


LORRAINE LEE
Chief Administrative
Law Judge



STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS

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August 21, 2012

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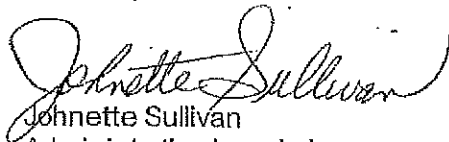
In re: Michele Taylor, Teacher Certification Cause No. 2011-TCD-0001

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Order in the above-referenced matter. This is a final decision and may be appealed pursuant to the instructions at the conclusion of the decision.

This completes this matter. The file will be closed and returned to the Office of Superintendent of Public Instruction, Administrative Resource Services. If you have any questions, you may reach Administrative Resource Services at (360) 725-6133.

Sincerely,


Johnette Sullivan
Administrative Law Judge
Office of Administrative Hearings

cc: Administrative Resource Services, OSPI
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

IN THE MATTER OF
MICHELE TAYLOR
CERTIFICATION NO. 378311E

TEACHER CERTIFICATION
CAUSE NO. 2011-TCD-0001

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

A hearing was held on this matter before Administrative Law Judge (ALJ) Johnette Sullivan on May 21 to 24, May 29 to 31, and June 7, 2012, at Yakima, Washington. The Appellant, Michele Taylor, appeared and was represented by Joseph W. Evans, attorney at law. The Office of Superintendent of Public Instruction (OSPI) appeared through Catherine Slagle, director of the Office of Professional Practices (OPP), and was represented by Anne Shaw, assistant attorney general (AAG).

Testimony was taken under oath or affirmation from twenty five witnesses: eleven current or former high school students¹ of East Valley School District (EVSD), John Schieche (EVSD Superintendent), Mike Messenger (EVSD Assistant Superintendent), Mark Hummel (former Principal EVSD high school), Dortehea Seay (current Principal EVSD high school), Mark Mochel (EVSD high school teacher and coach), Dawn Young (EVSD high school counselor), Dwaine Morrison (EVSD high school teacher and coach), Erin Pitzel Uren (EVSD high school teacher), Victoria Lamar (EVSD high school main office manager and mother of Appellant), Catherine Slagle (Director, OPP), Michele Taylor (Appellant), Kevin Taylor (Appellant's husband), Meranda Smith (Appellant's sister), and Koreena Sedge (Appellant's cousin).

The following documentary evidence was admitted: Joint Exhibits JT1 - JT37; Appellant's Exhibits A-C, D (excluding withdrawn pages 17, 21-37, 44-54), H, L-M, O-S, Y, AE-AG, and AJ; OSPI's Exhibits 2-6, 8-10, 12-13, and 20; admitted for identification purposes only OSPI's Exhibits 14A, 15-19, and 20-22. Appellant withdrew Exhibits E-G, J-K, N, T-X, Z, AA-AD, and AI. OSPI withdrew Exhibits 7, 11 (replaced with redacted version 11A), and 14B.

After considering the objections and legal arguments of the parties, the following documentary evidence was excluded pursuant to RCW 34.05.451 and .461 and in furtherance of the principles of due process: Appellant's Exhibit AH (witness questioned about excerpted version; full 81-page report offered after witness excused); OSPI's Exhibit 1 (not compliant

¹ To protect identity and confidentiality, students who testified, and students who were mentioned by name by witnesses, are identified by letter designation.

with RCW 5.44.040; no witness was referred to Exhibit 1 and asked to confirm statements attributed to the witness during testimony; and for the reasons outlined in letter to counsel dated June 1, 2012); OSPI's Exhibit 11A (to which OSPI did not refer Appellant during questioning when she testified as OSPI's direct witness or upon cross examination when she testified in her own defense).

The record closed June 22, 2012. The due date for the written decision in this matter is 90 days after the close of the record, pursuant to the Administrative Procedure Act, Revised Code of Washington (RCW) 34.05.461(8)(a), on September 20, 2012.

PROCEDURAL BACKGROUND

On February 11, 2010, the EVSD Superintendent sent a letter to OPP, alleging acts of unprofessional conduct on the part of the Appellant. Exhibit JT 1. On June 16, 2011, OSPI issued a Proposed Order of Revocation against the Appellant's teaching certificate, from which the Appellant appealed on July 13, 2011. Exhibit JT 4. On September 14, 2011, OSPI issued an Amended Proposed Order of Revocation. Exhibit JT 3.

On November 18, 2011, a review officer issued a Final Order of Suspension, after reviewing the files and having considered the arguments of each party and the recommendations of the Admissions and Professional Conduct Advisory Committee (APCAC). Exhibit JT 5. Appellant filed a notice of appeal on December 7, 2011. Exhibit JT 6. The matter was assigned to the Office of Administrative Hearings (OAH) to assign an ALJ to conduct an administrative hearing and issue a decision.

OAH mailed the parties a Scheduling Notice on December 9, 2011, which set a prehearing conference for January 3, 2012, and a hearing for January 19, 2012. The parties agreed to reschedule the hearing for a two week period beginning on May 21, 2012.

ISSUES

On January 13, 2012, the parties submitted an agreed Joint Issue Statement:

1. Has OSPI shown by clear and convincing evidence that Appellant violated WAC 181-86-013(3) and WAC 181-86-014 by exhibiting a behavior problem which endangered the educational welfare or personal safety of students, teachers, or colleagues within the education setting through her interactions with and treatment of Students A, B and C?

2. Has OSPI shown by clear and convincing evidence that Appellant violated WAC 181-87-060 through her flagrant disregard or clear abandonment of generally recognized professional standards in the course of her assessment, treatment, instruction, or supervision of Students A and B?

3. Has OSPI shown by clear and convincing evidence that Appellant violated WAC 181-86-013(3), WAC 181-86-014, and/or WAC 181-87-060 as set out in issues 1 and/or 2 above and that a one-year suspension as set out in the Review Officer's Decision of November 18, 2011, is the appropriate discipline in this matter?

FINDINGS WITHDRAWN

The Final Order of Suspension issued by OSPI on November 18, 2011, was timely appealed by Appellant on December 7, 2011. During this administrative hearing, OSPI withdrew three allegations. Finding No. 15, that Appellant invited Student B over to her house while indicating that her husband was not going to be at home, is withdrawn. Finding No. 23, that Appellant's mother told the high school principal that she told Appellant that Appellant should not be texting male students like Appellant was doing, is withdrawn. The last sentence of Finding No. 29, that Appellant refused to be interviewed for the school district investigation, is withdrawn. OPP continues to recommend a one-year suspension as an appropriate sanction based on the remaining findings.

FINDINGS OF FACT

1. The Appellant holds Bachelors and Masters Degrees in Education, and Washington Education Certificate No. 378311E, which was issued on June 27, 2000. Her endorsements are in grades K-12 physical education and grades 4-12 in health. She is not a school psychologist or counselor.

2. Appellant was educated in EVSD schools, where she was a student athlete. On her 16th birthday, she met another EVSD athlete, Kevin Taylor. They continued to date after he graduated and moved to Spokane to attend college on a baseball scholarship. Appellant graduated the next year, and moved to Centralia to attend a community college on a softball scholarship. She moved again to complete her education at Eastern Washington University. She continued to date Mr. Taylor through her college years. Appellant completed her Masters degree at Central Washington University.

3. In 1999, when Mr. Taylor was playing semi-pro baseball in California, he arranged an elaborate public marriage proposal to Appellant during a game on the Fourth of July. They were married July 1, 2000.

4. Appellant and her husband each began their teacher careers with the Yakima School District. Appellant also coached middle and high school girls' fast-pitch softball, volleyball, basketball, and soccer. Her performance reviews were satisfactory.

5. Appellant's husband found employment with the EVSD, and they bought a home in the district in March 2001. Mr. Taylor teaches at EVSD elementary school.

6. Appellant and her husband were heartbroken on the death of their first child in 2003. The East Valley community in which they had grown up and to which they had returned offered comfort and support.

7. In February 2004, after a medically difficult pregnancy, Appellant and her husband became the parents of triplets. The infants required extended medical care after birth. The East Valley community again offered comfort and support, including a fundraiser of \$7,000.

8. EVSD offered Appellant part-time work as a physical education teacher for the 2004-2005 school year. The contract was for a 0.50 full-time equivalent (FTE) position.

9. Appellant's mother also works for the EVSD, as secretary to the principal and manager of the high school's main office.

10. For the 2008-2009 school year, EVSD increased Appellant's contract from 0.50 to 0.82 FTE. She was assigned four classes (3rd through 6th Period) plus a Connections class of sophomores. She was paid under the contract from 8:52 a.m. to 3:00 p.m. She was assigned to second lunch.

11. Appellant, her husband, and especially their triplets, were well known in the East Valley community. She was a popular teacher with satisfactory performance reviews, and well liked among EVSD teachers, students, and administrators. Appellant was anticipating teaching full time for the 2009-2010 school year, until EVSD placed her on paid administrative leave on June 9, 2009.

12. Appellant seeks reversal of the suspension order, asserting that she would not be facing the current allegations were it not for earlier high profile sensational allegations which resulted in criminal charges. The state failed to prove the criminal charges beyond a reasonable doubt and Appellant was found not guilty. Described by the parties as the "statutory hearing," a civil matter followed in which EVSD sought to end the employment relationship. The hearing officer determined EVSD failed to prove many allegations by a preponderance of the evidence. As to the allegations which were proven, the hearing officer concluded termination was not appropriate because the behaviors were remediable. EVSD appealed. This third legal proceeding followed. The more sensational and serious allegations rejected by the jury and the statutory hearing officer are not at issue here.

Credibility Considerations

13. Appellant describes this as a "she said-he said" case, pitting a solid member of the community, a teacher of good character, a Christian wife and mother, against a troubled boy from a dysfunctional family who was emotionally and mentally unstable (Student A). OSPI contends Appellant inexplicably behaved in a manner contrary to the tenets of her profession,

her employer's policies, and her Christian values, and holds her responsible because she was the teacher and the adult in the matter.

14. Appellant argues that Student A's failure to preserve the contents of text messages or the fact that he deleted them, particularly the last 200 texts exchanged June 7-9, 2009, should cause the administrative law judge to infer that they would have been relevant and favorable to Appellant or, conversely, unfavorable to the position taken by OSPI.

15. The evidence is not simply "Appellant said-Student A said." Other students who read the text messages supported Student A. Students described texts about events which actually did occur. Student A knew personal details about Appellant's life, described to him by Appellant. If Student A said and did the things reported by Appellant, then she did not behave in a manner consistent with a reasonable teacher. Appellant's testimony conflicted with that of many students, and with the testimony of Principal Hummel and Coach Morrison.

16. Student A shared with Appellant about his life. In 8th grade, Student A was suspended for initiating a fight, but the evidence establishes it was an isolated incident. He resisted referral to a counselor. Student A witnessed a violent crime some years prior in Mexico. A brother had drowned in a canal. One older brother was preparing for military service, another for college. His sister had married and left home in 2008. Student A lived with younger sisters and his mother, who spoke only Spanish. For several years, his father was seriously ill and required hospitalization and nursing home care. His father died in January 2009, after life support was removed.

17. Appellant described Student A as a deeply troubled boy who was emotionally and mentally unstable. However, Student A earned A's and B's his freshman year in courses including Agricultural Science, Microcomputers, Freshman English, German, Core Math, Intro to Fitness, and World History. His choice of German as a freshman elective was indicative of a student on a college career path. He was described by several coaches and teachers as a quiet leader. Other witnesses described him as quiet and respectful. His freshman football coach described him as a group leader, and while "boys will be boys" with bad language or telling stories, not so with Student A, who did not swear and displayed good morals. Sometime after June 2009, a friend asked the coach about Student A dating his daughter, and the coach approved and assured the friend of Student A's character. Student A had no absenteeism or disciplinary problems at EVSD high school. No other teacher or coach expressed a concern about Student A's behavior or reported observing signs of mental or emotional instability. Appellant's description of Student A was not shared by any other teacher or witness who regularly interacted with him.

18. Appellant asserts she did not hide text exchanges with Student A which occurred while she was in the presence of her mother, sister, friend, and hairdresser (her cousin). By mid-May 2009, her husband learned she exchanged text messages with Student A. However,

Appellant did hide that she was sharing secrets and personal confidences about herself with Student A. None of her supporting witnesses knew that Appellant exchanged text messages with Student A during the school day at times he was scheduled in other teachers' classrooms.

19. Appellant admits she behaved in a manner contrary to her marital vows and Christian values at a bachelorette party in Seattle on May 16-17, 2009. The indiscretion should have remained private, but Appellant told Student A and he told other students. To justify why she told Student A about the indiscretion, Appellant told the jury in the criminal matter that Student A was being hard on himself about mistakes he had made. She said she mentioned the indiscretion as an example of mistakes she regretted, to explain how everybody makes mistakes, that she apologized to her husband, and moved on from there. Exhibit 17, page 27. During the statutory hearing, Appellant had to concede she had not apologized to her husband in 2009. She asserts she did not mislead the jury; rather, she lied to Student A. Exhibit 18, pages 32-33. In this third legal proceeding, Appellant admits the details about the May 2009 indiscretion were revealed to her husband in spring 2010 when she knew the information would be made public at the criminal trial. OSPI contends Student A knew that Appellant had not told her husband about the indiscretion, a fact he would not otherwise have known but for Appellant's confessing to him. Appellant explains she lied to Student A in 2009 in order to encourage him to do the right thing.

20. Most witnesses were asked to recall events which occurred three years ago in the 2008-2009 school year. Most witnesses had previously testified about these matters twice before in earlier criminal and civil proceedings, and some had also been deposed.

21. To make findings supported by clear and convincing evidence, it was necessary to assess and weigh witness testimony and documentary evidence, and make credibility determinations. In resolving conflicting testimony, the administrative law judge considered the demeanor and motivation of the witnesses, the logical persuasiveness of the parties' positions, consistency with prior testimony, and the totality of circumstances.

22. Based on the foregoing factors, the administrative law judge finds that OSPI's witness testimony and other evidence is clear, convincing, and more logically persuasive than the Appellant's, and has formed the basis of the Findings of Fact related to these issues.

EVSD Daily Schedules

23. During the 2008-2009 school year, EVSD high school students attended six class periods daily plus a Connections class. The assignment to first or second lunch period determined the students' and teachers' schedules for 4th period. EVSD allotted 5 minutes to pass from one class to the next. Mondays began with staff "Collaboration," and 42-minute class periods for students starting at 8:50 a.m. The "regular" Tuesday through Friday periods

were 52 minutes starting at 7:50 a.m.. On occasion the periods were shortened by 10 minutes to allow a 30-minute period at day's end for a school-wide activity. Connections was scheduled daily for 25 minutes. The students' school day ended daily at 2:26 p.m.

24. Below is the "bell schedule" observed by students and teachers for the 2008-2009 school year:

	Collaboration Monday	Regular Tues - Friday	Activity Day
Collaboration	7:50 - 8:35		
1 st Period	8:50 - 9:32	7:50 - 8:42	7:50 - 8:37
2 nd Period	9:37 - 10:19	8:47 - 9:39	8:42 - 9:29
3 rd Period	10:24 - 11:06	9:44 - 10:36	9:34 - 10:21
Connections	11:11 - 11:35	10:41 - 11:05	10:26 - 10:47
First Lunch	11:35 - 12:05	11:05-11:35	10:47 - 11:17
4 th Period	12:10 - 12:52	11:40-12:32	11:23 - 12:10
4 th Period	11:40 - 12:22	11:10 - 12:02	10:52 - 11:40
Second Lunch	12:22 - 12:52	12:02 - 12:32	11:40 - 12:10
5 th Period	12:57 - 1:39	12:37 - 1:29	12:15 - 1:03
6 th Period	1:44 - 2:26	1:34 - 2:26	1:08 - 1:56
Activity Period			1:56 - 2:26

EVSD Policies and Procedures

25. EVSD Staff Handbook. In August 2008, Appellant received a Staff Handbook for the 2008-2009 school year. Exhibit JT 12.

26. The Staff Handbook described the Connections Program. Each staff member serves as a "coach" to a group of approximately twenty students. The coach is responsible to help supervise and guide the students to complete the requirements of the program. The group is of students all of one grade, and remains with the coach for the four years of high school. Each coach represents a caring staff member who encourages the students in their group to connect in a positive manner within the school, to build connections with staff, and to understand the connections between their efforts in school and their post secondary opportunities and success. Connections meets daily for approximately 25 minutes as a graded class that impacts cumulative grade point average.

27. To meet new state non-credit graduation requirements, EVSD chose to monitor and support the requirements through the Connections Program. EVSD designated Tuesdays as the day for coaches and students to focus on the senior culminating project, career pathway exploration/job shadow/presentations, and community service activities. EVSD remained committed to its original goal to have every student reading silently every day for 25 minutes, with the exception of Tuesday activity days as needed to comply with the non-credit graduation requirements. Connections is not a study hall, and reading from class room textbooks or for homework is not appropriate. The Staff Handbook described in detail the type of reading-related activities which might extend beyond Tuesdays at the coach's discretion, not at the student's discretion.

28. The Staff Handbook section on Electronics in the Classroom states:

It is important that all staff members consistently enforce the school expectations regarding electronic devices at school. The policy is written as follows in the student handbook—

East Valley High School strongly discourages students from bringing electronic devices to school as they are prime targets for theft. The school will assume no responsibility for lost, misplaced, damaged or stolen electronic devices, including no responsibility to attempt to recover stolen electronics. **Electronic devices are not permitted into any classroom or learning environment, including the library and auditorium, at any time.** If brought to school, the student is responsible to ensure that they are in a secured area, such as a locker, while the student is in class. Students observed to have electronics (i.e. cell phones, I-pods, MP3 Players, CD players, audio and/or video recorders, video games, etc.) in their possession in a learning environment will be disciplined. The possession of camera phones in private areas such as locker rooms and restrooms is strictly forbidden and will carry the consequence of a suspension for a first time offense.

As a way of modeling this expectation, teachers should also limit their own cell phone use to non-instructional times.

29. The Staff Handbook addresses Parent Communication, a target area from the 2007-2008 school improvement plan to improve communication with parents. At the end of each month, secretaries place EVSD post cards in each teacher's mail box for use to send home a positive note about a student. The Staff Handbook states additional cards may be obtained from Mrs. Lamar, the EVSD high school main office manager and Appellant's mother. A quick check-off form to communicate a concern about a student was also developed, available in the office in English and Spanish.

30. The Staff Handbook section on Supervision of Students reminds teachers that leaving students unsupervised places both the teacher and the district in a situation of increased liability. Leaving a classroom unattended should only occur in emergency situations. In the event a teacher finds it is necessary to leave a classroom, the expectation is to "please notify a neighbor and minimize the time out of the classroom."

31. EVSD Policies Nos. 5100 and 2022. The Electronic Information System and Interschool and Electronic Mail and Message Delivery policies do not describe any of the conduct at issue here. Exhibit JT 25.

32. EVSD Policy No. 5242. Entitled Maintaining Professional Staff/Student Boundaries, the purpose of the policy is to provide staff, students, volunteers, and community members with information to increase their awareness of their role in protecting children from inappropriate conduct by adults. Exhibit JT 26. The EVSD Board of Directors expects all staff members to maintain the highest professional, moral, and ethical standards in their interaction with students. Staff members are required to maintain an atmosphere conducive to learning, through consistently and fairly applied discipline and established and maintained professional boundaries. The interactions and relationships between staff members and students should be based upon mutual respect and trust, an understanding of the appropriate boundaries between adults and students in and outside of the educational setting, and consistent with the educational mission of the schools.

33. Policy No. 5242 further provides that staff members will not intrude on a student's physical and emotional boundaries unless the intrusion is necessary to serve an educational or physical, mental and/or emotional health purpose. An educational purpose is one that relates to the staff member's duties in the district.

34. Additionally, staff members are expected to be sensitive to the appearance of impropriety in their own conduct and the conduct of other staff when interacting with students. Staff members will discuss issues with their building administrator or supervisor whenever they suspect or are unsure whether conduct is inappropriate or constitutes a violation of the policy. The EVSD Board supports the use of technology to communicate for educational purposes. However, employees are prohibited from inappropriate online socializing or from engaging in any conduct on social networking Web sites that violates the law, district policies or other generally recognized professional standards. The policy does not mention text messaging.

35. Policy 5242 provides illustrative examples of inappropriate boundary intrusions by staff members which constitute unacceptable conduct. Examples included:

- a. Singling out a particular student or students for personal attention and friendship beyond the professional staff-student relationship;

- b. For non-guidance/counseling staff, encouraging students to confide their personal or family problems and/or relationships. If a student initiates such discussions, staff members are expected to refer the student to appropriate guidance/counseling staff. In either case, staff involvement should be limited to a direct connection to the student's school performance;
- c. Banter, allusions, jokes, or innuendoes of a sexual nature with students;
- d. Disclosing personal, sexual, family, employment concerns, or other private matters to one or more students;
- e. Maintaining personal contact with a student outside of school by phone, email, Instant Messenger or Internet chat rooms, social networking Web sites, or letters (beyond homework or other legitimate school business) without including the parent/guardian.

Exhibit JT 26, page 3.

36. Policy 5242 further provides that, whenever possible, staff should avoid situations which can create actual impropriety or the appearance of impropriety, including being alone with an individual student out of the view of others, inviting or allowing individual students to visit the staff member's home, or social networking with students for non-educational purposes. If unavoidable, the activities should be pre-approved by the appropriate administrator. Lacking pre-approval, the staff person must report the occurrence to the appropriate administrator as soon as possible.

37. EVSD Policy 3416. The policy regarding Medication at School anticipates that under normal circumstances medication will be dispensed before and/or after school hours under supervision of the student's parent or guardian. For school-day dispensing, each school principal may designate two staff members to administer prescribed or non-prescribed oral medication. The policy provides for adoption of procedures in each school, including written authorization from a parent and as needed, from a physician or dentist. Exhibit JT 37.

38. Appellant was not a staff member designated to administer oral medications to EVSD high school students.

EVSD Staff Training

39. In August 2009, Appellant participated in three staff training sessions. EVSD training for athletic department staff specifically defined proper and improper behavior between coaches and students, relationship boundaries, and avoiding behavior which is inappropriate or could be perceived as inappropriate. An all-staff training addressed sexual

harassment and reviewed EVSD policies and procedures. EVSD written policies did not specify newer telephone technology like text messaging. Each administrator provided training related to building-specific policies and procedures. The orientation at EVSD high school and subsequent periodic staff training included forms and procedures for its team approach to responding to teachers who reported a student-of-concern.

Student B

40. Appellant's telephone records detail the date and time of two telephone calls and over 350 text exchanges with Student B. Exhibit Jt 35.

41. On Saturday, October 4, 2008, at 2:25 p.m., Appellant sent a text message from her cellular phone to the cellular phone of Student B. She did not receive a reply text.

42. A month later, at 6:14 p.m., on Wednesday, November 11, 2008, Appellant sent a second text message to the same number. A reply text was received to which Appellant responded, and Student B sent her an incoming text one minute later. The four-text conversation was completed in about 38 minutes.

43. Appellant explains she initiated the texts after she saw the name "Hottie" in her list of contacts on her cellular phone. She was curious about who had accessed her cellular phone and added the contact and decided to text the number. She learned it belonged to Student B. Appellant did not delete Student B's telephone number from her contacts list.

44. Student B was a sophomore. Appellant was his Connections coach. After June 2009, Student B transferred to another school.

45. Appellant initiated a 9-text exchange with Student B starting at 2:15 p.m. on Friday, January 30, 2009.

46. Appellant sent one text to Student B on Wednesday, February 25, 2009, at 6:56 p.m., but received no reply.

47. Shortly after midnight on Saturday, February 28, 2009, Appellant sent one text to Student B, but received no reply.

48. Appellant sent a text to Student B on Tuesday evening, March 3, 2009. A total of 8 texts were exchanged between 5:28 p.m. and 7:33 p.m. Appellant and Student B did not exchange another text for eight weeks.

49. Appellant initiated a text exchange with Student B on Tuesday, April 28, 2009. Between 12:42 p.m. and 4:54 p.m., they exchanged over 45 text messages. Early the next

morning, starting at 5:38 a.m., Student B initiated a text exchange with Appellant, which continued until 11:33 a.m., when he placed a one minute telephone call to Appellant.

50. Appellant and Student B continued to text over the next two weeks, with some exchanges initiated by Appellant and some initiated by Student B. The texts were exchanged from very early morning to very late evening, weekdays and weekends.

51. Appellant asserts the content of the text conversations with Student B concerned the advantages and challenges of participating in the Running Start program for his junior and senior years. She recalls Student B was a twin, and near Mother's Day she reminded him that mothers of multiples are special and to treat his mother well. She also told him about her weekend plans to go to the Bloomsday run. Their final text conversation occurred on Friday afternoon, May 15, 2009.

52. Appellant admits she violated EVSD policy when, without a medical note or parental permission, she provided an over-the-counter medication to Student B. Other than her claim she knew Student B suffered migraine headaches, Appellant admits she acted without knowledge of Student B's allergies, the potential for interaction with other medications, and his medical history.

53. Appellant was alone with Student B when she dispensed the medication. Teachers are often alone with a student at school during the school day. Examples of common situations include testing, the student first to arrive for class or last to depart, and conversations after class. The evidence does not clearly and convincingly establish that in being alone with Student B, Appellant departed from EVSD's expectations.

54. On June 8, 2009, Appellant made an unusual request to the school counselors who monitored Running Start participants. She asked if it would be okay if Student B stayed assigned to her Connections class and that she be the one who would monitor his fulfillment of non-credit graduation requirements starting in the 2009-10 school year. Running Start students attend class at a community college campus rather than the high school. The counselors sought input from the principal, who replied it was Appellant's call provided she understood Student B would remain her responsibility. A counselor told Appellant it was easiest to get the kids' cell phone numbers to contact them about upcoming deadlines and the like, and Appellant asked the principal if it would be acceptable for her to do the same with Student B. The principal replied "the word of the day is document," and that Appellant was to keep a written log of every time and the manner in which she communicated with Student B as "you never know how or why it will get turned back on you." Appellant did not tell the principal she was already communicating about Running Start with Student B and had been doing so for months, or that she had not thought to keep a written log of the communications.

55. Rumors about an inappropriate relationship between Appellant and Student B

circulated amongst some EVSD high school students during the 2008-09 school term, but were not heard by Student A.

Student A

56. Student A was age 14 when he started his freshman year of high school at EVSD in the 2008-2009 school year. In second semester, Appellant became his 5th period Fitness teacher. Student A played freshman football, and in spring he played baseball.

57. All baseball players, freshmen to senior class, start the season with joint practice sessions the first week of March. During the 2009 joint sessions, Mr. Taylor directed the running and conditioning assignments. Mr. Taylor had taught and coached Student A in elementary school. On Thursday, March 5, 2009, Mr. Taylor was watching players run and talking to players as they were going by when he was deeply offended by Student A.

58. When he testified at Appellant's criminal trial in June 2010, Mr. Taylor stated that Student A passed by and asked, "Coach Taylor, how was your day today?" Mr. Taylor testified:

I said, Good. And he very sarcastically and with a smile that I'll never forget, a cocky smile, said, So was Ms. Taylor's. And I did not take that correctly at all. I was – I thought he was talking, obviously about my wife and in a very sexual manner. And so I stopped him from running at that point and brought him over to me, called him over to me, and told him specifically how that was very disrespectful for me as a coach/player relationship that you are talking about my wife. And he's just standing there listening to the conversation, staring at me and listening. And I continued to tell him how disrespectful that is. How that cannot be allowed. She is a teacher of yours. I'm your coach. There's a separation of this baseball field as my wife to be mentioned. But you need to know that I'm your coach, you're a player, and that she's your teacher and you are the student and that what you said was not taken very well. And so I told the rest of the team at that time, which I did have to shout, because we're running the perimeter of the baseball field. I had to shout that we had an extra two laps for that comment.

Exhibit 21, page 30.

59. At this administrative hearing in 2012, Mr. Taylor still considered Student A's remark to be sarcastic and intentionally sexual in nature, but his testimony differed about the remark itself. Instead of "So was Ms. Taylor's," which Student A has consistently said was intended as a reference to Ms. Taylor's day also being a good day, Mr. Taylor now claims the remark was "So was Ms. Taylor."

60. Mr. Taylor's description of Student A as just standing, staring, and listening, while Mr. Taylor continued to repeat how Student A was disrespectful, is consistent with Student A's description of being in shock because he did not know what he had said to upset Mr. Taylor.

61. Mr. Taylor later told Appellant that Student A had remarked about her in a sexual way. He told her he punished all the players by requiring them to run extra laps. Mr. Taylor knew the reaction of the other ball players, while Appellant observed Student A was being teased by other students at school. They talked about these observations extensively. Appellant observed a noticeable change in Student A's behavior at school. He had been an eager, communicative student, but avoided and barely spoke to Appellant during 5th period Fitness. Appellant spoke to Student A to ease the situation, and his embarrassment ended within a week or so.

62. Text exchanges. Seven weeks later, beginning April 24, 2009, Appellant exchanged the first of over 1,100 text messages with Student A. A few days after the text exchanges began, Student A turned 15 years of age.

63. On Friday, April 24, 2009, it happened that Student A was one of several students who did not have parental permission to go on a freshman field trip to visit Heritage University. Appellant was one of the teachers assigned to supervise the freshmen who remained behind. She decided to use the time to clean up the gym and fitness areas. Appellant allowed students to openly use electronic devices in the gym's wrestling area during at least the last 45 minutes of the school day.

64. Student A was using a new touch screen cellular telephone which could play music. Appellant sat down next to Student A and asked how to use the new style phone. Appellant provided her personal cellular telephone number, and at 1:49 p.m., a text message was sent from Student A's cellular telephone to her personal cellular telephone. She replied from her personal telephone with a text back to Student A at 1:51 p.m. Exhibit JT 34, page 1.

65. Appellant did not tell anyone about the exchange. Student A immediately told Student F, who had been seated nearby, that the Appellant had given her cellular telephone number to him, and showed Student F the text she had sent to him. Student A also told Student I about how he and the Appellant had each others' numbers.

66. On Monday, April 27, 2009, at 12:51 p.m., Appellant sent Student A one text message just before the end of her lunch period and Student A's 4th period class. Student A did not reply on April 27, 2009.

67. Appellant's behavior on April 27, 2009, and the days following, was not consistent with her description of the text she sent to Student A on April 27, 2009. Appellant claims a student's remark that Monday morning caused her to be concerned Student A was telling other

students he had her cellular number. She wondered what he might be saying about her, and whether he might be sharing her cellular number with other students. Appellant did not speak privately with Student A to discuss her concerns before or after class, after school that day, or at any time. Appellant did not delete Student A's telephone number from her contacts list. Appellant did not reprimand or discourage Student A the next day when he sent her a text at 9:13 a.m. Exhibit JT 34, page 1. Instead, she replied to Student A with a text sent at 9:19 a.m., ten minutes prior to the end of Student A's 2nd period class with another teacher. Appellant gives no explanation for how her concerns were allayed or resolved.

68. It is more credible and logically persuasive, considering the totality of the circumstances, that a 14-year old boy would recall a text sent by a teacher just before he enters her class. Student A's description is consistent with descriptions by other students of the flirtatious nature of later text messages. Student A's description is not inconsistent with the events which followed, including extensive text exchanges before, during, and after class on school days, on weekends, and all hours of the day and night. His description is not inconsistent with Appellant's subsequent disclosures about intimate details of her personal life. It is found that the substance of Appellant's text message to Student A on April 27, 2009, was to not text anything too bad because her husband was the jealous type.

69. Appellant and Student A exchanged text messages from April 28, 2009, until on or about May 12, 2009, the contents of which were general in nature, asking about each other's day, or Student A asking for advice about girls. Appellant and Student A disagree regarding the content of text messages exchanged thereafter through June 8, 2009.

70. Regarding the text messages between his wife and Student A, Mr. Taylor testified at the June 2010 criminal trial, and at this administrative hearing in 2012, that he was "completely fine with it." Exhibit 21, page 30. He credibly explained the positive influence of teachers and coaches in his own life. He was willing to guide and help students, and believed his wife had the same attitude. However, he is barely able to concede even the possibility of other meanings of the March 2009 remark, and does not believe that Student A's words could be interpreted as non-sexual. Mr. Taylor expressed strong emotion as he recounted his still-vivid memory of the remark. He remains convinced three years later, as he was convinced on March 5, 2009, that Student A intended the sexual nature of the remark, and intended to show disrespect toward Mr. Taylor right to his face. The evidence is clear and convincing that Mr. Taylor was not aware, day-to-day, of the volume of text exchanges, frequency of text exchanges, or time of day of text messages exchanged between Appellant and Student A.

71. Mr. Taylor clearly understood the standards for acceptable boundaries with students, and in that context he was fine with some conversation and limited text messaging strictly to mentor Student A. When Mr. Taylor learned from Appellant some of Student A's confidences about his family, Mr. Taylor suggested Appellant invite Student A to a family dinner. The suggestion was consistent with his upbringing, his supportive attitude, and his

understanding of acceptable boundaries to encourage students to broaden rather than isolate their community connections. He trusted his wife and her representations.

72. No party or witness to this administrative hearing preserved any of the text messages exchanged between Appellant and Student A. Appellant's relatives and friends did not read the incoming or outgoing texts on her cellular telephone. Student A's cellular telephone could store only 200 texts, and beyond that the chronologically oldest texts would be deleted one-by-one. Some days Student A exchanged 100-200 texts and found the automatic delete function to be a hassle. Sometimes he selected "delete all" to start over. There were no texts stored when he submitted his cellular phone memory card for examination by school authorities on the afternoon of June 9, 2009.

Other Students

73. Other students read texts from Appellant in Student A's cellular telephone in-box, or were with Student A when an incoming text arrived from Appellant. Student A also forwarded some of Appellant's texts to other students.

74. Student F was not a close friend of Student A, but also missed the freshmen field trip on April 24, 2009. Student F was seated on the wrestling mat next to Student A. Some students were sending texts or making calls on cellular telephones. Appellant did not stop any students from using cellular telephones. Student F saw out of the corner of his eye that Appellant sat down and talked to Student A for about 10 minutes. Student A told him that Appellant had asked how to send a text, and displayed his telephone to show Student F he had a text from Appellant. Student F read a text from Appellant that said "Hi" or something similar. Student A later told Student F that he and Appellant were exchanging text messages, but Student A did not show or describe any additional texts to Student F. Exhibit 8.

75. Student A told freshman Student I about how he and Appellant came to have each others' numbers. He showed Student I text messages from Appellant, and also forwarded text messages from Appellant. Student I was with Student A as he received an incoming message from Appellant. Student I read about 20-30 text messages from Appellant. Student I described Appellant's texts as initially casual and fairly benign. Over time, the content of the Appellant's texts to Student A became more personal and flirtatious, like friend to friend rather than teacher to student. Student I recalls reading texts like "5th period is my favorite because I get to see you," or "see your smile," and "if I was in high school you would be my type," and really wishing she could talk to Student A about a book in a text with a sad face icon. Student I recalled a text about Appellant getting married too young or too soon, and a text to the effect that Mr. Taylor found out about the texting, but believed Appellant when she said she was mentoring Student A. Student A indicated to Student I that he had asked Appellant to stop texting. Student I recalls Student A was upset, shocked, and confused while recounting a late-night telephone conversation with Appellant. After reading texts from Appellant like "I feel like

I've been broken up with," and "I am sorry I made you feel uncomfortable," Student I urged Student A to tell a teacher or coach about it. Student I was a model student with excellent grades, and an articulate, thoughtful witness. Exhibit 2.

76. Student D was a junior. He read a text message on Student A's phone from Appellant. The text message was something about Appellant being in Seattle at a bachelorette party, and that she had been drinking. Student A told Student D that Appellant kissed someone at the bachelorette party. Student D saw a few texts and cannot recall the exact wording, but the content left him with the definite impression Appellant thought Student A was "hot." The texts were not like a self-esteem style cheer up, but more flirty. Student A did not appear to be bragging. Student D was not in any of Appellant's classes. He and Student A played football and volleyball together, but they were not close friends. Student D graduated with an overall 3.24 GPA. Exhibit 3.

77. Student G was one of Student A's best friends. Student G's overall GPA for high school is about 3.3, which was maintained while playing sports and having an outside job through most of high school. Student G's initial impression was that Student A was comfortable exchanging texts with Appellant. Student G thought the texts he saw seemed kind of personal, not like what he would expect a teacher to send to a student. Student G recalls being in the school gym with Student A and the topic of discussion was a text from Appellant regarding a bachelorette party in Seattle where Appellant did something she wasn't supposed to do. Student G can no longer recall if he actually read texts about the party, or if Student A just talked about them. Student G's impression was that Appellant had cheated on her husband. Student G observed Student A was sometimes comfortable and sometimes uncomfortable about exchanging texts with Appellant. Student G understood Student A wanted Appellant to stop texting, but he didn't know how to get Appellant to stop. Exhibit 4.

78. Student E was a good friend, but not a best friend, of Student A during their freshman year. Student E thought it was weird Student A and Appellant were exchanging texts and did not know what to think about it. Student E saw only one text message from Appellant on Student A's phone, something about if Appellant was in high school Student A would be her type of guy. Student E teased Student A and Student A stopped sharing texts with Student E. Student A did not talk much about Appellant. Student E was not interested in talking about the text exchange because Student E did not think it would turn out good for anyone. Student E maintained an overall high school GPA of 3.0. Exhibit 5.

79. Student J was a junior and was not close to Student A, but they knew each from athletics and were related by the marriage of their older siblings. On Saturday, June 6, 2009, they attended a tournament in Ellensburg. Student J recalls he was approached by Student A at lunch, and Student A began to talk about text messaging with Appellant. Student J was initially skeptical until Student A opened his cellular telephone and scrolled through a "bunch" of texts from Appellant. Student J can only remember the content of a few texts. Student J

recalls one text, something about "why can't two people be together in the same house, one with hormones and one who hasn't done anything in a while." Student J cannot recall the exact wording, but "hormone" was memorable because it seemed very odd that a teacher would send a message about hormones to a student. Student J recalled another text, something like "I'm worried you're not texting me," or "you haven't been texting me back." Student A told Student J about a late-night phone call where Appellant was purportedly in the garage so her husband would not find out they were talking. Student J understood Student A wanted to stop exchanging texts with Appellant. Student J told Student A to talk to Coach Morrison about the situation. Exhibit 6.

80. Student L was a sophomore and related to Appellant by marriage. Student L could not believe the rumors he heard about text exchanges between Appellant and Student A. He did not like that a member of his family was the subject of rumors. Student L did not go to Appellant or to Mr. Taylor. Student L talked directly to Student A, whom he knew from the March 2009 football conditioning. They were not on the same team and were not friends. Student L asked if Student A was texting Appellant. Student A took out his cellular telephone and showed a text from Appellant. Student L does not recall the content, only that it did not cause him concern. Student L asked if Student A had sent any pictures, and Student A replied he had not. Student L and Student A differ slightly in their recollection of whether Student L asked if any texts were inappropriate or asked if they were sexual, but agree that Student A replied, "No."

Other Objective Evidence

81. The testimony of student witnesses was consistent with other objective evidence. Appellant attended a bachelorette party in Seattle, on May 16, 2009, where she consumed alcoholic beverages. Appellant sent text messages to Student A from Seattle on May 16 and 17, 2009, the last sent at 3:53 a.m. Exhibit JT 34, page 6. Appellant disclosed to Student A that she had kissed a man not her husband while at the Seattle bachelorette party. Appellant hosted a bachelorette party at her home on June 6, 2009, after which the party moved to a Yakima bar. She exchanged text messages with Student A through the afternoon and early evening of June 6, 2009, and from 9:23 p.m. until her final two messages at 10:33 and 11:08 p.m., Appellant continued to text Student A past midnight, sending him a text at 12:12 a.m. on June 7, 2009. Appellant sent a text to Student A on June 6, 2009, at 10:59 a.m., and she sent enough texts to constitute a "bunch" on June 4th (31 texts) and June 5th (14 texts). On June 4 and 5, 2009, Appellant talked for 73 minutes by telephone with Student A starting at 11:45 p.m., and continuing past midnight, while in her garage. Exhibit JT 34, pages 13-14.

82. In an effort to explain her decision to leave the house on June 4, 2009, a school night, for a late-night telephone call with Student A, Appellant and her husband described their home routine, his early bed time, that he was a light sleeper, and the layout of their home including the heated office/exercise area in the adjacent garage. It is not necessary to

determine Appellant's motive for going to the garage to speak to Student A. It is sufficient to find that, on June 4, 2009, Appellant exchanged numerous text messages with Student A starting at 7:14 a.m. and continuing throughout the day and into the evening. Appellant initiated the final text exchange at 9:48 p.m, which continued every few minutes through her last text at 11:31 p.m. Appellant invited Student A to telephone her, she accepted his call at 11:45 p.m., and they talked for 73 minutes. Exhibit JT 34, page 13.

83. Appellant admits to the quantity, dates, and time of day of the telephone calls and text messages she exchanged with Student A, who was a boy half her age. She admits that she shared with Student A many details about her personal life, including details of her high school years, dating her husband, the death of her first child, a difficult pregnancy, a family outing to the Bloomsday run, and the indiscretion at the Seattle bachelorette party.

84. Then and now, a text exchange between an EVSD teacher and student is rare except for the occasion a coach might text the team that practice was delayed. Students agreed it was weird or strange or odd for a teacher to be sending any text messages to a student. Between January 2009 and June 2009, Appellant exchanged less than 140 text messages with all other persons, compared to over 350 with Student B and over 1,100 with Student A.

85. Appellant did not think it was inappropriate to exchange texts during the 5-minute passing time between class periods, or during the first and last five minutes of Fitness classes. She explained gym class did not start and end like academic classes; rather, her students spent the first and last five minutes of the class period suiting up or down in the locker room. Appellant noted the Staff Handbook section on Electronics in the Classroom urged teachers to limit their own cellular phone use to non-instructional times. Exhibit JT 12. Appellant contends passing time and the suit-up, suit-down times are such "non-instructional" times.

86. Appellant offered no explanation for exchanging multiple texts with Student A at times he was attending other teachers' classes. Appellant offered no explanation for exchanging multiple texts with Student A at times he was scheduled in another teacher's Connections class and supposed to be engaged in 25 minutes of silent reading. Appellant's contention is contrary to the EVSD policy regarding student use of electronic devices. She asserts, without any objective support, that each teacher had discretion regarding enforcement of the Electronic Devices policy during class or instructional periods.

87. Excluding the first exchange on April 24, 2009, on 17 school days Appellant and Student A exchanged texts during the times he was scheduled to be in a class. The number of text conversations during class time cannot be determined from the evidence because of the possibility that, on a few days, EVSD departed from the published schedule due to conferences, late starts, or other activities. However, the evidence is clear and convincing that

on at least a dozen school days, at times when Student A was in another teacher's class room, he and Appellant were exchanging texts.

88. Appellant's claim that policy enforcement was at the discretion of the classroom teacher during Fitness class is not credible. She admits to an absolute ban or prohibition on using cellular telephones in the locker rooms, and students do not carry electronic devices while in gym suits. She confirms the Physical Education Department teachers were aware of risks associated with cellular telephone cameras in the locker rooms. Nevertheless, her telephone records show text exchanges during the first five or last five minutes of 5th period Fitness, time Student A could be in the locker room suiting up or down.

89. Appellant admits she exchanged texts with Student A while in Seattle at a bachelorette party where she consumed alcoholic beverages. She does not deny her telephone records show a text to Student A in the early hours of Sunday after the party. She admits she has no memory of the 3:53 a.m. text.

90. Appellant admits her telephone records show nine telephone calls exchanged with Student A. She claims she missed the call from Student A the evening of the second bachelorette party, June 6, 2009. She does not deny the time of day of other calls, including during the school day and two late-night telephone calls on June 4 and June 8, 2009. She admits she never informed Student A's parent about the personal contact by telephone communication after school hours.

91. Appellant's stated purpose. Appellant's stated purpose for exchanging texts and telephone calls with Student A is inconsistent with EVSD policy and reasonable standards for teachers' behavior. She contends the text exchanges had an educational value to the extent that her assistance enabled Student A to function at school following the death of his father, and amidst other family struggles. Appellant claims she initially engaged in the text conversations in an attempt to be a caring, accessible teacher, because students often find it easier to communicate about personal matters with younger teachers like herself. After Student A raised more serious subjects, she continued text exchanges and telephone calls because she believed she was the only adult that Student A trusted. She claims he repeatedly declined her encouragement that he discuss matters with a counselor. She claims she realizes now it was a mistake to believe she could counsel and mentor Student A, and admits her attempts to counsel failed.

92. EVSD policy defines an educational purpose as one that relates to the staff member's duties in the district. Exhibit JT 26. During the 2006-2007 school year, Appellant taught health class while the regular teacher was on maternity leave. It may have been proper, in a class focused on child development and family relationships, for Appellant to discuss with a student her own experiences as a wife and mother, or details regarding her youth, or pregnancy. Appellant's text exchanges and telephone communication with Student A did not

relate to the fulfillment of her duties as Student A's Fitness teacher.

93. Appellant's actions encouraged Student A to confide in her about his personal or family problems and/or relationships in violation of EVSD Policy 5242. Exhibit JT 26, page 3. When a student initiates such discussions, a teacher is expected to refer the student to the appropriate guidance/counseling staff.

94. During the 2008-2009 school year, the duties of EVSD's high school counselors were focused on testing and test administration. However, Appellant knew the counselors. She spoke to a counselor about the Running Start program, and sent an electronic mail to a counselor about Student B. She could have spoken to a counselor about Student A. The counselors maintained an open door and remained available to teachers and students during both first and second lunch periods. The counselors met weekly with high school administration and other colleagues to address or follow-up on reports of a student-of-concern. The reports of a student-of-concern were made orally and in writing by teachers, students, administrators, and the counselors. Appellant talked to Student A about whether he should talk to a school counselor. Appellant's behavior in continuing to attempt to counsel Student A regarding his home and family circumstances was not consistent with the behavior of a reasonable teacher or EVSD policy.

95. Appellant's stated purpose of counseling or mentoring was not limited to a direct connection to Student A's school performance, or to his performance in her 5th period Fitness class, in violation of EVSD Policy 5242. Exhibit JT 26, page 3.

96. EVSD policy prohibits teachers from maintaining personal contact with a student outside of school by telephone without including the parent. Exhibit JT 26. Appellant maintained personal contact with Student A by telephone through oral conversations and typed text messages without knowledge or permission of his parent, in violation of EVSD policy.

97. Failure to refer for counseling. Appellant described Student A as emotionally and mentally unstable by late May and early June 2009. To the jury in the criminal trial, Appellant described Student A as "raging mad," "tanking," and "just falling apart" during text and telephone communication. Exhibit 17, pages 13-14, 21, and 52. Other teachers, administrators, and students described Student A as confused. Students I and J knew that Student A was upset about a late-night telephone call which occurred on June 4, 2009.

98. Appellant knew or should have known by late May or early June 2009, that Student A was upset and wanted to stop communicating by telephone with her. Her claim that she decided to stop the text exchanges and that she told Student A that he would need to be the one to reopen communication, is not consistent with her behavior between June 4 and 9, 2009. Appellant did not alert Student A's mother, his other classroom teachers, the school's

counselors or administrators, to his unstable condition, or even attempt to do so. Appellant departed from EVSD policy when she did not seek advice from her professional colleagues about how best to respond to concerns she allegedly had for Student A.

99. Multiple teachers and/or administrators gave clear and unambiguous testimony regarding the role and responsibility of a teacher when responding to a student in troubling circumstances as described by Appellant. A teacher is the adult and the person responsible to make difficult decisions in the best interests of a student, including the decision to make referrals to counselors or administrators with the professional credentials and expertise to actually counsel a student.

100. When Student A spoke to Coach Morrison, the coach immediately recognized his responsibility to seek advice and counsel from the high school principal. Teachers and administrators all easily identified "red flags" regarding the kind of behavior which Appellant attributed to Student A. They described Appellant's behavior toward Student A as inconceivable and unfathomable. Appellant departed from accepted teaching standards and EVSD policy when she failed to make referrals to counselors or administrators. Her behavior singled out Student A for friendship or personal attention in violation of EVSD Policy 5242. Exhibit JT 26, page 3.

101. Appellant violated Student A's trust when she shared the stories he had confided to her with her mother, her sister, her hairdresser, and a friend she knew was Student's A's neighbor. None were teachers or counselors. Their perception of Appellant as a caring teacher does not excuse Appellant's failure to comply with accepted teaching standards and EVSD policy when she failed to inform the appropriate EVSD professionals of her beliefs concerning the Student's fragile state of mind.

102. Appellant's decision to share extensively with Student A personal information about herself was inconsistent with EVSD policy for appropriate teacher/student boundaries, relationships, and avoiding actual or the appearance of inappropriate conduct.

103. Appellant knew or should have known by late May or early June 2009 that Student A was upset and expressing a desire to stop communicating with her. Her claims that it was she who decided to stop the text exchanges and that she told Student A that he would need to be the one to reopen communication is not consistent with her behavior between June 4 and 9, 2009.

Student A's "Threat."

104. Appellant sent a text to Student A on Monday, June 8, 2009, at 7:53 p.m., to which he replied with a one-minute telephone call. They exchanged texts throughout the evening, seven between 10:20 p.m. and 10:29 p.m., followed by a 15-minute telephone call initiated

by Appellant. She testified in the criminal matter that during this telephone call Student A threatened to go to school the next day and ruin her life. Exhibit 17, page 23.

105. Appellant saw Student A at school on Tuesday, June 9, 2009, but he was absent for 5th period Fitness class. Appellant left the high school building, went to the main office building, spoke to her mother, and learned Student A was in the office talking with Principal Hummel and Coach Morrison. She returned to the high school and taught 6th period Fitness class. She denies any urgency, but she did not tell a neighboring teacher she needed to leave the building and ask that students be supervised for any part of the 5th period suiting-down time, for passing time, or for 6th period suiting-up time.

106. Appellant did not immediately tell her husband that Student A had threatened her, even though she claimed the source of Student A's anger was the betrayal he felt after learning that Appellant had shared his personal confidences with her husband. Exhibit 17, page 21.

107. On June 9, upon arrival at school, Appellant did not tell Principal Hummel she had been threatened by Student A. Even if Appellant initially did not believe Student A would carry through with the threat, she still did not tell Principal Hummel about his threat after she saw Student A in the office with Coach Morrison and Principal Hummel. Appellant did not tell Principal Hummel about the threat when, at day's end, he informed her that she was being placed on administrative leave pending investigation into serious allegations made against her. The next day, at a meeting on June 10, 2009, Appellant did not mention the threat to Principal Hummel or the EVSD Superintendent.

108. There is no evidence that Appellant immediately told her union representative about receiving a threat. There is no evidence that Appellant or her union representative reported the threat to EVSD or any other authority.

109. At passing time before 5th period on June 9, 2009, Coach Morrison was standing in his classroom doorway monitoring students in the hallway. His classroom was the last doorway before the gym where Appellant taught Fitness class. Student A asked if he could come into his room. Student A did not want to go to Fitness class. Coach Morrison sought more information, and Student A began to describe text and telephone communication with an unnamed teacher. After about ten minutes, he told Coach Morrison the teacher was Appellant. Coach Morrison understood Student A wanted to hide and not attend Fitness class for the next few days until school ended on June 11, 2009. Coach Morrison told Student A he thought this information was the kind that needed to be reported. Coach Morrison understood Student A did not want to get Appellant in trouble, but did want the communication to stop.

110. Coach Morrison explained to Student A that as a teacher it was his duty to do what was best for Student A. He told Student A to wait while he sought the advice of the principal. After speaking to Principal Hummel, Coach Morrison told Student A he needed to tell the

principal. He offered to accompany Student A. If Student A refused to tell the principal, Coach Morrison stated he would tell because it was his duty. Student A accompanied Coach Morrison to the principal's office and told Principal Hummel about text exchanges and late-night telephone calls with Appellant, and he details about Appellant's personal life. Shortly after informing EVSD authorities, Principal Hummel was told to inform the building union representative a meeting was needed with Appellant, and to verbally inform Appellant she was being placed on paid administrative leave pending investigation

111. Appellant's reaction to Principal Hummel. Appellant claims she remained silent during the June 9, 2009, meeting and made no mention of Student A or his threat because Principal Hummel would not permit her to talk, and because before the meeting began her union representative told her to remain silent. Appellant did not offer the testimony of the third person who attended the meeting, her union representative, who reportedly witnessed that she remained silent before Principal Hummel.

112. Principal Hummel has informed teachers about pending investigations and has observed the reaction of many teachers. Student A had just disclosed details about Appellant's personal life reportedly learned during text and telephone conversations with Appellant, and Principal Hummel anticipated Appellant's reaction would be something like, "Gosh, I need to tell you about Student A." He was surprised when she made no mention of Student A. Appellant repeatedly said she had no idea what the allegations could be about. She continued to ask for details to learn what these allegations might be. Principal Hummel repeatedly stated he could not discuss the details with her. Appellant did not mention she had been concerned enough about Student A's absence from her 5th period class that she found it necessary to leave the gym, or that she had recently observed Student A meeting with Principal Hummel.

113. EVSD Policy 5242 expects teachers will discuss issues with their building administrator or supervisor whenever they suspect or are unsure whether conduct is inappropriate or constitutes a violation of the policies regarding teacher/student boundaries. Exhibit JT 26, page 1. The policy expects teachers to be sensitive to the appearance of impropriety in their own conduct when interacting with students. At no time during the 2008-2009 school year did Appellant discuss with Principal Hummel or other EVSD authority her interactions with Student A.

114. Appellant's testimony at this administrative hearing and the prior criminal trial that "a million things" came to mind about what Principal Hummel was talking about is not logical. Exhibit 17, page 52. It is inconsistent with her other claims that Student A had recently been raging mad, tanking, falling apart, and had threatened her. A reasonable teacher in Appellant's situation would have immediately regretted sharing personal information with a freshman boy, and such regret would likely have immediately come to mind. A reasonable teacher with Appellant's actual knowledge of the full extent of the text exchanges would have

immediately thought about having to explain herself. Appellant's testimony on this point is not credible.

115. Appellant's failure to inform Principal Hummel of a threat made by Student A was inconsistent with EVSD policy, common practice, and the expectations of Principal Hummel that teachers keep him informed of potential problems, risks, challenges, or claims. EVSD policy required Appellant to tell her supervisor whenever she suspected or was unsure whether conduct was inappropriate, or constituted a violation of EVSD Policy No 5242, the boundaries policy. Communication between teachers and the principal allows the principal to not be blind-sided, be prepared before speaking to a parent or student, and to provide support to the teacher. A health, nutrition and child development teacher described how teachers are always at risk, and it is necessary and important for teachers to protect themselves and their students.

116. Coach Morrison and Principal Hummel were immediately concerned with at least the appearance of improper behavior by the Appellant, based on Student A's descriptions of Appellant's communications. Student A's report caused Principal Hummel to reconsider with skepticism the timing of Appellant's June 8, 2009, request to get the cellular telephone number of Student B.

117. Principal Hummel would have been one of the first people Appellant told if there had been a threat. When he learned in June 2010, the Appellant told the jury in the criminal matter that on the evening of June 8, 2009, Student A had threatened to go to school the next day and ruin her life, he was convinced she had been dishonest with him in June 2009. He is convinced Appellant feigned ignorance about the entire matter involving Student A, and he no longer trusts her judgment to teach.

118. Principal Hummel's description of Appellant's response to the news that serious allegations had been brought against her is consistent with his encounters the next day with her mother and husband. On June 10, 2009, Appellant's mother told Principal Hummel, who was her immediate supervisor, that she did not understand why no one would tell Appellant what this was about, and how unfair it was to Appellant to not have any idea what the allegations might be about. Principal Hummel saw Mr. Taylor shortly before the meeting scheduled for Appellant to meet with the EVSD Superintendent. He was surprised Mr. Taylor was not planning to attend, as he knew Mr. Taylor to be a very supportive guy. Principal Hummel was impressed that Mr. Taylor's demeanor and actions demonstrated he was unaware of the extent of the Appellant's relationship with Student A. Principal Hummel's impression was accurate, given the evidence that Mr. Taylor was not aware of the extent of the communication between Appellant and Student A, the Appellant's behavior at the Seattle bachelorette party, that Appellant had told Student A about what she had done at the party, or that Appellant had claimed to have recently been threatened by Student A.

119. The testimony of Principal Hummel and Coach Morrison was more clear,

convincing, and logically persuasive than the Appellant's testimony. Appellant did not remain silent when Principal Hummel informed her of the pending investigation, but instead she acted as the innocent victim, pretending to be ignorant of any source of concern or problem.

120. Student A, and the student witnesses with whom he shared Appellant's text messages, gave credible testimony about the contents of the texts. It is found that Appellant departed significantly from expected norms for teacher-student communication and boundaries when she exchanged texts and telephone calls with Student A. The exchange of cellular telephone numbers began at the initiative of Appellant, and continued with her encouragement. The claim she was counseling or mentoring Student A is inconsistent with exchanging texts while he was in other teachers' classrooms. She knew or should have known that her remarks to Student A about his appearance, hormones, and drinking and kissing another man in a bar were inconsistent with EVSD expectations for communication with students. When Student A wanted to stop, Appellant continued to text and inquire as to why he had not replied. Appellant knew or should have known Student A was not mature enough to cope with disclosures about her personal indiscretions or private life. It is found that on June 8, 2009, Student A did not threaten to go to school the next day and ruin Appellant's life.

121. A reasonable teacher does not respond to a student's need for help or guidance by exchanging text messages during the school day, while the student is in classrooms with other teachers. A reasonable teacher does not respond to a student's need for help or guidance with before and after midnight text message and telephone calls. When the totality of the circumstances are considered, the evidence is clear and convincing that the Appellant's statements about mentoring Student A were intended as a ruse.

122. Student A continued at EVSD during his sophomore year. EVSD offered \$5,000 to seek treatment from a private counselor, but Student A declined and instead sought counsel from EVSD personnel. Student A admits he does not like it when others tell him he needs a counselor. He is not opposed to counselors themselves, just to people thinking he needs a counselor. Student A transferred to a private school after rumors, media interest, and teasing made attendance at EVSD high school difficult. His grades dropped his sophomore year, but have since rebounded. He recently graduated high school and has won a college scholarship.

Administrative Leave Directive

123. On June 10, 2009, Appellant was given a written directive by EVSD Superintendent Schieche, which stated in part:

You have been placed on paid administrative leave until further notice. The reason for this action is that certain matters have been alleged concerning your inappropriate conduct with male students which must be looked into. An investigation will therefore be conducted.

The letter included a list of seven "Directives". Directive 1 stated:

You are hereby directed to not talk with anyone concerning this matter other than your union representative, your attorney, mental health counselor or doctor, law enforcement conducting an investigation, your clergyperson, and district representative conducting any school district investigation. Talking includes any form of communication, including telephonic, electronic, blogging, and texting communication. Should you need to discuss this matter with anyone other than those listed in this paragraph, you must obtain prior written consent for me to do so.

Directive 3 stated the Appellant was not to communicate with or cause communication about this matter with any student or member of any student's family or suggest to or cause anyone else to do the same. Directive 6 provided that she was to refrain from action which could be construed as retaliation against any person who has complained about her or who has offered any information about her. Exhibit JT 8.

124. On December 10, 2009, Appellant sent an electronic mail to nine EVSD staff asking for "help in gathering information on the two boys" who made allegations against her. She was seeking people who could talk about the "negative character" of the boys, even if the information was second- or third-hand. If the email recipients knew any other staff members that might have helpful information, Appellant asked to have those persons email or call her. Appellant admits her action violated Superintendent Schieche's administrative leave directive. Exhibit JT 9.

125. Appellant was fearful of the possibility of going to jail, and felt she had to do all within her power to defend herself. Also, she felt the accusations had been aired publicly in the media, and did not feel she was disclosing information not already known.

126. Superintendent Schieche learned of the Appellant's email and responded on December 22, 2009. He reminded her of his earlier directives, told her that he considered her email to the nine EVSD staff to have been a violation of the directives, and said that she was "not to have any contact with [EVSD] staff" regarding this matter. Exhibit JT 10.

127. Appellant sent a second electronic mail on September 9, 2010, to "groups," one of which included members of her bible study group. Exhibit JT 11. One of the individuals in the bible study group was an EVSD staff member. The husband of another bible study group member was an EVSD staff member. Although Appellant referenced the "crazy story told by the two boys" at the criminal trial, the content of the email is primarily informative regarding the status of her employment hearing with EVSD, the burden of proof, and the timing of entry of a decision. Appellant considers her September 9, 2010, email, at most, a technical violation of Superintendent Schieche's directive.

Factors OPP Considered in Determining Disciplinary Sanction

128. OPP considered the eleven factors listed in Washington Administrative Code (WAC) 181-86-080 to determine the appropriate level and range of discipline.

129. Factor 1. Seriousness of the acts and actual or potential harm. OPP acknowledges that the most serious of the allegations raised in 2009 are not at issue here. It asserts the behavior and rule violations which remain at issue are of a serious nature. The large number of texts exchanged between Appellant and Student A, over 1,100, primarily during a six-week period, at all hours of the day and night, before, during, and after school and on weekends, were considered serious acts. The disclosure of personal and intimate information to a student, attempts to counsel a student outside her scope of expertise, and a pattern of fostering personal relationships with her students were considered to be serious in nature. Actual harm to Student A was evident in falling grades, harassment and teasing, and media focus which necessitated Student A transferring to a different school. OPP considered the fact that all the student witnesses had to deal with this matter and endure questioning related to three legal proceedings throughout their high school years to be harmful. OPP considered that potential harm includes unknown long-term effects related to violation of trust by a teacher.

130. OPP considered that there were over 350 texts exchanged between Appellant and Student B, and that Student B also transferred to another school after June 2009. OPP considered there was potential for harm to the school and community, but did not explain how harm might potentially occur.

131. Factor 2. Appellant's criminal history. Factor not applicable; no record of convictions.

132. Factor 3. Age and maturity level of participants. Appellant is a mature, married adult in her 30's with nine years of teaching experience. Students A, B, and C were 14-16 years of age, as were other high school students with whom Student A shared text messages, or shared his confusion and desire to stop communicating with Appellant. OPP considered Student A and other student witnesses to be to be impressionable boys and girls during the 2008-2009 school year.

133. Factor 4. Proximity or remoteness of time. OPP considered the proximity in time of text exchanges and telephone conversations exchanged almost daily within a six-week period in spring 2009. OPP considered that Appellant had known Student A for only a few months before she decided to confide personal and intimate information to him. OPP considered the proximity in time between Appellant's awareness by late May 2009 that her disclosures and communication were upsetting to Student A, and her failure to seek counsel or help for Student A before June 9, 2009.

134. Factor 5. Disregard for health, safety or welfare. OPP considered that Appellant gave an over-the-counter medication to Student B without knowledge of his allergies, interaction with other medications, and his medical history. This demonstrated a disregard for Student B's health, safety and welfare. OPP considered that Appellant treated Student A as her friend rather than her student, disclosing intimate details of her life which exceeded his maturity level and coping skills. Even if Appellant's version of events was accepted, such inappropriate disclosures and her failure to seek qualified counseling and help for Student A showed disregard for his health, safety and welfare.

135. Factor 6. Behavioral problem. OPP considered Appellant's behavior to be a problem because it demonstrated a pattern of excessive sharing of personal information, and excessive communication with a student without educational purpose during all hours of the day and night and all days of the week. OPP also considered the pattern of not following policies and directives to be a behavioral problem. Examples of the Appellant failing to follow policies and directives included: deciding to use her own discretion whether to enforce student compliance with the electronic device policy; deciding to accept/send texts during class time; using her own interpretation of 'non-instructional' time; ignoring EVSD's expectation to supervise students during passing time; using her own discretion to dispense over-the-counter medication without complying with the medication policy; and not following the administrative leave directives.

136. Factor 7. Fitness. OPP considered the fostering or developing of personal relationships with students without telling anyone, even if only just the perception, to be activities which demonstrated Appellant's lack of fitness. OPP considered the act of sharing information about a teacher's personal life to demonstrate lack of fitness. OPP considered the text contents described by the students to demonstrate a lack of fitness. A teacher not willing to follow rules and procedures is not fit. A teacher who does not demonstrate honesty and integrity in dealings with students and administrators is not fit.

137. Factor 8. Discipline. Factor not applicable; no record of other discipline imposed against Appellant.

138. Factor 9. Aggravating or mitigating circumstances. OPP considered as an aggravating factor the excessive number and the very personal content of the texts exchanged with the Student A. It considered the request for permission to contact Student B by cellular telephone to be dishonest. OPP considered Appellant's frequent attempts to counsel a student without the education, training, or expertise to do so, and her failure to seek help from her appropriate professional colleagues, to be aggravating factors. OPP considered that Appellant initiated the disclosure of her own personal information, kept secret the confidential nature of her relationship with Student A, and persisted when Student A wanted to stop.

Mitigating information considered was that Appellant was a good teacher, with satisfactory evaluations, but for this six-week period.

139. Factor 10. Information to support character and fitness. No other information was considered, beyond the mitigating statements that support Appellant in Factor 9 above.

140. Factor 11. Other relevant information. No other relevant information was considered.

141. OPP recommended reinstatement of Appellant's teaching certificate will require:

Reinstatement will require: (1) Successful completion of a mutually agreed upon course, or training, for issues of appropriate/inappropriate relationships with students; (2) successful completion of a course or training for issues of appropriate/inappropriate interaction with students as a school teacher and (3) Michele Taylor will provide OPP with evidence of her successful completion of the coursework or training completed. The cost of conformance to all reinstatement requirements will be the responsibility of Michele Taylor.

AND/OR Reinstatement shall (also) require submission of a new application, including Character and Fitness Supplement, provided by OPP and having Michele Taylor's fingerprints be checked by both the Federal Bureau of Investigation (FBI) and the Washington State Patrol (WSP). Reinstatement shall also be contingent upon Michele Taylor's fingerprint background check returning with no criminal convictions that are listed in WAC 181-86-013, RCW 28A.410.090, and/or any felony convictions.

CONCLUSIONS OF LAW

Jurisdiction

1. The Washington Professional Education Standards Board has the authority to develop regulations determining eligibility for, and certification of, personnel employed in the common schools of Washington pursuant to Revised Code of Washington (RCW) 28A.410.010. OSPI administers these regulations, with the power to issue, suspend, and revoke education certificates. RCW 28A.410.010. OSPI has granted jurisdiction to OAH to hear appeals of actions to suspend education certificates. Washington Administrative Code (WAC) 180-86-170.

2. Pursuant to RCW 28A.410.090, OSPI may revoke or suspend any professional educator certificate it grants "based upon a . . . complaint of any school district superintendent . . . for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the State."

Burden of Proof

3. The burden of proof in a suspension or revocation hearing lies with OSPI. WAC 181-86-170 and -075. OSPI "must prove through clear and convincing evidence that the certificate holder is not of good moral character or personal fitness or has committed an act of unprofessional conduct." *Id.*

4. Clear and convincing evidence requires more than a mere preponderance of the evidence. *Nguyen v. Dep't of Health Med. Qual. Assurance Comm'n*, 144 Wn.2d 516, 534, 29 P.3d 689 (2001), *cert denied*, 535 U.S. 904, 122 S.Ct 1203 (2002).

Unprofessional Conduct

5. Pursuant to WAC 181-87-060:

Any performance of professional practice in flagrant disregard or clear abandonment of generally recognized professional standards in the course of certain specified professional practices is an act of unprofessional conduct:

- (1) Assessment, treatment, instruction, or supervision of students.
- (2) Employment or evaluation of personnel.
- (3) Management of moneys or property.

6. The terms "flagrant disregard" and "clear abandonment" are not defined by the regulations. According to *Hunter v. UW*, 101 Wn. App. 283, 290-291 (2000), "[i]f a term is not statutorily defined, the term is given its ordinary or common law meaning." In determining the ordinary meaning of a word or a term, a court may use a dictionary. *Zachman v. Whirlpool Fin. Corp.*, 123 Wn.2d 667, 671, 869 P.2d 1078 (1994).

7. Flagrant is defined as "extremely or purposefully conspicuous; glaring; notorious; shocking. Webster's Seventh New Collegiate Dictionary 316 (1972) "Disregard" is defined as "to pay no attention to; to treat as unworthy of regard or notice." Webster's Seventh New Collegiate Dictionary 241 (1972) "Abandon" means "to forsake, desert", and "to cease intending or attempting to perform." Webster's Seventh New Collegiate Dictionary 1 (1972)

Good Moral Character and Personal Fitness

8. The definition of good moral character and personal fitness is in WAC 181-86-013:

As used in this chapter, the terms "good moral character and personal fitness" means character and personal fitness necessary to serve as a certificated employee in schools in the state of Washington, including character and personal

fitness to have contact with, to teach, and to perform supervision of children. Good moral character and personal fitness includes, but is not limited to, the following:

- (1) No conviction of any felony crime . . .
- (2) No conviction of any crime within the last ten years . . .
- (3) No behavioral problem which endangers the educational welfare or personal safety of students, teachers, or other colleagues within the educational setting.

9. WAC 181-86-014 provides that the requirement of good moral character and personal fitness is an ongoing one:

The good moral character and personal fitness requirement of applicants for certification under the laws of the state of Washington is a continuing requirement for holding a professional educational certificate under regulations of the professional educator standards board.

10. The term "behavioral problem" is not defined by the regulations. The definition of "behavior" is "the manner of conducting oneself, to behave with manners." Webster's Seventh New Collegiate Dictionary 77 (1972) "Problem" is defined as "a question raised for inquiry, consideration, or solution," and "dealing with human conduct or social relationships, difficult to deal with." Webster's Seventh New Collegiate Dictionary 678 (1972).

11. It is concluded that EVSD policies did prohibit communication between a teacher and a student by telephone depending on timing, frequency, and content. It is not relevant whether the mode of telephonic communication between a teacher and a student was oral or written. A teacher's conduct which singles out a student for friendship or personal attention is contrary to EVSD policy. A reasonable teacher does not encourage a student to confide in her over a period of several weeks about the student's personal and family matters and/or relationships. It is concluded that OSPI has shown by evidence which is clear and convincing that the timing, frequency, and content of Appellant's communication with Student A was inconsistent with EVSD policies and the manner in which a reasonable teacher conducts herself. As to Student B, the evidence which is clear and convincing related only to the timing and frequency of communication by Appellant, which were inconsistent with EVSD policies and the manner in which a reasonable teacher conducts herself. Therefore, it is concluded the evidence is clear and convincing that Appellant's assessment, treatment, instruction, or supervision of Students A and B was in flagrant disregard or clear abandonment of generally recognized professional standards and constituted acts of unprofessional conduct. WAC 181-87-060. The evidence is not clear and convincing regarding the allegations related to Student C, and Appellant did not violate WAC 181-87-060 related to Student C.

12. It is concluded that EVSD policies did prohibit Appellant's behavior regarding the manner in which she dispensed medication to Student B. It is concluded that EVSD policies

did prohibit Appellant's behavior regarding the timing, frequency, and content of oral and written communication with Student A, and the timing and frequency of the written communication with Student B. OSPI has shown by clear and convincing evidence that Appellant had a pattern of conducting herself in a questionable manner. Appellant has repeatedly decided on her own interpretation of policies or directives without seeking clarification from the proper authority. She has repeatedly decided to use her own discretion in deciding whether and when and which policies or directives to follow or enforce. OPP has shown by clear and convincing evidence that Appellant's pattern of problematic behavior interacting with Students A and B endangered their educational welfare, and that she lacks good moral character and personal fitness. WAC 181-86-013

13. The evidence is not clear and convincing regarding endangerment of the safety of Student B. Appellant violated the medication policy, but there is no showing of harm or consequence to Student B related to the over-the-counter medication. Appellant's use of poor judgment does not demonstrate a lack of good moral character or personal fitness. WAC 181-86-013

Grounds for Suspension

14. The grounds for issuance of a suspension order by OSPI relevant to these facts are set forth in WAC 181-86-070(2) and (3):

(2) The certificate holder has committed an act of unprofessional conduct or lacks good moral character but the superintendent of public instruction has determined that a suspension as applied to the particular certificate holder will probably deter subsequent unprofessional or other conduct which evidences lack of good moral character or personal fitness by such certificate holder, and believes the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a suspension. Such order may contain a requirement that the certificate holder fulfill certain conditions precedent to resuming professional practice and certain conditions subsequent to resuming practice.

(3) The certificate holder lacks personal fitness but the superintendent of public instruction has determined the deficiency is correctable through remedial action and believes the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a suspension which states condition precedent to resuming professional practice and which also may state certain conditions subsequent to resuming practice.

15. To impose a sanction/disciplinary order, WAC 181-86-080 requires consideration

of eleven factors in order to determine the appropriate level and range of discipline prior to issuance of the discipline:

Prior to issuing any disciplinary order under this chapter the superintendent of public instruction or designee shall consider, at a minimum, the following factors to determine the appropriate level and range of discipline:

- (1) The seriousness of the act(s) and the actual or potential harm to persons or property;
- (2) The person's criminal history including the seriousness and amount of activity;
- (3) The age and maturity level of participant(s) at the time of the activity;
- (4) The proximity or remoteness of time in which the acts occurred;
- (5) Any activity that demonstrates a disregard for health, safety or welfare;
- (6) Any activity that demonstrates a behavioral problem;
- (7) Any activity that demonstrates a lack of fitness;
- (8) Any information submitted regarding discipline imposed by any governmental or private entity as a result of acts or omissions;
- (9) Any information submitted that demonstrates aggravating or mitigating circumstances;
- (10) Any information submitted to support character and fitness; and
- (11) Any other relevant information submitted.

Factors Considered in Determining Disciplinary Sanction of Appellant

16. Factor 1. Seriousness of the acts and actual or potential harm. The exchange of over 1,100 text messages with Student A over a six-week period at all hours of the day and night, before, during, and after school and on weekends, constitutes serious acts. More serious were the text exchanges during Student A's scheduled class times in another teacher's class, or when he was supposed to be reading in silence in the Connections program. More serious were the text exchanges on school nights after 10:00 p.m., and communication on any day in any manner after midnight. The exchange of texts with Student A while Appellant was consuming alcoholic beverages at a party and at a bar are serious acts, made more serious by Appellant's decision to disclose her circumstances to him. The disclosure to Student A by Appellant of personal and intimate information about herself or her marriage is a serious matter, made more serious by the unwarranted disclosure of misbehavior or indiscretion. The attempts to counsel outside the scope of Appellant's duties and expertise is a serious matter, made more serious by the failure to consult with colleagues who possessed the education, training and expertise to help.

17. Actual harm to Student A was evident in falling grades, harassment and teasing, and media focus which necessitated a school transfer. The EVSD class of 2012 was harmed

when their freshman year ended in scandal, confusion, and unflattering public spotlight. The remainder of their high school experience was tainted with discord, suspicion, confusion, investigations, and multiple legal proceedings. Potential future harm includes long-term negative impacts on students' ability to trust.

18. Student B transferred to another school, but the reason which motivated the transfer is not clearly and convincingly known, and that factor was not considered. OPP did not provide evidence to support consideration of potential future harm to the school and community.

19. Factor 2. Appellant's criminal history. Factor not applicable; no record of convictions.

20. Factor 3. Age and maturity level of participants. Appellant is a mature, married adult in her 30's with nine years of teaching experience. Student A was 14-15 years of age in his first year of high school. The other high school students with whom Student A shared text messages, or shared his confusion and desire to stop communicating with Appellant, were ages 14-16. Student B was a sophomore in high school during the 2008-2009 school year.

21. Factor 4. Proximity or remoteness of time. The text exchanges and telephone conversations between Appellant and Student A, and Appellant and Student B, occurred almost daily within a six-week period. The communication with Student A escalated in frequency and intensity of content, and within a few weeks Appellant had decided to confide personal and intimate information with Student A, although she had only known Student A since the start of second semester. The proximity in time between Appellant's awareness by late May 2009 that her disclosures and communication were upsetting to Student A, is considered in context of her failure to seek counsel or help for Student A before June 9, 2009. The Appellant's pattern of behavior ignoring policies and directives involved a broader range of time, beginning with the 2008-09 school year and continuing to remote times in 2009 and 2010 with administrative leave violations.

22. The proximity of time of Appellant's final telephone call to Student A the night of June 8, 2009, is considered in context of her behavior in response to Student A's absence from her 5th period Fitness class, and in response to observing Student A in the principal's office, and in response to learning from Principal Hummel about the pending investigation.

23. Factor 5. Disregard for health, safety or welfare. Appellant treated Student A as her confidante rather than her student, disclosing intimate details of her life which exceeded his maturity level and coping skills. This demonstrated Appellant's disregard for Student A's health, safety and welfare. Appellant's failure to consult with colleagues who possessed the education, training and expertise to help her and to help Student A demonstrated disregard for Student A's health, safety and welfare.

24. Factor 6. Behavioral problem. Appellant's behavior was a problem because it demonstrated a pattern of maintaining inappropriate personal contact with a student outside of school without parental knowledge. This included sharing of her personal information, and excessive communication all hours of the day and night and all days of the week. Appellant demonstrated a pattern of behavior of deciding arbitrarily not to follow policies and directives. That the behavior constituted a pattern was evidenced by the breadth and scope of the violations: deferring to her own discretion whether to enforce student compliance with the electronic device policy; deferring to her own schedule and exchanging texts with Student A regardless of the bell schedule; deferring to her own interpretation of 'non-instructional' time; deferring to her own standards for best use of paid contract time rather than actively supervising students as expected during passing time; deferring to her own judgment to dispense over-the-counter medication without complying with the medication policy; and deferring to her own goals instead of following the administrative leave directives.

25. Factor 7. Fitness. The Appellant supported the ruse of mentoring Student A when she told her mother, a sister, her husband, her hairdresser and a friend the details of Student A's life, while Appellant fostered or developed a personal relationship by sharing with him her secrets, confidences and intimate details of her personal life. Both her actions, and the perceptions of her actions, demonstrated a lack of fitness. Appellant's pattern of behavior of not following rules and procedures demonstrates a lack of fitness. Appellant's interactions with Principal Hummel on June 8 and 9, 2009, were lacking in honesty and integrity, and demonstrated a lack of fitness.

26. Factor 8. Discipline. Factor not applicable; no record of other discipline imposed against Appellant.

27. Factor 9. Aggravating or mitigating circumstances. The aggravating information considered is: text exchanges with Student A on at least a dozen school days while Student A was scheduled to be in another teacher's classroom; text and telephone communication with Student A after 10:00 p.m. on school nights, and after midnight on any day; the steady maintenance of communication on a nearly daily basis for six weeks totaling over 1,100 messages in an educational environment when any text between teachers and students at all was a rarity; the ruse of mentoring Student A; attempting to counsel Student A without the education or expertise to do so; and failing to seek help from or make referrals to appropriate professional colleagues. Appellant initiated the disclosure of her own personal information, kept secret the confidential nature of the relationship with Student A, and persisted when Student A wanted to stop. Mitigating information considered was that Appellant was a good teacher, with satisfactory evaluations.

28. Factor 10. Information to support character and fitness. No other information was considered, beyond the mitigating statements that support Appellant in Factor 9 above.

29. Factor 11. Other relevant information. No other relevant information was considered.

30. OSPI has determined that suspension will probably deter subsequent unprofessional or other conduct by Appellant which evidences lack of good moral character or personal fitness. Second, it also determined that the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a suspension. WAC 181-86-070(2).

31. OSPI recommended a one-year suspension as the proper sanction, but it has not proved all the factual allegations and has withdrawn three allegations listed in its Final Order. Two allegations withdrawn were the less egregious of its allegations, but the claim that Appellant invited Student B over to her house indicating her husband was not going to be home is an egregious allegation. OSPI has not proven that the text messages sent to Student B were without educational purpose, and speculation in light of the messages sent to Student A is insufficient. It also did not prove an encounter with Student B on June 9, 2009, involving a statement against interest by Appellant. OSPI did prove that Appellant used poor judgment and violated the medication policy, but there is no evidence of harm or consequence to Student B. Appellant's violation of the medication policy does not demonstrate a lack of good moral character or personal fitness. In the event evidence is not viewed favorably to Appellant, she argues that poor judgment on her part warrants only a letter of reprimand and other remediation conditions.

32. In *Patterson v. Public Instruction*, 76 Wn.App. 666, 887 P.2d 411, 416 (1994), the appellate court considered the appeal of an 18-month suspension, based on findings that a teacher failed to list prior employment on an application for professional employment, and removed his own job application file without authorization. *Patterson* held that falsification of an application for professional employment constituted unprofessional conduct. The falsification of the application, as well as the removal of the job application file without authorization, were both evidence of lack of personal fitness for teaching and the 18-month suspension was affirmed.

33. The Appellant's conduct and behavior had a direct negative impact on EVSD students, and in particular on Student A. The exchange of text messages with her student while he was in another teacher's classroom is a more serious act compared to the acts in *Patterson*. The disclosure of a personal indiscretion to a student half her age is a more serious act compared to the acts in *Patterson*. Appellant's pattern of behavior of not following rules and procedures is more serious behavior compared to *Patterson*. A letter of reprimand is not sufficient when these facts and conclusions are considered. The evidence clearly and convincingly supports a determination that the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a one-year suspension. WAC 181-86-070(2).


ORDER

Michele Taylor's Certification No. 378311E is SUSPENDED for twelve months. The conditions for reinstatement of the Review Officer are adopted, and are as follows:

Reinstatement will require: (1) Successful completion of a mutually agreed upon course, or training, for issues of appropriate/inappropriate relationships with students; (2) successful completion of a course or training for issues of appropriate/inappropriate interaction with students as a school teacher and (3) Michele Taylor will provide OPP with evidence of her successful completion of the coursework or training completed. The cost of conformance to all reinstatement requirements will be the responsibility of Michele Taylor.

AND/OR Reinstatement shall (also) require submission of a new application, including Character and Fitness Supplement, provided by OPP and having Michele Taylor's fingerprints be checked by both the Federal Bureau of Investigation (FBI) and the Washington State Patrol (WSP). Reinstatement shall also be contingent upon Michele Taylor's fingerprint background check returning with no criminal convictions that are listed in WAC 181-86-013, RCW 28A.410.090, and/or any felony convictions.

Dated at Yakima, Washington on August 21, 2012.


Johnette Sullivan
Administrative Law Judge
Office of Administrative Hearings


This is a final agency decision subject to a petition for reconsideration filed within ten days of service pursuant to RCW 34.05.470. Such a petition must be filed with the ALJ at her address at OAH. The petition will be considered and disposed of by the ALJ. A copy of the petition must be served on each party to the proceeding and OSPI. The filing of a petition for reconsideration is not required before seeking judicial review.

APPEAL RIGHTS

Pursuant to Chapter 34.05.542 RCW, this matter may be further appealed to a court of law. The Petition for Judicial Review of this decision must be filed with the court and served on OSPI, the Office of the Attorney General, all parties of record, and OAH within thirty days after service of the final order. If a petition for reconsideration is filed, this thirty-day period will begin to run upon the disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). Otherwise, the 30-day time limit for filing a petition for judicial review commences with the date of the mailing of this decision.

Please note: in the event this decision is to reprimand, suspend or revoke, pursuant to WAC 180-86-150, this order takes effect upon the signing of this final order. No stay of reprimand, suspension or revocation shall exist until such time as the Appellant files an appeal in a timely manner pursuant to WAC 180-86-155.

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein. 

Via Certified Mail

Michele Taylor


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