. Because of the special needs of the students, all teachers at Rosemont DART, including substitute teachers, are required to abide by specific rules of conduct. (Testimony of Dawn Jackson.) All substitute teachers are required to read a document entitled "Substitute Protocols" and sign a "Propriety and Privacy Agreement." (Exs. 18 and 19.) Either the program chair, or an administrative assistant, ensures that all substitute teachers receive and sign the above documents. (Testimony of Dawn Jackson.) The Propriety and Privacy Agreement prohibits "references to drugs, alcohol and violence." (Ex. A18.) Under specific, limited circumstances, a teacher may discuss sex, drugs and alcohol topics in the classroom. These discussions must be for an educational purpose and put into proper context for the students. Teachers must be extremely careful to avoid upsetting the girls. (Testimony of Dawn Jackson and Barbara Stonecypher.) The Morrison Agency requires that all teachers, including substitutes, stay at least six inches away from the students at all times. Encroaching on the personal space of the students can trigger memories of past sexual and physical trauma. (Exs. 18 and 19; testimony of Dawn Jackson.)

² See Appendix B for complete text of these authorities.

4. During the 2001-2002 school year, Mr. Drewek worked as a substitute teacher at Rosemont DART a few times. Several students complained to Morrison Agency staff and Ms. Jackson that Mr. Drewek would stand too close to them as he walked around the classroom. The students reported that Mr. Drewek "hovered" next to them, that he surprised them by standing so close, and that he made the students feel uncomfortable. (Ex. A3; testimony of Ms. Jackson.)

5. Another Rosemont DART student reported that Mr. Drewek talked to her in detail about the Jack Daniel's Distillery as she was doing research for a report on Tennessee. The student, a recovering alcoholic, felt very uncomfortable talking to Mr. Drewek about a liquor distillery. The student told Mr. Drewek that she was an alcoholic. Mr. Drewek laughed and did not apologize to her. The student reported this incident to Ms. Jackson. (Ex. A3; testimony of Ms. Jackson.)

6. On another occasion, Mr. Drewek was sitting in the teacher's lounge when Ms. Jackson walked in, dressed in her dance clothes (she was a dance instructor at the time). Mr. Drewek said, "You look better with less clothes on." This made Ms. Jackson very uncomfortable and she confronted Mr. Drewek, who apologized. (Testimony of Ms. Jackson.)

7. On another day at the Rosemont DART School, Mr. Drewek was sitting near the teacher mailboxes when Barbara Stonecypher, one of the regular teachers, entered the room. As she checked her mailbox, Mr. Drewek said, "Your husband must be really satisfied with you because you are tall and beautiful." Ms. Stonecypher was extremely uncomfortable about this comment because she did not know Mr. Drewek, and she felt that his comment was inappropriate. (Testimony of Ms. Stonecypher.) Mr. Drewek believes that "most women" would take his comment as a compliment. (Testimony of Mr. Drewek.)

8. On October 16, 2002, Ms. Jackson was in a classroom where Mr. Drewek was teaching when she overheard Mr. Drewek telling a joke about "welfare mothers" to the students. All of the students at Rosemont DART qualify for public assistance. She also heard him telling an ethnically insensitive joke to the students. Ms. Jackson asked Mr. Drewek to come to her office. Once there, Ms. Jackson told Mr. Drewek that he had to leave the building. She based her decision to send Mr. Drewek home on her observations, and on the reports she received from students, Ms. Stonecypher and the Morrison Agency staff. Mr. Drewek became angry, and flushed and clenched his fists. He walked toward Ms. Jackson, who backed into a corner of the room. Ms. Jackson felt threatened by Mr. Drewek. Mr. Drewek is much larger than Ms. Jackson. (Ex. A3 at 3; testimony of Ms. Jackson.) Ms. Stonecypher witnessed this incident. (Testimony of Ms. Stonecypher.)

9. In October 2002, Ms. Jackson filed an Administrator's Request to Restrict Substitute From Building/Program form, documenting the incidents set out above concerning Mr. Drewek. (Ex. A3 at 2 and 3.) The form was approved by Rose Bond, administrator of the Rosemont DART school. (Ex. A3 at 2.) On November 5, 2002, Larry Gant, Administrator for the Department of Human Resources of the Portland Public Schools, notified Mr. Drewek by letter that Ms. Bond had requested that Mr. Drewek not return to her school for the remainder of the school year. (Ex. A3 at 1.)

10. On November 15, 2002, Mr. Drewek worked as a substitute teacher in an eighth grade class at Ockley Green Middle School. Some sixth and seventh grade teachers at this school line their students up and walk them, in a line, to lunch. This is not the practice with eighth grade classes. (Testimony of Mr. Malone and Ms. Peterson.) Ockley Green employed a Student Management Specialist who was responsible for student discipline. (Testimony of Mr. Malone.) Most Ockley Green teachers allow eighth grade students to leave class two to three minutes before the lunch bell, so that the students can get in line first for lunch. (Testimony of Ms. Peterson.)

11. On November 15, 2002, a few minutes before the lunch bell rang, the students in Mr. Drewek's classroom started lining up at the rear of the classroom, preparing to leave for lunch. Mr. Drewek wanted to prevent students from leaving early, so he positioned himself with his back to the door, facing the students. Mr. Drewek had his hand on the door knob. (Testimony of Mr. Cortez.) Juan Cortez, a student in the class, walked up to the door and tried to leave.³ Mr. Drewek blocked Juan and at one point, hooked his arm around Juan's neck, in a headlock maneuver. (Testimony of Mr. Cortez and Mr. Sails.) Juan felt himself lifted off the ground while Mr. Drewek had his arm around Juan's neck. (Testimony of Mr. Cortez.) Juan pushed away and Mr. Drewek released his hold. (Testimony of Mr. Sails and Mr. Cortez.) Juan and the class eventually were allowed to leave for lunch. Juan immediately complained to school administrators. Mr. Malone observed red scratches on Juan's neck and upper arm and photographed the injuries.⁴ (Testimony of Mr. Malone.) Ms. Peterson saw the injuries to Juan's neck and spoke with him about the incident. (Testimony of Ms. Peterson.) Mr. Drewek admitted to Mr. Malone that he tried to physically block Mr. Cortez from leaving the classroom. (Testimony of Mr. Malone and Mr. Drewek.)

12. On November 18, 2002, Mr. Malone filed an Administrator's Request to Restrict Substitute From Building/Program form regarding Mr. Drewek and his conduct at Ockley Green Middle School. (Ex. A5 at 2 and 3; testimony of Mr. Malone.) On November 21, 2002, Mr. Gant notified Mr. Drewek by letter that Mr. Malone had requested that Mr. Drewek not return to Ockley Green Middle School for the remainder of the school year. (Ex. A4 at 1.)

13. The Commission learned that on May 16, 2001, while substitute teaching at Whitaker Middle School, Mr. Drewek tried to physically block a student from leaving the classroom by placing the student in a headlock. Ms. Beudefeldt, the principal at Whitaker, directed her staff to report the incident to the Portland Police Bureau. She considered Mr. Drewek's behavior toward this student to be "out of control." (Testimony of Ms. Beudefeldt.) Officer Winters of the Portland Police Bureau interviewed witnesses and Mr. Drewek, and filed a police report. (Ex. A2.) Mr. Drewek does not remember this event. (Testimony of Mr. Drewek.)

14. When a middle school student tries to leave a classroom, a teacher should never try to physically restrain the student. Rather, the teacher should allow the student to leave and then

³ It is unclear whether Juan tried to leave before the bell rang (testimony of Mr. Drewek) or after the bell rang (testimony of Mr. Sails).

⁴ Mr. Malone was not able to produce the photographs of Juan's injuries at the hearing.

notify the Student Management Specialist or other administrator, who will then take steps to discipline the student. A teacher should use physical restraint if it will prevent injury to the student or another person. (Testimony of Mr. Malone and Ms. Beudefeldt.) Using physical restraint with a student will cause the student to escalate his or her response and will not calm down the situation. (Testimony of Ms. Peterson and Ms. Beudefeldt.)

15. At the majority of schools where Mr. Drewek taught, he had to block doors to prevent students from "sneaking out" early. (Testimony of Mr. Drewek.)

16. On December 4, 2002, Mr. Drewek was assigned to work at Bridger Elementary School in a classroom with eight autistic children and three para-educators. (Ex. A5; testimony of Ms. Geiacalone.) One of the students, Zach, was nine or ten years old at that time. On this day, Mr. Drewek was assigned as the "licensed teacher" in the classroom. Because he was not specially trained, the para-educators did not expect Mr. Drewek to discipline the students. (Testimony of Ms. Geiacalone.) The students watched a video that afternoon. Mr. Drewek sat on a chair, watching the video. Zach approached Mr. Drewek and climbed onto his lap. Zach lay against Mr. Drewek's stomach, and placed his lips and nose on Mr. Drewek's lips and nose. Mr. Drewek put his arm around Zach and sat still while Zach kissed him. (Ex. A5; testimony of Mr. Drewek, Ms. Geiacalone and Ms. Nichols.) After 30 to 45 seconds, Ms. Geiacalone noticed that Mr. Drewek was not stopping Zach or taking steps to move Zach from his lap. She yelled, "Inappropriate! Get down, Zach!" Mr. Drewek still did nothing to remove Zach. Ms. Geiacalone picked Zach up and placed him in a nearby chair. Cathy Nichols, another para-educator in the room that day, witnessed Mr. Drewek's behavior with Zach. Both Ms. Nichols and Ms. Geiacalone were upset and felt that Mr. Drewek's conduct was inappropriate because he took no action to stop Zach from kissing him. (Ex. A5 at 2 and 3; testimony of Ms. Geiacalone and Ms. Nichols.)

17. On December 5, 2002, Marilyn Seger, administrator of Bridger Elementary School, filed an Administrator's Request to Restrict Substitute From Building/Program form regarding Mr. Drewek and his conduct with Zach. (Ex. A5 at 1.)

18. Mr. Drewek believed that his conduct with Zach was "misunderstood" because of his gender and size. (Testimony of Mr. Drewek.) Mr. Drewek is 6'7" tall and weighs approximately 280 pounds. (Ex. R12 at 4.) Mr. Drewek believes he has been "cursed" because of his size and has learned "to stay away from people." Mr. Drewek believes that his size is "a defect." Mr. Drewek feels that people "pick" on him and that he is "not allowed to show affection." (Ex. A17 at 13.) Mr. Drewek acknowledged that he did not have specific training to teach autistic children. He has taught "deaf and dumb kids" at Sunnyside School and worked with "retarded students." (Testimony of Mr. Drewek.)

19. On January 22, 2003, Mr. Drewek worked as a substitute teacher in a math class at Mt. Tabor Middle School. Ms. Weidrich was the regular teacher. It was her practice to leave detailed notes for substitutes, stating which of her students needed accommodations due to their Individualized Education Programs (IEPs). On that day, Ms. Weidrich's students were expected to take a math test. She left instructions for the class that they were not to use calculators. (Testimony of Ms. Weidrich.) Mr. Drewek saw this note, and wrote "no calculators" on the

classroom white board. (Testimony of Mr. Drewek.) Ms. Weidrich left a note attached to her grade book, stating that a particular student was allowed to use a calculator because of her IEP. (Ex. A6 at 2; testimony of Ms. Gilliam.) Mr. Drewek did not see any notes regarding IEP students. (Testimony of Mr. Drewek.) The student asked to use a calculator, and Mr. Drewek said that she could not. The student's mother complained to Ms. Gilliam, principal at Mt. Tabor, about the school's failure to accommodate her daughter's IEP. Ms. Gilliam met with Mr. Drewek that afternoon. She saw Ms. Weidrich's note about this student and her IEP clearly attached to the grade book. (Ex. A6 at 2; testimony of Ms. Gilliam.)

20. On January 24, 2003, Ms. Gilliam filed an Administrator's Request to Restrict Substitute From Building/Program form regarding Mr. Drewek and his failure to provide an IEP accommodation. (Ex. A6 at 2.) On November 21, 2003, Mr. Gant notified Mr. Drewek by letter that Ms. Gilliam had requested that Mr. Drewek not return to Mt. Tabor Middle School for the remainder of the school year. (Ex. A6 at 1.)

21. On March 13, 2003, Mr. Drewek worked as a substitute teacher at Whitaker Middle School. Whitaker has since been closed, but in 2003 it was located on NE Columbia Boulevard in an industrial, inner city neighborhood. At that time, Whitaker was the only middle school in Oregon to fail federal standards. A majority of students at Whitaker were African-American and economically poor. (Testimony of Ms. Lizio-Katzen.) Whitaker administration referred to substitutes as "guest teachers." (Testimony of Ms. Beundefeldt.)

22. On that day, Mr. Drewek substituted for Matthew Moule. Mr. Moule had a student teacher, Rachele Lizio-Katzen, at that time. Ms. Lizio-Katzen was in the classroom with Mr. Drewek on March 13, 2003. After watching Mr. Drewek teach the first period, Ms. Lizio-Katzen taught the remainder of day's classes. She did this because she felt that Mr. Drewek did not have a positive rapport with the students. Ms. Lizio-Katzen believed that Mr. Drewek's interactions with the students were unprofessional, and she was uncomfortable with him as a teacher. Specifically, Ms. Lizio-Katzen was concerned with Mr. Drewek's lack of basic class management skills. Mr. Drewek raised his voice and threatened students with referrals to the office. Mr. Drewek did not try other, more constructive techniques to relate to the students. During a break between classes, Ms. Lizio-Katzen tried to help Mr. Drewek become more comfortable by talking to him. She was upset by Mr. Drewek's negative, disrespectful comments about "these students." She pressed Mr. Drewek for an explanation, and he continued talking about the "poor, black kids." Mr. Drewek explained that it was easier for him to teach "these kids" since they were failing and expectations for the students were already low. Ms. Lizio-Katzen reported her concerns the next day to Mr. Moule. Several students complained to Ms. Lizio-Katzen about Mr. Drewek and his disrespectful attitude. (Testimony of Ms. Lizio-Katzen.)

23. On April 2, 2003, Mr. Moule filed a Teacher Request to Restrict Substitute from Classroom form regarding Mr. Drewek, whom he referred to as "Mr. Drake."⁵ He based his request on the comments from Ms. Lizio-Katzen, and on his own observations of Mr. Drewek. Mr. Drewek had been a frequent substitute at Whitaker, and Mr. Moule had seen Mr. Drewek teaching. He noted that students in Mr. Drewek's classes seemed loud and out-of-control and did

⁵ Mr. Moule's students called Mr. Drewek "Mr. Drake."

not seem to follow Mr. Drewek's lessons. In one case, he observed Mr. Drewek discussing college-level astronomy concepts in a science class. Mr. Moule thought that this was odd and wondered why Mr. Drewek would spend time on a subject that was obviously not part of the lesson plan. Mr. Drewek also substituted for Mr. Moule several times, and when he returned, Mr. Moule was generally dissatisfied with what Mr. Drewek had covered with his students. For example, Mr. Drewek would not follow the lesson plan, or would only cover a portion of the material that Mr. Moule expected him to teach. Mr. Moule believed that Mr. Drewek was racist based on the comments he made to Ms. Lizio-Katzen. Mr. Moule was supposed to contact Mr. Drewek to discuss the concerns he listed in the Request to Restrict, but Mr. Moule chose not to do so. (Ex. A7 and testimony of Mr. Moule.) Because Mr. Moule did not contact Mr. Drewek, Mr. Drewek was not restricted from teaching at Whitaker for the remainder of the 2002-2003 school year. (Testimony of Mr. Moule.)

24. Mr. Drewek did not like teaching at Whitaker. When he was called to teach there, he "shuddered" because "most of the time it was not a good experience." Nonetheless, Mr. Drewek regularly accepted teaching assignments at Whitaker. He contrasted Whitaker students with high IQ, industrious "white" students at Winterhaven School in SW Portland. (Testimony of Mr. Drewek.)

25. On September 19, 2003, Portland Public Schools reprimanded Mr. Drewek because of the incident in late 2002 at Bridger Elementary School with Zach, the student who climbed onto Mr. Drewek's lap and kissed him for an extended period of time. Mr. Gant advised Mr. Drewek that he was being reprimanded "for failure to keep the proper and professional, physical boundaries and distance between [Mr. Drewek] and a student while on assignment." (Ex. A9.)

26. Portland Public Schools and the Portland Association of Teachers agreed in November 2003 that Mr. Drewek would be evaluated by Cascade Counseling concerning his fitness to work as a substitute teacher. (Ex. R12 at 1.) Cascade Counseling referred Mr. Drewek to a forensic clinical psychologist for further evaluation. (Ex. R12 at 2.) Dr. Ronald N. Turco, M.D., performed a psychiatric evaluation of Mr. Drewek on February 5, 2004. Dr. Turco concluded that Mr. Drewek's examination was "entirely within normal limits" and that he was "fit to be a substitute teacher or a regular teacher on a regular and full times [*sic*] basis." (Ex. R12 at 4 through 7.)

27. On May 18, 2004, Mr. Drewek was a substitute for the Whitaker librarian. The librarian left instructions with Mr. Drewek that he was to keep the store room locked. (Testimony of Mr. Drewek.) On that day, Tai Said-Hall, a Whitaker teacher, got a key for the store room from the school secretary. At approximately 10:30 a.m., Ms. Said-Hall let herself into the room so that she could pump breast milk for her infant. Ms. Said-Hall used the room to pump breast milk every school day at the same time. As was her habit, she put a sign on the door that read, "Please do not come in -- Tai." She locked the door from the inside and walked about ten feet into the room so that she could set up her breast pump on a table. In order to use the pump, Ms. Said-Hall had to remove her clothing from the waist up. She attached the pump to both breasts and started the machine. It is not possible to immediately stop a breast pump. After about ten minutes, she heard the locked door open. She did not see who was coming inside, but yelled, "Please don't come in." Mr. Drewek continued walking into the room toward

her. Ms. Said-Hall bent over in an attempt to shield her breasts from view and continued to yell at Mr. Drewek to get out and leave the room. Mr. Drewek walked up to where she sat and stared at Ms. Said-Hall. She screamed, "I'm pumping my breasts! Get out!" Mr. Drewek seemed confused and eventually turned around and left. He was inside the room with Ms. Said-Hall for close to one minute. Ms. Said-Hall was "freaked out" by Mr. Drewek's behavior and did not feel safe. She was scared and shocked and reported the incident to school personnel that same day. When Ms. Said-Hall left the store room that morning, her sign was still in place on the door. (Ex. A13 at 1; testimony of Ms. Said-Hall.) Mr. Drewek did not immediately leave the room because he did not understand how Ms. Said-Hall got inside, or what she was doing inside the room. He was not sure that he saw the note on the door, but if he had, he would have assumed that it did not apply to him since he had the keys to the room. (Testimony of Mr. Drewek.)

28. Mr. Drewek has a hearing loss and chooses not to wear hearing aids in the classroom. (Ex. R12 at 5.)

29. During the week of May 26, 2004, Mr. Drewek was a substitute at Whitaker. Part of the week, he substituted for the librarian. On Tuesday of that week, he met two students who helped in the library. One of the students was a 13 year-old girl named Jessica Martz. Mr. Drewek was impressed by how hard Jessica worked, helping him organize and shelve library books. On Wednesday, while teaching in a classroom, Mr. Drewek again noticed that Jessica assisted him again. He was very appreciative that she was helpful and attentive to him. Mr. Drewek believed that Jessica waited outside the school in the mornings until he came to work, so that she could walk in with him. On Thursday, Mr. Drewek was back in the library. Jessica told him that she lived with a foster family, and that some of the girls in her foster home went to Monroe School (a school for pregnant students). Mr. Drewek told Jessica the story of Cinderella and her fairy godmother. He told Jessica that if he could ever do anything to help her, she should contact him and he would try to do what he could to help her. Mr. Drewek gave Jessica a note with his home address and phone number. On the back of the note, Mr. Drewek wrote, "When you wish upon a star, makes no difference who you are. Your dreams will come true." (Ex. A12 at 2-3; testimony of Mr. Drewek.) Mr. Drewek also told Jessica that she was too young to have a boyfriend, and asked if she wanted to end up at the Monroe School. (Ex. A17 at 29.) Mr. Drewek believed that "many girls when they're thirteen or fourteen years old with boyfriends end up at the Monroe School." (*Id.*)

30. Jessica showed the note to Ms. Beundefeldt and also reported Mr. Drewek's comments about her being too young for a boyfriend. Ms. Beundefeldt, who was the principal at Whitaker at that time, concluded that Mr. Drewek's behavior was unprofessional, inappropriate and "scary." Whitaker staff reported the incident to the Portland Police Bureau by calling the child abuse hotline. Mr. Drewek's note to Jessica crossed an important professional line and evoked fear in Ms. Beundefeldt. Teachers are trained to turn over information related to them by students to trained professionals who are in a position to help the students with emotional issues. It is not appropriate for a teacher to become personally involved with a student. (Testimony of Ms. Beundefeldt.)

31. Loretta Benjamin-Samuels, a Human Resources Administrator for the Portland Public Schools, wrote Mr. Drewek on June 23, 2004, advising him that the District terminated

him from its Substitute List. Ms. Benjamin-Samuels based her decision to terminate Mr. Drewek on the complaints made against Mr. Drewek by Tai Said-Hall, Juan Cortez and Jessica Martz. (Ex. A13.)

32. On June 30, 2004, Maureen R. Sloane, Human Resources Counsel for the Portland Public Schools, advised TSPC that the District had investigated Mr. Drewek and removed him "from the District's substitute list." (Ex. A14.)

33. Mr. Drewek has not worked as a substitute teacher since June 2004. (Testimony of Mr. Drewek.)

CONCLUSIONS OF LAW

1. Mr. Drewek committed acts which constitute gross neglect of duty.
2. Revocation of Mr. Drewek's right to apply for a teaching license is the appropriate sanction.

OPINION

The Commission presented evidence of 11 incidents which, it alleges, prove that Mr. Drewek committed acts that constitute gross neglect of duty. OAR 584-020-0040(4)(d), (f), (l), (n) and (o). Mr. Drewek acknowledged committing several of the acts, but argued that his motives were misunderstood and misinterpreted. The Commission argued that, while Mr. Drewek made good contributions in the past as a teacher, teaching is no longer the type of demanding job that is best for him. The Commission argued that it should revoke Mr. Drewek's right to apply for renewal of his teaching license.

"The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position." ORS 183.450(2). Here, the Commission has the burden of proving its allegations. *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); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989). For the reasons discussed below, I conclude that the Commission has met its burden of proof and I agree that revocation is the appropriate sanction.

The Commission is authorized, under ORS 342.175, to revoke a teacher's license.

The Teacher Standards and Practices Commission may suspend or revoke the license of a teacher or administrator, discipline a teacher or administrator or suspend or revoke the right of any person to apply for a license if the person has held a license at any time within five years prior to issuance of the notice of charges under ORS 342.176 based on the following:

* * *

(b) Gross neglect of duty;

* * * * *

In addition, the legislature has authorized the Commission to adopt rules "necessary for the issuance, denial, continuation, renewal, lapse, revocation, suspension or reinstatement of licenses or registrations issued under ORS 342.120 to 342.430." ORS 342.165.

The Commission has defined "gross neglect of duty" to include the following:

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:

* * *

(d) Unreasonable physical force against students, fellow employees, or visitors to the school, except as permitted under ORS 339.250;

* * *

(f) Any sexual conduct with a student;

* * *

(l) Sexual harassment;

* * *

(n) Substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030;

(o) Substantial deviation from professional standards of ethics set forth in OAR 584-020-0035; * * *.

OAR 584-020-0040(4). The Commission's 11 allegations relate to the five subsections of OAR 584-020-0040(4) set out above.

Unreasonable physical force against a student -- OAR 584-020-0040(4)(d)

The Commission alleged that Mr. Drewek committed an act that constitutes a gross neglect of duty when he placed Juan Cortez in a headlock as the student attempted to leave the classroom at Ockley Green Middle School on November 15, 2002. Mr. Drewek did not contest the fact that he used physical force against Juan Cortez, but he argued that he was defending himself and trying to prevent students from leaving the classroom early. Mr. Drewek further argued that he has stood in front of classroom doors over 2000 times, and he has only had physical altercations with two students.

According to OAR 584-020-0040(4)(d), the Commission considers "unreasonable physical force against students * * * except as permitted under ORS 339.250" to be an example of a gross neglect of duty. ORS 339.250(2) provides that a teacher may use "reasonable physical force upon a student when and to the extent the [teacher] believes it necessary to maintain order in the school or classroom" if the district school board has adopted written policies authorizing such use of force.⁶ There is no evidence before me that the Portland Public Schools have a

⁶ ORS 339.250(2) provides as follows:

policy that authorizes a teacher to use physical force against a student. Moreover, two administrators, Mr. Malone and Ms. Beudefeldt, and a teacher, Ms. Peterson, testified that Mr. Drewek's use of physical force against students was unreasonable and unprofessional. Both Whitaker and Ockley Green had Student Management Specialists who were responsible for disciplining students. It was not necessary for Mr. Drewek to physically block Juan Cortez and place him in a headlock. There were other alternatives available to Mr. Drewek, yet he chose to escalate his response and use force against a middle school student. Mr. Drewek had used a similar technique against a student at Whitaker in 2001. Mr. Drewek's use of force against Juan Cortez was not reasonable and constituted a gross neglect of duty under ORS 343.175 and OAR 584-020-0040(d).

Sexual conduct with a student -- OAR 584-020-0040(4)(f)

The Commission charged Mr. Drewek with violating OAR 584-020-0040(4)(f) because he allowed Zach, a special education student, to climb onto his lap and kiss him on the lips for 30 to 45 seconds. Mr. Drewek does not deny that he allowed Zach to kiss him, but argues that his conduct was misconstrued because he is a large man. Mr. Drewek argued that female teachers are allowed to be physical with students, but he is considered "homosexual" if he is physical with a boy, and a "pervert" if he is physical with a girl. Mr. Drewek defended his conduct with Zach by asserting that he did not want to reject Zach or make him feel bad for showing affection. He further asserted that, because there were para-educators in the room, he did not believe that it was his responsibility to discipline Zach.

I can think of no circumstances where it would be appropriate for a teacher, of either gender, to kiss a student on the lips for 30 to 45 seconds. Mr. Drewek was responsible for his behavior in the classroom, and for redirecting Zach toward more appropriate behavior. His failure to do so was unprofessional and disturbing. Mr. Drewek cannot avoid responsibility for his conduct by assigning blame to the para-educators. Mr. Drewek was ultimately responsible for behaving properly and for redirecting Zach.

I must determine, however, whether Mr. Drewek's actions amounted to sexual conduct with a student, which is cited in OAR 584-020-0040(4)(f) as an example of gross neglect of duty. Sexual conduct with a student is defined at OAR 584-020-0005(5) to include the following:

- (a) The intentional touching of the breast or sexual or other intimate parts of a student;
- (b) *Causing, encouraging, or permitting a student to touch the breast or sexual or other intimate parts of the educator;*

Pursuant to the written policies of a district school board, an individual who is a teacher, administrator, school employee or school volunteer may use reasonable physical force upon a student when and to the extent the individual reasonably believes it necessary to maintain order in the school or classroom or at a school activity or event, whether or not it is held on school property. The district school board shall adopt written policies to implement this subsection and shall inform such individuals of the existence and content of these policies.

- (c) Sexual advances or requests for sexual favors directed towards a student;
- (d) Verbal or physical conduct of a sexual nature when directed toward a student or when such conduct has the effect of unreasonably interfering with a student's educational performance or creates an intimidating, hostile or offensive educational environment; or
- (e) Verbal or physical conduct which has the effect of unreasonably interfering with a student's educational performance or creates an intimidating, hostile or offensive educational environment.

(Emphasis added). The rules do not define "other intimate parts." The Commission interprets "permitting a student to touch * * * other intimate parts of the educator" to include kissing on the lips. An agency's interpretation of its rules will be given deference by the courts if the rule is consistent with applicable statutes, and if the legislature has given the agency broad authority to establish rules in order to further its mandate. *Martin v. ODOT*, 122 Or App 271, 274 (1993); *Don't Waste Oregon Com. v. Energy Facility Siting*, 320 Or 132, 142 (1994) (an agency's construction of its own rule will be affirmed if the interpretation is plausible and not inconsistent with the rule itself, the context of the rule, or some other source of law). I am persuaded that the agency's interpretation of "sexual conduct" in this context is plausible and reasonable. Mr. Drewek committed an act that constituted a gross neglect of duty, in violation of OAR 584-020-0040(4)(f).

Sexual harassment -- OAR 584-020-0040(4)(l)

In support of this allegation, the Commission presented the testimony of Ms. Jackson and Ms. Stonecypher. Both women testified credibly that Mr. Drewek made comments about their appearance that made the women extremely uncomfortable. Specifically, Mr. Drewek told Ms. Jackson that she looked better wearing less clothing, and Ms. Stonecypher that her husband must be proud because she was tall and beautiful. Mr. Drewek defended his comments by asserting that most women would be flattered by his statements.

The Commission defines sexual harassment in OAR 584-020-0005(6):

"Sexual harassment": Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (c) Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

Mr. Drewek's comments made both women extremely uncomfortable. Under certain circumstances, causing a person feel extremely uncomfortable may create an offensive working environment. For example, Mr. Drewek's statement to Ms. Jackson, that she looked better wearing less clothing, was patently offensive to the point of creating an offensive working