

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

IN THE MATTER OF:

KEVIN JOHN PLECHL

) **FINAL ORDER INCORPORATING**
) **AMENDED PROPOSED ORDER**
)
) OAH Case No.: 1002055

This matter came before the Teacher Standards and Practices Commission during its public meeting of February 3, 2012. The Commission considered the Amended Proposed Order and exceptions filed by Licensee on January 11, 2012, as well as the oral argument that was presented on February 3, 2012.

The Commission does not find Licensee's exceptions persuasive, and hereby adopts the attached Amended Proposed Order as the Final Order.

Now therefore, a Public Reprimand is imposed upon Licensee Kevin John Plechl.

It is so Ordered this 13th day of September 2012.


Victoria Chamberlain, Executive Director,
Teacher Standards and Practices Commission

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provision of ORS 183.482 to the Oregon Court of Appeals.

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

IN THE MATTER OF THE TEACHING) AMENDED PROPOSED ORDER
LICENSE OF:)
)
KEVIN JOHN PLECHL) OAH Case No.: 1002055

This matter came before the Teacher Standards and Practices Commission during its regular meeting of July 22, 2011 to consider the proposed order issued by Administrative Law Judge Ken Betterton. Licensee did not file exceptions to the Proposed Order. After considering the record herein, the Commission adopts the ALJ's Findings of Fact, reasoning, and conclusion of law (1), (2) and (3). The Commission amends conclusion of law (4) by changing the sanction to a public reprimand. The Commission now issues this Amended Proposed Order.

The history of the case, issues and findings of fact, as stated by ALJ Betterton, are set forth below:

HISTORY OF THE CASE

On April 6, 2010, the Teachers Standards and Practices Commission (TSPC) issued a Notice of Opportunity for Hearing to Kevin John Plechl (Licensee), seeking to discipline him for violating laws regarding his licensure. Licensee filed a timely request for hearing on April 8, 2010.

The TSPC referred the case to the Office of Administrative Hearings on November 18, 2010. The case was assigned to Senior Administrative Law Judge Ken L. Betterton.

A telephone pre-hearing conference was held on January 4, 2011. Licensee was represented by Attorney Heidi K. Brown (Brown). The TSPC was represented by Assistant Attorney General Judith K. Anderson (Anderson).

A hearing was held in Salem, Oregon on April 14 and 15, 2011. Attorney Brown represented Licensee. Assistant Attorney General Anderson represented the TSPC.

The following witnesses testified for the TSPC: Kathryn Nove, Director of Employment Relations, Salem-Keizer School District; Licensee; and Ariel Williams, mother of student [REDACTED].

The following witnesses testified for Licensee: Bob Jones, Assistant Principal at McNary High School; Robin Buckingham, teacher with Salem-Keizer School District; Eric Johansen, attorney at law and soccer coach; Mark Risen, Assistant Principal and Athletic Director with Salem-Keizer School District; Pam Miller, teacher at McNary High School; Rod Fretz, retired teacher and soccer coach; Dawn Plechl, Licensee's wife; and George Finch, the TSPC's Legal Liaison. Licensee also testified on his own behalf.

The record closed April 15, 2011, and the matter was taken under advisement. On May 18, 2011 a proposed order was issued.

ISSUES

(1) Whether Licensee engaged in gross neglect of duty under ORS 342.175(1)(b) by deviating from professional standards of competency and ethics, by failing to maintain an appropriate student-teacher relationship by demonstrating or expressing professionally inappropriate interest in a student's personal life, in violation of OAR 584-020-0035(1)(c)(A).

(2) Whether Licensee engaged in gross neglect of duty under ORS 342.175(1)(b) by deviating from professional standards of competency and ethics, by failing to maintain an appropriate student-teacher relationship by not reporting to his supervisor when he had reason to believe a student was or may have become romantically attached to him, in violation of OAR 584-020-0035(1)(c)(C).

(3) Whether Licensee engaged in gross neglect of duty under ORS 342.175(1)(b) by failing to report child abuse in violation of OAR 584-020-0040(4)(s) and ORS 419B.010.

(4) If Licensee committed one or more of the above violations, what discipline should be imposed?

EVIDENTIARY RULING

Exhibits A1 and A4 through A7, offered by the TSPC, were admitted into evidence without objection. Exhibits A2, A3, A8 and A9, offered by the TSPC, were admitted into evidence over Licensee's objections as to hearsay and lack of foundation. Exhibits A10 and A11, offered by the TSPC, were excluded from evidence based on Licensee's objections as to relevance, lack of foundation, and lack of reliability.

Exhibits R1 through R19, R21 through R25, R28, R29, and R32, offered by Licensee, were admitted into evidence without objection. Exhibits R20, R30 and R31, offered by Licensee, were admitted into evidence over the TSPC's objections as to relevance. Licensee did not offer Exhibits R26 and R27, although they were marked for identification.

FINDINGS OF FACT

(1) Licensee has a bachelor's degree from Willamette University, and a master's degree in teaching from Western Oregon University. He has been licensed by the TSPC since February 1, 2002. Licensee currently holds an Initial I Teaching License, with endorsements in health education at the high school level and physical education at the middle and high school levels. He does not hold a counseling endorsement and does not have any training in counseling. (Licensee's testimony.)

(2) Licensee started teaching full time in the Salem-Keizer School District at McNary High School (McNary) in Keizer, Oregon for the 2004-2005 school year. He has taught at McNary since then. (Licensee's testimony.)

(3) Licensee played soccer in high school, college, and professionally. He has coached soccer, primarily girls' soccer, in city leagues, for high schools in the Salem-Keizer School District other than McNary, and at the college level for many years. (Licensee's testimony.)

(4) Licensee taught several classes of Wellness I, primarily to freshmen, at McNary during the 2007-2008 school year. The curriculum covered such topics as managing conflict, dealing with stress and depression, nutrition, abuse, sexual harassment, and sex education. Licensee typically had 35 students in a class. (Licensee's testimony.)

(5) McNary is on a semester basis. Fall semester runs from September through late January; spring semester runs from late January to mid-June. The Wellness I class is a one-semester class. (Licensee's testimony; Kathryn Nove's (Nove) testimony.)

(6) Licensee's direct supervisor for several years has McNary Assistant Principal Bob Jones. Licensee's classes during the 2007-2008 school year ended at 2:15 p.m. His collective bargaining contract day ended at 3:15 p.m. (Licensee's testimony.)

(7) [REDACTED], a 14-year-old freshman at the time, enrolled in one of Licensee's Wellness I class in September 2007. Her mother had moved from California to Oregon in 2003 with [REDACTED] and [REDACTED] s two younger half-sisters. (Ariel Williams's (Williams) testimony.)

(8) For fall semester 2007, Licensee started an email project for students to receive 10 points extra credit by communicating with him by email about course related topics. (Licensee's testimony; Ex. A8 at 1.) Parents could also participate and help their children obtain extra credit. Many, but not all students took part in the extra credit program. Licensee gave his students only his email address at work. (Licensee's testimony.) McNary provided each teacher with a computer for the teacher to use for academic and school related purposes. McNary's administration prohibits teachers from using their computer for personal or non-school related reasons. (Nove's testimony.)

(9) Since at least the 2004-2005 school year, the Salem-Keizer School District (District) has trained district teachers on topics of harassment and bullying, maintaining appropriate boundaries with students and "grooming" of students, and reporting child abuse. The training has been both in-class and computer tutorials. Teachers are required to take such trainings upon hire and to take periodically refresher trainings. Teachers are required to acknowledge that they have taken such trainings. The District trains teachers to err on the side of reporting suspected child abuse. (Nove's testimony.) Licensee took the initial and periodic trainings on reporting child abuse. (Nove's testimony; Licensee's testimony.)

(10) [REDACTED] started emailing Licensee under the extra credit program shortly after school started in September 2007. (Licensee's testimony.) Licensee informed her in an email dated October 17, 2007 that she had earned "ten points of extra credit." (Ex. A8 at 3.)

(11) Scores of emails between [REDACTED] and Licensee continued over the next 12 months. Some of those emails are set forth as follows:¹

[REDACTED] 10/30/07 5:17 A.M.

Glad you had a good weekend!

That does help, thanks a bunch!

Well, I'mma go get ready for school, then finish the Stress Shield.

See you soon!

From: KEVIN PLECHL

To: [REDACTED]

Sent: Tuesday, October 30, 2007 6:59:37 AM

Subject: Re: [REDACTED] My Stress Shield

Wow, you are one early-bird. How do you do it?

See you shortly.

Mr. P

[REDACTED] 10/31/2007 5:24 AM

¹ The emails contain numerous spelling and grammatical errors as well as slang terms. The emails have not been corrected and read as they do in the exhibits.

² For reasons that were not made clear during the hearing, [REDACTED] sometimes referred to herself in her emails by the pseudonym "[REDACTED]"

Um. lol. Well, I don't know. I just go to bed around 9. I was planning on getting up around 3 this morning to re-straighten my hair, but for some reason, my alarm clock JUST went off, so I better hurry up on here to go get ready!

lol.

How are you Mr P.?

Hope you have a Happy Halloween, what are your plans?

Talk to you later,
[REDACTED]

(Ex. A8 at 5.)

From: KEVIN PLECHL

To: [REDACTED]

Sent: Thursday, November 1, 2007 9:45:08 AM

Subject: Re: [REDACTED] My Stress Shield

You're crazy! However, you do draw very nice stars.

We ended up going to South High where they have some "safe" trick-or-treating." It also ends at a reasonable time.

(Id. at 6.)

[REDACTED] 11/1/2007 4:30 PM

I know I'm crazy. ☺ lol. Thank you! I finished my warm-ups early, and was bored, so yeah . . .

hehe, You wrote this with me sitting right there in your classroom!

Yeah, 11 o'clock at night is a little late to be trick-or-treating! Sound like fun, I went next door to the Meadows with my friend J[deleted] And my little sisters. N[deleted] is 8, and O[deleted], you met her at conference, is 4.

I am studying, in fact, I was looking for a 3 by 5 note card when I decided to check my email. I can't find any though. I'll have to ask my mom to take me to the Dollar Store then. After I remember if I had Spanish homework or not, I forgot to write it in my planner. ☹ And that's my first class tomorrow.

Same with you, Mr. P!

See you then.

From: KEVIN PLECHL
To: [REDACTED]
Sent: Friday, November 1, 2007 1:58:16 PM
Subject: Re: [REDACTED] My Stress Shield

Yea, I'm pretty sly.

Enjoy the weekend.

See attached, not that you need it. Although, many in your class could sure use it.

kp

(Id.)

* * * * *

[REDACTED] 11/2/2007 3:21 PM

☺

Well, I'm just doing chores and homework all weekend long since I'm grounded. ☹
Enjoy yours!

I read them, and I'm pretty sure I have everything, thank you!

See you Monday!

Ttyl,

From: KEVIN PLECHL
To: [REDACTED]
Sent: Monday, November 5, 2007 8:03:01 AM
Subject: [REDACTED] My Stress Shield

Grounded? You make bad choices? I don't believe it.

I'm expecting over 75 from you today. Should I go out on a limb and predict the highest score in the class? Yes!

Mr. P

[REDACTED] 11/5/2007 7:28 PM

Well, um, I haven't been getting my chores done a lot of the time.
(I blame homework on that. High School is hard.)
And I may have told my mom some things that weren't exactly NICE to
say.
(I take full blame for it. But they were true.)

So that's pretty much why I'm grounded.
Otherwise, I'm a good girl.
I don't do drugs or any of that drama.
I do have a potty mouth sometimes though. ☹
I've been trying to stop.

I think I did pretty good on the test.
I studied hard.
Except on Saturday. Our two baby bunnies passed away because it too
cold. ☹
The only think I know I didn't do too go on would be the defentions of
Alarm, Restiance and Exhaustion. I knew that they were like part of GAS,
but I didn't study the defentions. ☹ My bad.

I think you should. Or at least one of the highest? I hope so!
Did you grade our quizzes yet?

Ttyl,
[REDACTED] ☺

(Id. at 7.)

* * * * *

From: KEVIN PLECHL
To: [REDACTED]
Sent: Tuesday, November 6, 2007 8:36:01 AM
Subject: Re: [REDACTED] My Stress Shield

All that really surprises me! You're such a great student, it's just hard to
believe you'd treat your mom that way.

I went out too far onto the limb . . . it broke. A 74 only, not the 75 like I
expected. Although, it was the highest in the class by 6 whole points.
Nice job, as well as bs-ing your way through the stages of stress.

Sorry about the bunnies, as well as the note during class.

Mr. P

[REDACTED] 11/7/2007 12:56 AM

Darn. Stupid Limb. What question did I get wrong? YEAH! I know, I got to that question, and I'm like, Oh, crap. I have NO freaking idea AT ALL what the answer is?

It's okay. ☺

Tell me about your wife and daughter, you don't mention them very much.

See you soon,
[REDACTED]

From: KEVIN PLECHL

To: [REDACTED]

Subject: Re: [REDACTED] My Stress Shield

You now see what went wrong! If only others put in half of what you do, They'd be much more successful.

Now you know my wife is Dawn, she's a great partner. Most students don't seem to give a hoot about their teachers' personal lives. I guess that's why I don't say too much about them. Two kids also: Djuna, 3.5 years and Sinjin, 10 months.

See you Friday!

O' that book (I can't remember the name) was something I recently skimmed, it was about Time Management. Some good suggestions. Although, not as good as the four you learned. jk (;

Mr. P

(Id. at 8.)

* * * * *

[REDACTED] 11/9/2007 8:18 PM

Haha, that's okay.

Well, I have a library card, but I haven't even been to the Salem Public Library in about a year. We don't go to Salem very much anymore because that is where my stepdad works. More about that in a minute. Self-directed learner. haha. I suppose I would be, although, if I do look up Time Management, it will have to be on the internet.

The reason for that is that my stepdad was abusive. Both physically and emotionally to me. He occasionally did things to my sisters and mom, but my sisters don't remember, and my mom just doesn't want to bring it up. My mentality is that, at least he didn't sexually abuse me. So, we have a

restraining order against him now, and he (his name is Marcus Williams) and my mom are currently fighting in court over custody for my two little sisters, who are both his. He works for the City of Salem, doing the whole parking meteor thing, so that's why we don't go downtown, because we might run into him. I personally would love to run into him, so that he could see how much I've changed and grown up and how I now do all sorts of things he used to forbid me to do. lame stuff like wear capris, listen to music, cut my hair, etc. But mom doesn't want any drama, so . . . ☹

I prefer just to not think about it. He and my mom were together since she and my real dad (who lives in California, and now has three other kids besides me) split up when I was three. He started being abusive when I was in the second grade. But, that's in the past, and this is now, if you understand how I'm thinking about it?

ANYWAYS! Yeah, my mom got married and had me at the age of 19. So many people are doing stuff like that, and I'm not sure how I want my life to be. I mean, who doesn't want to find their true love, and all that? But, I don't want to be let down. I want kids, I LOVE kids. But I kinda DON'T want to have any, just so that I don't mess their lives up too. Kinda confusing.

Wow, this is really long! Sorry about that! Um, your age . . .

Actually: Um, You are probably around my mom's age. 34'ish. Give or take a few years. Probably take.

Mental: Okay, don't get me wrong if this comes out not sounding the way I want it too. You act young, in a cool way. Not immature at all, but more like, hip, cool, etc. kinda way? Did you get it? Sorry if you didn't ☹

Those are awesome names!

My full name is [REDACTED]

[REDACTED] My mon's two best friends (at the time when I was born)'s names put together.

[REDACTED] Mon's side of the family's family name. If I have a daughter, it will be her middle name.

[REDACTED] This is sad. My dad was reading *coughpornmagazinecough* and it was the last name of a chick that he thought was really hot. Yeah.

Um. What can I say? They were young. Ew!

[REDACTED] Real Dad's last name.

[REDACTED] Step-dad's last name. I didn't want it in the first place, Whey they got married when I was in the third grade. And then, I wanted to get rid of it when they split up. But my mom isn't changing her or the girl's last names, (so it doesn't confuse them) and she wants me to stay part of the "the family."

If it were my choice, it would be [REDACTED] But, it won't be my choice for four more years. ☹ Where did you go to college? I'm not sure where I want to go yet. Something far FAR away from home.

Long weekend. Ugh. I don't like being at home. It sucks. You're Catholic? That's cool. I tried, when Mom and Marc first split up, to go to church, (Christian) but I never found God. Any my mom is atheist. So, that's just what I am too, since the whole thing just didn't work out for me. Idk.

So Sorry for such the long email! I'm just really bored, and already have all my homework done.

All right, see you Wednesday!

[REDACTED]
P.S. Happy Veteran's Day. Hope what you end up doing (Soccer maybe? lol) is fun!

Marcus was in the Marine Corps. How long were you in the Navy for?

From: KEVIN PLECHL

To: [REDACTED]

Sent: Tuesday, November 13, 2007 2:45:23 PM

Subject: Re: [REDACTED] My Stress Shield

omg . . . how do I reply to all this?

I need to talk to you on b-lunch or after school.

Mr. P

From: [REDACTED]

Sent: Tuesday, November 13, 2007 5:11 PM

To: KEVIN PLECHL

Subject: Re: [REDACTED] My Stress Shield

Um . . .

Okay.

But, why?

Am I in trouble or something?

I hope not. ☹

Okay, well, um, see you tomorrow then.

(Ex. R23 at 1-3.)

(12) Licensee met with [REDACTED] on November 14, 2007 to discuss her November 9 email. He did not ask her any questions regarding the details of the abuse she had disclosed by her stepfather. He satisfied himself that she was "safe" from abuse. Licensee did not report child abuse to authorities because she had stated in her email that "we have a restraining order against him now." (Licensee's testimony.)

(13) Licensee knew that as a teacher he is a mandatory child abuse reporter. He has taken the training on reporting child abuse that the school district has offered and knows that he must report child abuse immediately upon being made aware of it. (Licensee's testimony.)

(14) McNary has a school resource officer to whom teachers can report abuse. McNary also has a Suspected Abuse Reporting form on which teachers and school employees can report abuse. (Nove's testimony.) Licensee also knows that he can telephone an Oregon Department of Human Services hotline and report suspected child abuse. (Licensee's testimony.)

(15) Licensee reports between two and four instances of child abuse a school year. (Licensee's testimony.) On November 19, 2007, Licensee completed a Suspected Abuse Reporting form the same day a female student disclosed "sexual abuse" in a written assignment. He spoke with the student after class to see when the abuse occurred. The student told Licensee that occurred when she was seven years old; the student was 15 years old in November 2007. (Ex. R25; Licensee's testimony.)

(16) The email exchanges between Licensee and [REDACTED] continued after November 14, 2007 as follows:

[REDACTED] 2/11/2008 10:21 AM

Oh, Okay. Why do you call me [REDACTED] when talking to B[deleted] but not me? I don't mind if you call me that at all.

No, I'm sorry. I don't understand your sarcasm/sense of humor at times. It's funny once I get it, but um, please try to make it a little more simpler.

☺

Otherwise, I misunderstand it, and take it seriously, and it makes me SERIOUSLY f*cking pissed at you. ☹

5 months, and I guess I don't ☹ Sorry! ☺

What are you up too?

I'll be there tomorrow. ☺

[REDACTED]

To which Licensee emailed back:

What would you like me to call you?

I can be simple, I think. You're not pissed anymore, are you? With such profanity, I feel there is something really serious going on that I don't know.

Enjoy your walk! Not that I know you're walking because, for all I know, you're on the bus. ☺

To which [REDACTED] replied to Licensee at 3:01 PM on 2/11/2008:

Naw, everything is perfect I suppose.

Ugh, emailing is hard. I wish u had testing!!!!!! ☹ ☹

(Ex. A8 at 34.)

* * * * *

[REDACTED] 2/11/2008 1:41 PM

☺ romeo and juliet are so romantic! It almost makes me believe in true love ☺

B[deleted] and I are in english, watching the movie romeo and Juliet. ☺
Hm, As to what we were talking about earlier, as to why I am not happy. It is illegal, I just haven't actually broken the law yet, and at that rate its going, prolly never will. Which is both ☹ and ☺ sorry, this prolly makes no sense. ☺ lol. Maybe it will. Does it???
Oh, Jeez. I can be very confusing at times, can't I?

To which Licensee emailed back:

Perhaps I never will understand. I am truly concerned though!

(Id. at 29-30.)

[REDACTED] 2/19/2008 4:47 AM

My Valentines Day was good. I got to see a lot of the people I love! ☺

So much happened this weekend.

☹ & ☺

sigh

How was your weekend?

[REDACTED]

To which Licensee emailed back:

As you heard, my weekend was well.

It's good to hear you're getting along better with mom. The whole "house on your own" sounds very interesting.

Enjoy the week!

Mr. P

(Id. at 25-26.)

* * * * *

[REDACTED] 2/20/2008 10:03 AM

I stayed home sick today. I feel horrible. ☹

How's your day so far?

To which Licensee emailed back:

Sorry to hear that. We started the Mental Unity today; I don't like the first day. I need to change it.

Get well soon.

Plechl

(Id. at 25.)

[REDACTED] 2/21/2008 6:05 AM

I'm feeling much better today, so I'll be at school. ☺
Hm, what's wrong with the first day? ☹

[REDACTED]

To which Licensee responded:

Too many notes. Seems a little mundane.

Good to hear you're feeling better and will be back at it, filling your mind with great knowledge in this wonderful world.

Mr. P

(Id.)

* * * * *

[REDACTED] 2/22/2008 6:13 AM
Yes, because school is just oh-so-fabulous.

YOU MADE B[deleted] GET A TARDY SLIP!!!!!! ☹
Give her a break, she had to change her clothes, then walk ALL the way out there ☹

See you at lunch

[REDACTED]

To which Licensee emailed back:

So, did you ever figure out who tapped you on the shoulder prior to first period?

Enjoy the weekend.

Mr. P

PS. See you at lunch? Well, I guess it's not over yet.

(Id.)

* * * * *

[REDACTED] 2/25/2008 7:30 AM
Um. I was being sarcastic about school. But. Okay . . .

Meh, it's alright. She was late after all.

Was that you? Hm, sorry. I wasn't paying attention, next time you will have to like, say my name or something.

How was your weekend, mine was awesome! ☺

Oh. Sorry. I changed my mind, didn't want to bother you again, since you have tests and such to grade.
Today then?

[REDACTED]

KEVIN PLECHL 2/25/2008 3:17 PM

[REDACTED]³ Sarcastic? I never see it.

We took Djuna to get her ears pierced yesterday; they're so cute.
Although, Dawn emailed me and said she pulled one out, not good.

It is good to hear your weekend was so wonderful. It sounds like you have
some new roommates. How long do they plan on staying?

Yes, it was me. You turned around and looked right at the girl behind
you. I was moving quickly through the crowd, stealth mode.

Like I said before, you're not a bother. I do appreciate the silence though.
It was nice to get a majority of them corrected during the day's work.

Enjoy the week . . . spring break is a day closer. ☺

Mr. P

(Id. at 27.)

* * * * *

[REDACTED] 3/13/2008 6:06 AM

How are you?

[REDACTED]

Licensee emailed back:

Great, how's the baby?

(Id. at 39.)

* * * * *

[REDACTED] 3/14/2008 12:35 PM

PLECHL

³ "[REDACTED]" was a pseudonym that [REDACTED] sometimes used to refer to herself in emails to Licensee.

You're, you're, you're, you're, you're, you're . . .
Cutting all your hair off?
That's REALLY sweet of you to do,
But I LOVE your hair. ☺
Gtg. [REDACTED]

KEVIN PLECHL emailed back:
Not if we don't raise enough money. If the school gets to 5K, then I'll do
it.
Have a super weekend. I hope you get some sleep.

Mr. P

PS. I love it too!

(Id.)

* * * * *

[REDACTED] 3/16/2008 7:32 AM

Oh.
This is really kind of you to do.
Has anyone close to you been a victim of cancer?
Yes, I did get to rest this weekend, it was pleasant.

[REDACTED]
From: KEVIN PLECHL
To: [REDACTED]
Date: 3/17/2008 9:49:36 AM
Subject: Re: Hello

My aunt was the closest. She ended up having a mastectomy. It was bad.

Good to hear you got some rest. You should catch up next week. Enjoy
your final week!

Mr. P

(Id.)

* * * * *

[REDACTED] 3/31/2008 1:29 PM

Okay, so:
I really don't like the way you handled A[deleted] this morning.
Basically, you told her that she was crazy, and she needed meds to fix it.

First, she isn't crazy.
Second, maybe you do have a point, maybe medication would be good for her.
But I still don't like the way you stated it.
She's a very upset and emotional girl. She really can't handle your insensitivity.
Be more compassionate next time, if there is one.

⊗
[REDACTED]

To which Licensee emailed back on 3/31/2008 at 2:35 PM

Crazy? That's how you interpreted it. It wasn't what I said nor what I felt. If there is a chemical imbalance, as what depression is, medication is a fantastic step in the right direction. I know she's not crazy.

Perhaps issues that involve emotions would be better discussed with someone more sensitive than I.

Regards,
Mr. Plechl

(Id. at 40.)

* * * * *

[REDACTED] 4/9/2008 2:39 PM

Hello.
How are you, Mr. Plechl?

[REDACTED]

To which Licensee emailed back on 4/9/2008 at 3:37:20 PM

Fair, and you?

(Id. at 41.)

* * * * *

[REDACTED] 4/11/2008 2:46 PM

Can I come in on Monday?
So we can finish our discussion,
And I'll explain what I meant.
Hopefully you and I can be okay again?

[REDACTED]

To which Licensee wrote back on 4/11/2008 at 3:30:48 PM

Yes.

I'm sure the bridge can be re-built after the fire.

Have a swell weekend.

Mr. P

(*Id.* at 42.)

* * * * *

[REDACTED] 5/20/2008 2:57 PM

Haven't had a chance to really talk to you much lately.

How have you been?

[REDACTED]

From: KEVIN PLECHL

To: [REDACTED]

Date: 5/20/2008 3:36:27 PM

Subject: Re: Hello.

Things have been well. It's been a bit crazy regarding soccer the past two weeks. I don't know if I told you, I resigned from Western Oregon and have taken a new coaching position.

And you?

Mr. P

(*Id.* at 49.)

* * * * *

[REDACTED] 6/3/2008 1:24 PM

Hello.

Would it be okay if I came in one day next week after finals to hang out one last time??

[REDACTED]

From: KEVIN PLECHL

To: [REDACTED]

Sent: Tuesday, June 3, 2008 2:28:59 PM

Subject: Re: Availability?

Monday through Wednesday . . . I'll be grading away;.

(Id. at 50.)

* * * * *

██████████ 6/11/2008 3:15 PM

Have a great summer Plechl!

I had a good time after school today, and every other day.

Thank you. ☺ (for everything).

See you next year, Miss you.

██████████

My love, forgive me for who I was, what I did, and what I cannot change.
Love me now for who I can be, and what I plan to accomplish. If you
can't, then just love me because my heart loves you, unconditionally.⁴

From: KEVIN PLECHL

To: ██████████

Date: 6/12/2008 9:58:53 AM

Subject: Re: Availability?

Likewise, ██████████

Make the good choice this summer, and forever!

Mr. P

(Id. at 51.)

* * * * *

██████████ 9/30/2008 11:31 AM

I understand if you don't want to talk to me any longer, but I wish you
would just tell me this, instead of ignoring me.

It hurts less that way.

From: KEVIN PLECHL

To: ██████████

Sent: Tuesday, September 30, 2008 1:44:11 PM

Subject: Re: Kevin⁵

⁴ Apparently this verse came from a song by Robert Goulet. Robert Goulet (1933-2007) was a singer/entertainer. (Ex. A6 at 2.) It did not appear during the hearing that Licensee knew who Robert Goulet was. (Licensee's testimony.)

⁵ It is unclear to whom "Kevin" refers in this email. ██████████ had a boyfriend also named "Kevin" at McNary during the 2007-2008 school year. They broke up sometime

Stop it!

(Id. at 59.)

* * * * *

10/2/2008 11:26 AM

My tone? Kevin, I'm just expressing myself, that's how I feel . . .
Did you mean anything else by "Stop it!", or was my tone all?

From: KEVIN PLECHL

To:

Sent: Thursday, October 2, 2008 11:29:56 AM

Subject: Kevin..

Yes, it's your tone as well as being manipulative. Where in the world do you come up with, "I understand if you don't want to talk to me any longer, but I wish you would just tell me this, instead of ignoring me . . ."

I'm not ignoring you. I hope you understand I'm incredibly busy because I have to leave promptly and am losing a lot of prep time. I have to find it other places.

10/2/2008 11:34 AM

How in the world am I being manipulative? From my point of view, I felt as if you were ignoring me, so I was giving you an easy way out of this. I apologize for not understanding correctly, but that's what I got. I do understand no, I'm sorry, and please don't get snappy at me.

And thank you for replying, I appreciate it greatly.
I miss talking to you.

From: KEVIN PLECHL

To:

Sent: Thursday, October 2, 2008 11:48:40 AM

Subject: Re: Kevin

I'm not getting snappy, just being honest.

Perhaps something like this . . . "Mr Plechl I feel as if you are ignoring me; is this an accurate feeling I'm having?"

after November 2008. (Williams's testimony.) Licensee believed the reference was to the boyfriend Kevin. (Licensee's testimony.)

Mr.. P would reply . . . "No, that's ridiculous! I'm pretty busy at this time of year. . I'm sorry if you felt that way. . I think you know me better that. I would never ignore anyone."

██████████ 11:51 AM

Hm.

Does it bug you when I call you Kevin?

I mean, it is your name after all.

From: KEVIN PLECHL

To: ██████████

Sent: Thursday, October 2, 2008 12:17:27 PM

Subject: Re: Kevin . .

Considering I'm your teacher . . I think there's a little respect issue there. I would never call my instructors by their first name, but that's me.

Gotta go get to my lunch duty!

(*Id.* at 58.)

██████████ 10/2/2008 12:23 PM

Hm. I have three points to make, if that's okay with you?

1. Technically, you aren't my teacher, not now . . .
2. You call me ██████████. At least you used to. Why don't you anymore?
3. I would consider us to be possibly friends, just for lack of a better word.

But if you don't like it then . . .

From: KEVIN PLECHL

To: ██████████

Sent: Friday, October 3, 2008 2:05:36 PM

Subject: Re: Kevin

. . . .what?

It's always okay . . .

1. Valid
2. ██████████ is your name, and you have asked me to call you that. I do at times.
3. Yes, but not as peer friends . . More as teacher/student "friends . . " Where the two roles are distinctly different. Perhaps a better word would be "relationship" – a bond or connection between two people. Friendship

is a significant bond or connection. Wow, it sound like Wellness class all over. ☺

Enjoy the weekend, even though it will be raining.

Mr. P

██████████ 4:42 PM

Thank you.

Point number three: Well, I didn't mean as "peer friends." After all, there is an obvious twenty-four year difference between us. But friendship isn't necessarily a significant bond.

<http://en.wikipedia.org/wik/Friendship>
<http://dictionary.reference.com/browse/friend>

After reading those definitions, it would seem that we could be friends. We have mutual feelings and respect for each other, along with other things.

Enjoy your weekend also, I'll see/hear from you on Monday! ☺
And thank you for continuing to reply to me, I appreciate it.
Sonna

(*Id.* at 57.)

From: KEVIN PLECHL
To: ██████████
Sent: Monday, October 6, 2008 8:14:04 AM
Subject: Re: Kevin

Yes, but if you look at the definitions you sent with reference to "dictionary", numbers one and two are significantly different.

██████████ 10/6/2008 11:24 AM

Oh, fine then! We won't be friends. ☺
I'm just kidding. It's fine, I understand perfectly well the reasons why we can't have anything more than a teacher/student relationship. ☺
So, anyways, how is the soccer season coming along?
When does it end?

Licensee emailed back: I'm glad you completely understand.

Soccer isn't going too bad. We played South yesterday and lost 1-3. We did very well against them. They are 7-0 this season; they are very good.

We play McNary here at school on Tuesday. You should hang out and watch . . . It's kicks off at 3:30. The winner will likely earn the fourth and final playoff spot. It will be a good one that you don't want to miss.

Making it into the playoffs will extend the season with each win. If you loose, you're done. The regular season is over at the end of this month with the state championship being on November 15th.

Enjoy your day off.

Mr. P

PS. You earned a B+ for the first 6-weeks in "Lunch Time." I'll expect an A for the next 6 weeks.

[REDACTED] 10/13/2008 7:03 AM

I understand why, and I don't expect a thing, but why can't we have anything more?

Interesting. You coach for Sprague, right?
The game sounds fun, I will try to go, depending on how much it costs.
How is your team doing in the playoffs?

Why only a B+, I thought I did rather well at Lunch Time? But of course I'll get an A next time! ☺

My weekend was great, how was yours?

Sonna

(*Id.* at 56.)

From: KEVIN PLECHL
To: [REDACTED]
Sent: Monday, October 13, 2008 1:36:17 PM
Subject: Re: Kevin

Sonna

I'm sorry, I don't understand your question.

Yes, I coach for Sprague. The game is free, and starts a little over an hour after school is out.

We're not in the playoffs yet. The regular season ends at the end of the month.

A B+ because at times you are off task (not eating a healthy meal) and do not follow directions when asked for the first time.

I'm excited for the game tomorrow.

Mr. P

[REDACTED] 10/14/2008 11:54 AM

My question was, why can't we have more than a "teacher/student" relationship?

My friend and I wanted to go to the game, unfortunately, my mom has an appt with her attorney, so I need to be home to babysit..
Perhaps the next game, if you could let me know?
Good luck today, I hope you and your team make it to the playoffs! ☺

I rarely eat lunch, Plechl. I have breakfast, no lunch, an after-school snack and dinner.
Did I tell you? I'm a vegetarian now.

We didn't get to walk together . . ☹
[REDACTED]

From: KEVIN PLECHL

To: [REDACTED]

Sent: Friday, October 17, 2008 12:10:15 PM

Subject: Re: Kevin

Not appropriate. Just like those comments Mr. Pierce was talking about at lunch.

There's no more games here. Two more at Sprague and one at McKay.
We have to win at least and tie another to likely get into the playoffs.

A vegetarian? How did that happen?

Enjoy the weekend!

Mr. P

(Id. at 55.)

[REDACTED] 10/17/2008 12:23 PM

That's not what I had meant, but you are right, that was not appropriate.
I'm sorry. Forget it, please?

That's too bad, good luck though! ☺

A[deleted] N[deleted] if you remember her?) is a vegetarian, and her K[deleted] and I were discussing it, and I just didn't like the idea that I was actually eating something that one once had a face, that had lived, and had a family, a spouse, kids, parents, etc. ☹

I've haven't had any sort of meat for about two months now.

Do you have any plans for the weekend?

Also, I have a Mock Trial meeting after school today. How long will you be after school, maybe I could stop after the try-outs are done?

[REDACTED]

From: KEVIN PLECHL

To: [REDACTED]

Sent: Tuesday, October 21, 2008 11:42:31 AM

Subject: Re: Kevin

I'll forget it . . .

I love faceless meat. I heard a quote once that went something like this, "If slaughter houses had glass walls, we would all be vegetarians." I hope you know what you're doing with this decision. You must get your protein intake. Like I said earlier today, the long term effects of this choice now could have a drastic impact on you later in life.

How was the tryouts for Mock Trial?

My weekend was good. I'm so excited for our game tonight. I hope I have some good news to report.

Cheer up, life's short!

Mr. P

[REDACTED]

10/21/2008 11:52 AM

Thank you.

I've started eating some sort of cereal that my mom bought for me, it's high in fiber, or something.

And I eat alot of cottage cheese and peanut butter.

Also, some of those instant breakfast thingys . . .

I know that, and I'm trying to keep a balanced diet. ☺

They went great, I got a part as an expert witness, Terry Cohen.
I also drew up some T-charts, just to get a feel for the case, and the teacher loved them, so he's photocopying them, and giving them to all the Mock Trial people.
He said what I did because I was bored could help us win the case on Nov. 15. So I'm feeling pretty proud! ☺

Good luck, hope you and your team win!
Get back to me on the score, I'm looking forward to hearing how it was!

Life may be short, but it's also complicated and scary.
[REDACTED]

(*Id.* at 54-55.)

From: KEVIN PLECHL
To: [REDACTED]
Sent: Thursday, October 23, 2008 11:23:32 AM
Subject: Re: Kevin

Congratulations, Terry! It sounds like you'll fit right in. I mean with all those t-charts and such you definitely will.

1-0, it was a good win. The girls were very excited. I know McNary is not too happy about it.

Complicated and scary? Is that part of the down feeling?

[REDACTED] 10/23/2008 11:39 AM
Thank you. So far, Mock Trial seems very exciting. Challenging, but I like it. Having to put yourself in someone's place, be able to see the views of both the plaintiff and the defendant, and needing to think on your feet . . . This will be interesting.

Good job, and good luck at the next game!

Yes, it is.

From: KEVIN PLECHL
To: [REDACTED]
Sent: Wednesday, October 29, 2008 12:01:37 PM
Subject: Re: Kevin

Is your mom coming to conferences? It's always a dandy time to come hang out with all the teachers. Should be a wonderful two evenings.

Yes, it looks quite complicated. Are you sharing thing with mom or someone?

From: [REDACTED]
To: PLECHL-KEVIN
Date: 10/2/2008 12:09:47 PM
Subject: Re: Kevin

Yes, she's coming, most likely tomorrow between 9 and 12, when both my sisters are in school.

Sorry, you've lost me. Am I talking to my mother about being down lately?

No, I'm not. Most things are better left unsaid with A[deleted]. I do however talk to K[deleted] and my friend A[deleted]. And sometimes you.

Speaking of K[deleted], I should do down at lunch and quickly say "Hi!" You have B-lunch duty too, right?

Do you have any Halloween plans with your kids?

[REDACTED]

(*Id.* at 53-54.)

(17) In early November 2008, [REDACTED]'s mother discovered some of the emails between her daughter and Licensee and became alarmed about their content. She did more investigating, including talking to some of [REDACTED]'s female school friends and discovered more emails and learned more from [REDACTED]'s friends about her relationship with Licensee. She learned that [REDACTED] had sent many of the emails between her and Licensee to her friends for the friends to store in files meant to hide the emails on their computers. [REDACTED] also sent emails to her friends describing her emails with Licensee. (Williams's testimony.) In one of those emails, she referred to Licensee as "38," which represented his age at the time. (Ex. A8 at 21-23.) The mother did not find any emails that were sent between Licensee and [REDACTED] during the 2008 summer recess. (Williams's testimony.)

(18) The mother had noticed during 2007 and 2008 that [REDACTED] stayed late after school more than she would have expected her to do. She also observed that when [REDACTED] started the 2007-2008 school year, she was poised and a good student. She observed that over the following 12 months [REDACTED] became more fragile and emotional and that her relationship with her daughter became strained. (Williams's testimony.)

(19) [REDACTED]'s mother reported what she discovered to administrators at McNary and to the Keizer Police Department. (Williams's testimony.) A police officer investigated the matter and interviewed [REDACTED] on November 17, 2008. (Ex. A3.) She admitted having a "crush" on Licensee. She denied that they had any physical contact. (*Id.* at 3.) The police officer concluded that Licensee had not committed any crime. (*Id.* at 4.)

(20) McNary administrators investigated the matter and reviewed the emails on Licensee's computer. (Nove's testimony.) McNary placed Licensee on paid administrative leave effective November 18, 2008, while the school completed its investigation. (Ex. A4.)

(21) School administrators interviewed Licensee on November 24, 2008. (Ex. A6.) In the interview, Licensee admitted that in hindsight he should have gone to a supervisor or a counselor and reported the excessive emails contacts with [REDACTED] (Ex. A6 at 1; Nove's testimony.) He also acknowledged that he overstepped his role and took on a counseling role with [REDACTED] (Ex. A6 at 2; Nove's testimony.) He explained that he did not report the abuse when he learned about it because he knew [REDACTED] was not living with her stepfather at the time. (Ex. A6 at 2.)

(22) Following the investigation, on December 19, 2008, McNary issued a formal Letter of Reprimand to Licensee, for failing to maintain an appropriate professional student-teacher relationship by not demonstrating or expressing professionally inappropriate interest in a student's personal life, and for not reporting child abuse. (Ex. A5.)

(23) Licensee did not have email correspondence with any other student during 2007-2008 like the email correspondence he had with [REDACTED] (Nove's testimony; Licensee's testimony.) Licensee viewed [REDACTED] as a "troubled girl." He wanted to "reach out" and help her and be a positive male role model for her. For those same reasons, he continued the contact with her after her Wellness I class ended in January 2008. In addition to the emails, Licensee often met with [REDACTED] during lunch break and after the school day in his classroom. Licensee denied emailing [REDACTED] from his home computer. He emailed her only from his work computer during school hours. He denied emailing her during the 2008 summer recess period. He realized by mid-October 2008 that his relationship with [REDACTED] and gotten out of hand and that he should have taken steps to stop it or report it to supervisors. (Licensee's testimony.)

(24) Licensee's supervising Vice Principal, Robert Jones, regularly visited Licensee's classroom from 2004 through 2008 and gave him written evaluations. He found that Licensee's performance met the school district's standards, and that his classes were well organized, that he managed his subject material and students well, and generally had positive comments about Licensee's teaching skills. (Robert Jones's testimony; Exs. R2-12, 14, 16 and 17.)

(25) Licensee's fellow soccer coaches and athletes have observed that Licensee had a high level of integrity, character and displays professionalism toward his female soccer players. (Testimony of Eric Johansen, Mark Risen, and Rod Fretz.)

CONCLUSIONS OF LAW

(1) Licensee engaged in gross neglect of duty under ORS 342.175(1)(b) by deviating from professional standards of competency and ethics, by failing to maintain an appropriate student-teacher relationship by demonstrating or expressing professionally inappropriate interest in a student's personal life, in violation of OAR 584-020-0035(1)(c)(A).

(2) Licensee engaged in gross neglect of duty under ORS 342.175(1)(b) by deviating from professional standards of competency and ethics, by failing to maintain an appropriate student-teacher relationship by not reporting to his supervisor when he had reason to believe a student was or may have become romantically attached to him, in violation of OAR 584-020-0035(1)(c)(C).

(3) Licensee engaged in gross neglect of duty under ORS 342.175(1)(b) by failing to report child abuse in violation of OAR 584-020-0040(4)(s) and ORS 419B.010.

(4) Licensee should receive a public reprimand.

OPINION

The TSPC is seeking to discipline Licensee. The TSPC has the burden of proof to establish its allegations. ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683 (1980). The allegations must be proven by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). 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 Contractor v. Tandy Corp.*, 303 Or 390 (1987).

The TSPC is charged with the responsibility of disciplining teachers in Oregon. ORS 342.175 *et seq.* One basis for disciplining a teacher is gross neglect of duty. ORS 342.175(1)(b). The TSPC has alleged that Licensee engaged in gross neglect of duty in three ways.

OAR 584-020-0040(4) states:

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:

* * * * *

- (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;

* * * * *

- (s) Failing to report child abuse pursuant to ORS 419B.010.

The "competent educator" demonstrates, among other things, a commitment to the "use of professional judgment." OAR 584-020-0010(5).

OAR 584-020-0035 addresses professional standards of ethics. The rule provides, in relevant part:

The ethical educator is a person who accepts the requirements of membership in the teaching profession and acts at all times in ethical ways. In so doing the ethical educator considers the needs of the students, the district, and the profession.

- (1) The ethical educator, in fulfilling obligations to the student, will:

* * * * *

- (c) Maintain an appropriate professional student-teacher relationship by:

- (A) Not demonstrating or expressing professionally inappropriate interest in a student's personal life;

* * * * *

- (C) Reporting to the educator's supervisor if the educator has reason to believe a student is or may be becoming romantically attached to the educator;

* * * * *

The three allegations against Licensee are addressed in turn.

- (1) *Inappropriate interest in the student's personal life.*

The TSPC has alleged that Licensee started communicating, primarily by email, with one of his students, a 14-year-old female freshman, and that he demonstrated or expressed professionally inappropriate interest in the student's personal life over the next year.

Licensee started an email project for students in his freshmen Wellness I class at the beginning of the 2007-2008 school year for students to earn 10 points extra credit. The student started participating in the email project shortly after school started in early September. She learned from Licensee on October 17, 2007 that she had earned "ten points of extra credit." (Ex. A8 at 3.) If she had earned the points designated for the project by mid-October 2007, it is unclear why Licensee allowed the emails to continue for another year. What followed over the next approximately 12 months were many

emails between the student and Licensee in which Licensee showed an inappropriate interest in the student's personal life. While the student obviously expressed an early interest in Licensee and his personal life, for example, asking him in October 2007 what his plans were for Halloween, Licensee encouraged that interest by his responses.

Examples of his interest in her personal life included his email to her in early November 2007 about her relationship with her mother (Ex. A8 at 7-8); the email exchange on February 11, 2008 about the Romeo and Juliet movie (*Id.* at 29-30); the email exchange on February 19, 2008 about the student having the "whole house on your own" for the weekend being "very interesting" to Licensee (*Id.* at 25-26); the email exchange on February 22, 2008 about Licensee tapping the student on the shoulder in the hall, and the student apparently not knowing at the time that he was the person who did it (*Id.* at 25); the email on February 25, 2008 referencing the student's new roommates and asking how long they planned to stay (*Id.* at 27); the email exchange on March 13, 2008, where the student asked "[h]ow are you," and Licensee responded, "[g]reat, how's the baby" (*Id.* at 39.); the email exchange on March 31, 2008 about the student's friend with emotional problems (*Id.* at 40); and the email exchange on October 17, 2008 about the student being a vegetarian (*Id.* at 54-55).

Licensee viewed the student as a "troubled" girl. He wanted to "reach out" and "help" her, and provide a positive role model. However, the personal nature the emails, the sheer volume of them, and the fact that the emails and meetings continued for months after the student's class with Licensee ended in late January 2008, went far beyond what was professionally appropriate for a teacher.

Licensee's conduct constituted a failure to maintain a professional student-teacher relationship by demonstrating and expressing professionally inappropriate interest in the student's personal life in violation of OAR 584-020-0035(1)(c)(A).

(2) Not reporting that the student was or may have become romantically attached.

The year-long emails also established that the student became romantically attached to Licensee.

As early as October 2007, the student was asking Licensee about his plans for weekends and for how he spent time away from work. (Ex. A8 at 5 and 25-26.) She asked about his wife and children and his age. (*Id.* at 8-9.) The student asked in emails about how Licensee was feeling and what he was doing as she emailed him. (*Id.* at 34, 39, 41.) She referenced Valentines Day in an email to Licensee (*Id.* at 25-26), exchanged emails with him about him cutting his hair for a fundraiser, and how she liked his hair (*Id.* at 39), exchanged emails with him about a Romeo and Juliet movie (*Id.* at 29-30), exchanged emails with him about rebuilding the bridge between them after the "fire," (*Id.* at 42), exchanged emails with him referring to "love lyrics" from a song (*Id.* at 51), exchanged emails with Licensee about him "ignoring" her and accusing her of being manipulative (*Id.* at 58), exchanged emails about the "missing" talking to him (*Id.*), and about him informing her in October 2008 that she had "earned" a B+ for the first six

weeks in “lunch time,” and that he “expected” an A for the next six weeks. (*Id.* at 56). The student responded to the October 2008 email about “lunch time” by writing that she thought she did rather “well,” and that “of course” she would get an A next time. (*Id.*) The student asked Licensee why he did not call her “Sonna” more, and referenced their 24-year age difference. (*Id.* at 57.) The email exchanged continued in October 2008 with their exchanges about the appropriate “level” their friendship could take, and why they could not have more than a teacher/student relationship. (*Id.* at 55, 59.)

Licensee acknowledged when he was questioned by school administrators in late November 2008, after the student's mother had uncovered the emails and reported Licensee to the school and the police, that he should have gone to a supervisor and reported his email contact with the student.

It is clear from the emails that shortly after they stated in the fall of 2007, the student had or was becoming romantically attached to Licensee. Licensee had reason then to believe that the relationship between them had become inappropriate and that he should have reported the matter to a supervisor by the late fall of 2007. He certainly should have reported the relationship to his supervisor by mid-October 2008, when it became clear from the emails that the student was asking why they could not have more than a teacher/student relationship. Yet, he never reported the matter to his supervisor.

Licensee's conduct constituted a failure to maintain an appropriate student-teacher relationship in violation of OAR 584-020-0035(1)(c)(C).

(3) Child abuse report.

As a teacher, Licensee was and is a mandatory reporter of child abuse under ORS 419B.010(1)⁶ and 419B.005(3)(c).⁷ Licensee knew he was legally required to report child abuse immediately. He had reported child abuse on other occasions. He understood the purpose and the importance of the law.

The TSPC's allegation of Licensee failing to report child abuse rests on the November 9, 2007 email from the student to Licensee and their subsequent conversation. Licensee argues that he did not report the abuse because he believed the abuse had already been reported.

⁶ ORS 419B.010(1) states, in relevant part:

Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse * * * shall immediately report or cause a report to be made in the manner required in ORS 419B.015 * * *.

ORS 419B.015(1)(a) provides, in relevant part:

A person making a report of child abuse, * * * shall make an oral report by telephone or otherwise to the local office of the Department of Human Resources, to the designee of the department or to a law enforcement agency * * *.

⁷“Public or private official” includes “school employee.” ORS 419B.005(3)(c).

In her November 9 email, the student first stated she did not go to the Salem Public Library or to the City of Salem anymore because her stepfather worked for the city, and she did not want to have contact with him. She stated that her stepfather had abused her, both physically and emotionally, that he occasionally did “things” to her sisters and her mother, but that her sisters did not remember and her mother did not want to bring up the issues. The student expressed relief that at least her stepfather had not sexually abused her. She went on in her email to state that “we” have a restraining order against the stepfather “now,” and that her mother and stepfather were currently fighting in court over custody of her two little sisters, who were the stepfather’s daughters. (Ex. R23 at 1.)

The purpose of the child abuse reporting law is to encourage private and public officials, especially school teachers who have extensive contact with children, to report suspected abuse to proper authorities and let skilled professionals investigate the allegations. ORS 419B.007. Licensee knew from his training that he should err on the side of reporting suspected child abuse.

The threshold question is whether the student’s description of what she reported to Licensee meets the definition of “abuse” under ORS 419B.005. ORS 419B.005(1)(a)(A) defines “abuse” as:

Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

A person commits the crime of “assault in the fourth degree” if the person “intentionally, knowingly or recklessly causes physical injury to another.” ORS 163.160(1)(a). “Physical injury” means “impairment of physical condition or substantial pain.” ORS 163.015(7).

Given the context of the student’s statements about her stepfather being abusive to her, both physically and emotionally, that he did “things” to her sisters and mother, and that the student expressed relief that at least her stepfather did not sexually abuse her, a public or private official would have reasonable cause to believe that the student had been the victim of “assault” and had experienced “physical injury.” ORS 163.160(1)(a); 163.015(7). The student described reportable child abuse to Licensee. ORS 419B.010(1). Licensee had a legal obligation to report the abuse.

ORS 419B.010(2) provides an exception for a public or private official to report child abuse as follows:

Notwithstanding subsection (1) of this section, a report need not be made under this section if the public or private official acquires information relating to abuse by reason of a report made under this section, or by

reason of a proceeding arising out of a report made under this section, and the public or private official reasonably believes that the information is already known by a law enforcement agency or the Department of Human Services.

Licensee argues that he was excused under ORS 419B.010(2) from reporting child abuse because the student told him that her family currently had a restraining order against the stepfather, and that the authorities already knew about it.

Licensee's counsel argues that the language in ORS 419B.010(2), "and the public or private official reasonably believes that the information is already known by a law enforcement agency or the Department of Human Services," following the requirement that "the public or private official acquires information relating to abuse by reason of a report made under this section, or by reason of a proceeding arising out of a report made under this section," is confusing.

ORS 419B.010(1) requires that the report of abuse be made in the manner required in ORS 419B.015. ORS 419B.015(1)(a) requires the person to make the report to the Department of Human Services (DHS) or a law enforcement agency.

If Licensee had acquired information relating to abuse against the student by reason of a report made to DHS or a law enforcement agency, or by reason of a proceeding arising out of a report made to DHS or a law enforcement agency, presumably Licensee would reasonably believe that the information was already known to DHS or the law enforcement agency.

However, Licensee's argument that he falls under the exception in ORS 419B.010(2) is not persuasive. It is not clear from the student's email the basis on which the restraining order was obtained. The email referred to the stepfather doing "things" to her two little sisters and her mother. The email referred to her mother and stepfather being in a custody dispute over the student's little two sisters, both of whom were fathered by her stepfather.

The restraining order could have resulted from a proceeding arising from the stepfather's abusive conduct against the student's sisters or against her mother, or could have been issued in connection with the custody dispute between the parents over the student's two sisters. Those events would have had nothing to do with an allegation of abuse against the student by her stepfather.

Because the restraining order could have been based on circumstances other than a proceeding arising out of a report of abuse against the student by her stepfather to DHS or a law enforcement agency, Licensee failed to establish that he reasonably believed the abuse had already been reported to DHS or a law enforcement agency. He failed to show that the exception in ORS 419B.010(2) applies.

Licensee was required immediately to report to authorities the child abuse that the student described to him in her November 9, 2007 email. His failure to do so constituted gross neglect of duty under ORS 342.175(1)(b) by failing to report child abuse in violation of ORS 584-020-0040(4)(s) and ORS 419B.010.

(4) Discipline.

The commission rejects the ALJ's proposed sanction and reasoning for the sanction in this case. The specific sanction imposed in any given case is a matter that is within the Commission's discretion. Licensee's employer believed that Licensee's behavior was serious enough to warrant a written reprimand. Licensee engaged in a relationship with a student that was outside of the professional boundaries; failed to report to supervisors when he had reason to believe the student was romantically attracted to him, and failed to report potential child abuse that he learned from the student. A reprimand is within the Commission's discretion and will serve to deter this type of conduct in the future. Further, a letter of informal reproof issued pursuant to Sections 5 to 7, chapter 706, Oregon Laws 2009, is not appropriate because under section 5, a letter of reproof is confidential and is only available if the commission agrees not to pursue disciplinary action against the licensee and the licensee agrees to the terms of such a letter. The commission did not agree to offer a letter of reproof when it first considered this case. Instead, it voted to pursue disciplinary action. Given the charges and evidence against licensee, the commission is well within its discretion to issue a public reprimand pursuant to ORS 342.177(3)(a) against licensee.

ORDER

Based on the foregoing, the Commission hereby imposes a Public Reprimand on Licensee Kevin John Plechl.

It is so Ordered this 28 day of December, 2011.



Victoria Chamberlain
Executive Director

Teacher Standards and Practices Commission

EXCEPTIONS

The amended proposed order is the Commission's action on the Administrative Law Judge's Proposed Order. If you disagree with any part of this amended proposed order, you may file written objections, called "exceptions," to the amended 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 amended proposed order** with the:

Teacher Standards and Practices Commission
250 Division 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. After the Commission considers the exceptions or oral argument, the Commission will enter a Final Order