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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS

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July 31, 2009

AUG 06 2009

Via Certified Mail and US Mail

Linda Capo
[Redacted]
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SUPERINTENDENT OF PUBLIC INSTRUCTION
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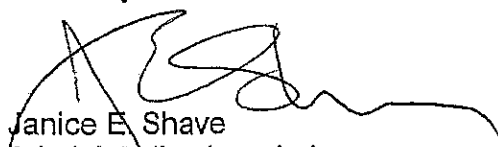
In re: **Linda Capo, Teacher Certification Discipline - Cause No. 2008-TCD-0007**

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:


Janice E. Shave
Administrative Law Judge

cc: Administrative Resource Services, OSPI
Janice E. Shave, ALJ, OAH/OSPI Education Caseload Coordinator



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

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IN THE MATTER OF:

LINDA CAPO

CERTIFICATE NO. 345373E

TEACHER CERTIFICATION
SUPERINTENDENT OF PUBLIC INSTRUCTION
ADMINISTRATIVE RESOURCE SERVICES
CAUSE NO. 2008-TCD-0007

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

A hearing was held before Administrative Law Judge (ALJ) Janice E. Shave in Port Angeles, Washington, on May 19, 20 and 21, 2009. The Appellant, Linda Capó, was represented by Jon Howard Rosen, attorney at law. Charles Schreck, director of the Office of Professional Practice (OPP) of the Office of Superintendent of Public Instruction (OSPI) participated. OPP/OSPI was represented by Anne Shaw, assistant attorney general. The ALJ, having sworn the witnesses, heard testimony, and considered the admitted exhibits and arguments of the parties, hereby enters the following:

EVIDENCE RELIED UPON

Testimony was taken from the following witnesses under oath or affirmation: Linda Capó, Gary Cohn, Ph.D. (superintendent of Port Angeles School District (PASD)), Holli Hilt (relative of a student), Michelle Reid (PASD assistant superintendent), Mary Ann Unger (assistant principal, Port Angeles High School), Scott Harker (principal, Port Angeles High School), Cecilia Jacobs (school guidance counselor), Mark Jacobson (PASD executive director - business operations), Danetta Rutten (senior juvenile probation officer), Walter Seely (PASD intervention specialist), and Charles Schreck.

The following exhibits were admitted: Court Exhibit C1 (12.8.08 request for hearing), Joint Exhibits J1-J3, Tab 18 (the joint exhibits were the exhibits admitted in an earlier

employment termination hearing between the Appellant and the PASD), and OSPI's Exhibits S1 through S28. Although the parties agreed to the admission of Exhibit J-3, Tab 2 (Appellant's notes of her interviews with Student, admitted by stipulation under seal), and that exhibit was to be provided at the hearing, no copy of the exhibit was provided. It has not been reviewed, and is not admitted.

The record closed June 9, 2009, with the submission of post-hearing briefs. The written decision is due 90 days after the close of the record pursuant to Revised Code of Washington (RCW) 34.05.461(8)(a). The due date is September 7, 2009, which is a holiday. The decision due date is then the next business day, September 8, 2009.

ISSUES

Whether the Appellant is of good moral character and personal fitness (Washington Administrative Code (WAC) 181-86-013), or has disregarded or abandoned generally recognized professional standards (WAC 181-87-060(1)), such that her Washington Education Certificate No. 345373E should be suspended for twelve (12) months, and if so, whether the conditions for reinstatement imposed by OSPI are appropriate; and

Whether a harsher sanction may be imposed at the administrative hearing than was imposed by the informal hearing process?

FINDINGS OF FACT

Procedural History

1. The Appellant was issued Washington State elementary and secondary education certificates by OSPI under certificate number 345373E, issued June 5, 1996. Exhibit S-8.
2. OSPI received a written complaint from the Superintendent of the PASD's superintendent, Gary Cohn, on April 11, 2007. Exhibit S-1. The complaint alleged the Appellant had committed acts of unprofessional conduct. OSPI conducted an investigation of the Appellant, and issued a Proposed Order of Revocation on August 20, 2008. Exhibit S-3. The Proposed Order was appealed by the Appellant on September 23, 2008. Exhibit S-4. Prior to the next stage of the proceeding (an informal hearing), OSPI unilaterally and orally reduced the proposed discipline to a two-year suspension.

3. The informal hearing was held before the Admissions and Professional Conduct Advisory Committee (APCAC) on November 13, 2008. APCAC issued a Final Order of Suspension for twelve months on December 3, 2008. Exhibit S-6. On December 9, 2008, OSPI received the Appellant's appeal of the APCAC order. Exhibit S-7. Approximately two weeks prior to the due process hearing in this matter, OSPI notified the Appellant and her counsel that it sought imposition of the two year sanction it previously proposed. The Appellant objects to the imposition of a harsher sanction than that imposed by APCAC.

4. PASD issued a Notice of Pre-Determination Hearing (Loudermill hearing) on April 12, 2007. Exhibit J-3, Tab 12. The Loudermill hearing was held May 24, 2007. Exhibit J-3, Tab 13.

5. PASD sought to discharge the Appellant from employment. It issued a Probable Cause letter dated August 3, 2007. Exhibit J-3, Tab 15. The Appellant appealed and requested a probable cause hearing, which was held October 23 - 25, 2007. Exhibit J-1.

6. Following the probable cause hearing, an independent hearing officer issued Findings of Fact, Conclusions of Law and Order on November 6, 2007. Exhibit S-23. The discharge from employment was upheld on the sole basis of substantial insubordination. The two other bases alleged, unprofessional conduct - boundary invasion behaviors, and unprofessional conduct - extreme poor professional judgment, were dismissed.

7. The Appellant received her education and began her teaching career outside of Washington State. She began teaching 25 years ago, but interrupted her teaching career to raise her children. She is divorced. She is a recovering alcoholic who participates in Alcoholics Anonymous (hereinafter AA) meetings and has remained sober for several years as of the time of the hearing. At the time of the events at issue herein, the Appellant was in her early 60s.

8. The Appellant became employed by PASD as a high school special education teacher in or about 1995, and remained employed there into the 2006-2007 school year (SY).

9. Until the 2006-2007 SY events involving the Student¹ here which are the subject of this proceeding, the Appellant had never been disciplined in her employment. Exhibits J-2, Tab 4, J-3, Tab 10B.

Contact With Student

10. At the end of the 2005-2006 SY, the Appellant commenced research to write a book on the effects of methamphetamine use. She told students at the high school where she taught that she was interested in meeting students who were involved with methamphetamines, for research for her book. The Appellant met a 14 or 15 year old student (hereinafter the Student) at that time, but did not have significant contact with him then or over Summer break 2006.

11. The Student resided with his great-grandmother at all times material to this matter. His family members, including siblings, parents, aunts, uncles and grandparents, had significant involvement with drugs and alcohol.

12. The Student was in a rehab or behavior program during August and September 2006; he did not return to school at PASD until October 2006. He was a general education student, not a special education student, and was not assigned to any of the Appellant's classes.

13. The Appellant began to interview the Student as research for her methamphetamine book in October 2006. She quickly became fascinated by the Student's life story, which she felt was worthy of a book of its own. Audiotapes of some of the interviews she conducted with the Student document sad stories of his family members' involvement with drugs, alcohol and violence, some of the violence directed toward other family members, toward other people, and some directed at family pets. Exhibit J-3, Tab 1.

14. The interviews document in detail the Student's significant involvement with drugs and alcohol at a very young age. The Appellant's audible responses to the Student's autobiographical tales include her inappropriate laughing, giggling and chuckling. The Appellant made derogatory comments to the Student about Ms. Unger, one of the high school

¹ To ensure confidentiality, names of parents and students are not used.

assistant principals. The Appellant's responses sound like those of a teen peer, not like those of a professional educator to a deeply troubled student with significant substance abuse issues. Other witnesses who are certificated educators characterized the comments as unprofessional.

15. The Appellant felt sorry for the Student as she learned his life history. She believed he was an exceptional person. She became quite fond of him, and believed she could significantly and positively affect his life. She felt she was uniquely able to help him. She considered herself an extended family member, a mentor. She believed that her own personal history, including her alcoholism, gave her special insight into his life, his motivations, and problems. She did not think of herself in a teaching relationship with the Student. Instead, she came to see herself in a guardian or parental relationship with him. Over the first couple of months she worked with him, she quickly decided she wanted to become his legal guardian and to adopt him. She was generally aware he had a long history with juvenile justice authorities, but unaware of the specifics of his juvenile record, including the crimes he had been charged with, convicted of, and the terms of his probation.

OVERNIGHTS

16. The Appellant first slept in the same room or house with the Student sometime before Thanksgiving in November 2006. She was visiting with the Student, his 18 year old brother, and the brother's girlfriend, in the brother's small camping trailer, where the brother was living. The weather was snowy. The Appellant decided not to risk driving home when she learned the highway department was advising all non-emergency travel be avoided. There is no evidence to contradict her testimony that she slept on one bed in the tiny space of the camping trailer, and the Student, his brother and the brother's girlfriend all slept together on the other bed.

17. The roads were not actually closed by the highway department, but non-emergency travel was advised against for three nights and two days. The camping trailer did not have heat, and the toilet stopped working. The Appellant stayed with the Student, his brother and the brother's girlfriend three nights in a row in the trailer. When the weather cleared a bit, she

drove them all to her house, rather than the great-grandmother's house. The great-grandmother lived on a hill, and advised the group it was snowy and slippery on her driveway. The Appellant invited the Student, his brother and the brother's girlfriend to stay at her house, where they remained two or three more nights. No other adults were present in the house with them.

18. There is no allegation that the Student slept in the Appellant's bed or bedroom on those nights in November 2006, or on any of the approximately 10-11 overnights the Appellant admitted she and the Student slept in the same room/trailer/house. The overnights occurred from mid to late November 2006 through the end of December 2006.

19. During two nights in December 2006, the Appellant slept in the Student's own bed at his great-grandmother's house. At the same time, the Student slept on a lounge chair across from the Appellant in his open loft bedroom. The Appellant felt it was necessary to stay overnight because she was concerned about a wheel or tire of her car the first night, and the second night was due to poor weather. The Appellant did not ask the great-grandmother if she could sleep in the house - the Student asked his great-grandmother. The Appellant later explained she did not sleep on the main floor of the house, for instance, on the large sofa there, because it would have taken too long to move all the items off the living room sofa, and it might have upset the great-grandmother to have them moved.

20. During one of the nights the Appellant slept at the Student's great-grandmother's house, the Student played a recording as they lay in their beds, just before falling asleep. The recording contained explicit language about sex, rape, violence and misogyny. The Appellant asserts she did not pay attention to the message contained in the recording, and fell asleep.

21. The Appellant was aware at the time of the overnights that it was generally not considered appropriate for an unrelated teacher and student to sleep in the same room. She told him at the time that people would not understand.

22. The Student slept at the Appellant's house on Christmas Eve 2006. One of the Appellant's adult children stayed in the house that night.

Privileges Granted by Appellant to Student

23. The Appellant obtained written authorization from the Student's great-grandmother to drive him in her personal vehicle. Exhibits S-9, J-3, Tab 10-E. She frequently drove him to school, to her house, his house, and his other family members' houses, AA and other meetings, and to the Dream Center, a place for homeless youth. She drove him to the hospice where his step-great-grandfather was dying of cancer. The permission also allowed her to obtain emergency medical treatment for him, and to record him for her book research.

24. The Student was not a homeless youth from October 2006 through January 2007. Because of this, it was a probation violation for him to be at the Dream Center, where the Appellant frequently drove him. She was unaware of probation conditions which restricted his ability to drive a car. She was certain she knew more about what was good for the Student than did other professional educators at PASD, and was certain she knew more about what was good for him than his juvenile probation officer, Danetta Rutten, did. The Appellant believed she knew about the Student's childhood, and knew why he thought and acted the way he did.

25. The Appellant encouraged the Student to complete a Christmas gift wish-list online, which was what she did with her own adult children. Exhibit J-3, Tab 10-F. She felt so sorry for the Student as she learned about his history that she bought him every item on his list without considering the appropriateness of any of the items. She gave the Student the CDs he listed, with graphic and offensive lyrics which promoted substance abuse, misogyny, suicide, and violence against women and others. Exhibit J-3, Tabs 10-G and H. She bought him a T-shirt with an inappropriate photo of a performer who extolled violence and substance abuse. Exhibit J-3, Tab 10-I. The Appellant thought the T-shirt showed a man masturbating, but it showed a man reclining with a bottle of alcohol. The man depicted on the T-shirt was the same performer on the explicit recording the Appellant and the Student had listened to in the Student's bedroom in early December. The music and clothing would not have been allowed at PASD schools, and were inappropriate gifts to give to this substance-abusing Student by a teacher or tutor. She also gave the Student a \$200 snowboard.

26. The Appellant concedes the CDs and T-shirt were not appropriate gifts for her to give to the Student, given his history of violence and substance abuse, and concedes they were not appropriate to give to any teenage boy. She concedes that a teacher giving multiple gifts to a student, some of them costing \$200, is not generally accepted as appropriate.

27. On several occasions the Appellant allowed the Student to drive her car on his great-grandmother's property, and to drive it a short distance across a public roadway to turn around and re-enter the great-grandmother's property. The Appellant concedes that a teacher allowing an unlicensed student to drive her car is not generally accepted as appropriate.

28. The Appellant promised the Student she would give him her car as a gift when the book she was writing about him was published.

29. At the time of the events at issue (October 2006 through August 2007), the Student was 15 years old. He did not have a learner's permit or driver's license. Because he had four prior convictions for Minor In Possession (of alcohol, or MIP), he is not legally permitted to drive a car or obtain a permit or license until he turns 21. Driving the Appellant's car was a violation of his juvenile rehabilitation probation. The Appellant was aware the Student did not have a permit or license at the times she allowed him to drive, but was unaware of the legal restrictions on his future driving. She did not inform the probation officer she had repeatedly allowed him to drive her car, or had promised to give him her car. Nor did she inquire into any restrictions.

INTERACTION AT SCHOOL

30. The Student was assigned to be a teaching assistant (TA) in the high school guidance office during 4th period starting in October 2006, when he returned to high school. This assignment was made by Cecilia Jacobs, school guidance counselor, in part so Ms. Jacobs could keep an eye on him and monitor his progress during his re-integration to school after rehab. The Student was distractable, and distracted others when the guidance office did not have enough work to keep him busy the entire period.

31. The Appellant invited the Student to visit her in her special education classroom during 4th period, which was her planning period. She helped him with his homework at that time.

The Student benefitted from the Appellant's assistance with his schoolwork. The amount of benefit is difficult to quantify, given the Student's mid-term return to school, the abrupt discontinuation of tutoring in or about January 2007, and the uncertainty about when the tutoring resumed.

32. The Appellant also helped two other students during her 4th period planning time. A paraprofessional (classroom instructional assistant for the special education students) was also present in the Appellant's classroom during 4th period.

33. Ms. Jacobs, the guidance counselor, initially approved of the Student spending time being tutored in the Appellant's classroom. Ms. Jacobs became concerned over the Appellant's degree of involvement with him, and about the Appellant's comments regarding the Student over the months he was in the classroom (October through early December 2006).

34. Assistant principal Unger noticed the Student in the Appellant's classroom in early December 2006. She was aware the Student was not a special education student, and aware he was assigned to the guidance office. Ms. Unger was also aware 4th period was the Appellant's planning period, when she was not supposed to be teaching, according to her employment contract. On or about December 7, 2006, Ms. Unger reassigned the Student from being a TA in the guidance office to being a TA in the attendance office, where she worked. The attendance office had greater need of a TA than did the guidance office.

35. The Appellant believed it was best for the Student to remain in her classroom. She believed Ms. Unger made the reassignment as retaliation against her. The Appellant was so certain the move of the Student to the attendance office was retaliatory that it did not occur to her there was a good reason, or any non-retaliatory motive, behind it. She became upset and exerted significant efforts to have the Student returned to her classroom.

36. The Appellant drafted a note for the Student's great-grandmother's signature, requesting the Student be returned to her classroom. Exhibit J-3, Tab 10-D. The great-grandmother signed the note. The Appellant also contacted the Student's juvenile probation officer, Ms. Rutten, on two occasions, requesting Ms. Rutten intervene with the PASD to have the Student assigned to her class. Exhibit S-11.

37. The Appellant contacted Scott Harker, PASD High School principal, and complained to him about the reassignment. Mr. Harker explained to the Appellant that it was a contractual problem for her to have a student assigned to her classroom during her planning period. He did not change the assignment.

38. The Appellant also complained multiple times to Ms. Jacobs, the guidance counselor, in an attempt to have Ms. Jacobs change the Student's assignment. The Student was never assigned to the Appellant's classroom.

39. The Appellant and Ms. Unger had a significant conflict of personality. The Appellant's outspoken criticism to the Student of Ms. Unger's authority undermined the appropriate respect for the authority of the high school administration.

40. The Appellant requested a meeting and met with Mr. Harker on December 8, 2006, to inform him she was driving the Student in her private vehicle. She showed him a note signed by the Student's great-grandmother, which gave permission to the Appellant to transport the Student in her car. The great-grandmother also gave the appellant permission to obtain emergency medical treatment for the Student, and to record him for her book research. Exhibit S-9.

41. Mr. Harker advised the Appellant of the risks associated with a teacher transporting a student in a private vehicle, including insurance coverage as well as allegations of improper contact between the teacher and student. Mr. Harker recommended the Appellant discuss the issue with Dr. Mark Jacobson, PASD risk manager.

42. During the Harker meeting, which was initiated by the Appellant, she advised Mr. Harker nothing inappropriate had taken place between her and the Student, and said she had never been alone with the Student. This was not truthful, as the Appellant had slept in the same room and/or same house with the Student at least six times as of the time she spoke with Mr. Harker.

43. The Appellant met with Dr. Jacobson on December 6, 2006, soon after her meeting with Mr. Harker. The Appellant and Dr. Jacobson provided widely diverging accounts of what was discussed in that meeting. The Appellant and Dr. Jacobson agreed on one critical point,

however; the Appellant did not advise Dr. Jacobson that she had already spent at least six and possibly seven nights sleeping in the same room and/or same house as the Student.

44. Had the Appellant informed either Mr. Harker or Dr. Jacobson that she was sleeping in the same house/trailer/room with the Student on multiple occasions, they would have taken immediate action. PASD does not have any written policies that prohibit a teacher from sleeping in the same house or trailer as a student. However, teacher-student sleepovers are generally not considered acceptable professional conduct in PASD, even where there is no sexual contact. Some exceptions include sporting events or other school-sponsored events away from school.

45. In December 2006, the Appellant wore the Student's black leather jacket which had fringe and chains. The Appellant drove the Student and his brother to the house of one of their relatives, when asked to do so by the great-grandmother. The Student and his brother did some yard work for the relative. The Appellant helped with the chores, but did not have warm clothing with her. She borrowed the black leather jacket from the Student because she was cold. When she returned the Student and his brother to their great-grandmother's, she continued to wear the Student's jacket, at least a half-hour, while inside. She kept the jacket on because she remained cold. Some members of the Student's extended family saw the Appellant wearing the Student's black leather jacket that day after they returned felt uncomfortable at the sight of the Appellant in the teen's clothing.

46. The Appellant accompanied the Student and his great-grandmother to a juvenile probation revocation hearing on January 3, 2007. At that time, the Appellant advised Ms. Rutten, the Student's juvenile probation officer, that she wished to obtain custody of the Student. She wanted Ms. Rutten's assistance. Ms. Rutten explained the process involved in obtaining custody, particularly for a non-relative, in light of the fact that both the Student's natural parents are alive, plus two step-parents, his grandparents, and at least one great-grandmother.

47. The Appellant believed she would be a better guardian, surrogate parent, or adoptive parent, than any of the Student's actual biological family members. She did not think of herself

as a teacher in relation to the Student, she thought of herself as extended family, his future guardian and future adoptive parent. She believed the Student had no one else to act effectively on his behalf.

48. Despite her knowledge of the Student's history, it did not occur to the Appellant that the Student was manipulating her, or not telling her the truth, until sometime in 2008 or 2009, a year or more after the events at issue in this proceeding. For a long time, she believed everything he told her. It was only within the year prior to this administrative hearing, that she began to feel the Student might have manipulated her.

49. The Appellant believed Ms. Rutten supported the idea of her obtaining custody of the Student. Ms. Rutten did not support this. Ms. Rutten initially supported the Appellant's tutoring of the Student, but changed her opinion starting at least as early as January 2007. Ms. Rutten came to believe the Appellant was an enabler, making excuses for the Student's failure to comply with what was required of him. Ms. Rutten believes the Appellant was co-dependent, meaning the Appellant believed she was helping, but in actuality, it was not a healthy relationship for the Student. She believes the Appellant's conduct went beyond appropriate boundaries and believes the Student did not benefit from his relationship with the Appellant. Ms. Rutten believes it is important for adults and authority figures to model good behavior for the Student, and for him to accept the consequences of his own actions, not to have a teacher trying to provide excuses for his failure to comply. Ms. Rutten was unaware of the sleepovers, and unaware the Appellant allowed the Student to drive her car. Had she been aware of the driving, she would have sought contempt of court proceedings against the Appellant.

50. By the time the Appellant came to know the Student, he had been convicted of 4th degree assault, referred for rape in the 2nd degree (not charged), charged with obstructing a law enforcement officer, convicted of four instances of MIP; he had multiple truancy referrals, and he had been in juvenile justice detentions several times. He had multiple probation violations, largely as a result of failing to appear for the many required probation, counseling and substance abuse sessions.

INVESTIGATION BY PASD, CONTINUING CONTACT

51. On or about December 21, 2006, Mr. Harker called the Student in during Winter break to speak with him about his reassignment from guidance office TA to attendance office TA. Assistant superintendent Michelle Reid also participated in the meeting. The discussion included the Student's involvement with the Appellant. By this time, PASD administration had heard stories about one or more sleepovers, and were becoming concerned. The Student was interviewed alone, with no adult or family member present. He denied he had slept in the same place as the Appellant, and said he had no plans to see her over Winter break. He did not mention driving her car. He did not voice any objection to being the attendance office TA.

52. The Appellant learned about the interview almost immediately. Within an hour of its conclusion, she telephoned the assistant superintendent's house to speak with her about it. The Appellant was very concerned the Student had been called in alone and questioned about his relationship with her, without any parent or guardian present.

53. On January 3, 2007, (the day the Appellant appeared in court with the Student) Mr. Harker sent a letter to the Appellant, scheduling a meeting with her the following afternoon to discuss concerns regarding her relationship with a PASD high school student. Exhibit J-2, Tab 6. On January 4, 2007, assistant superintendent Reid issued a letter advising the Appellant she was placed on non-disciplinary administrative leave with pay effective immediately, pending investigation of an alleged inappropriate relationship with a PASD high school student. Exhibit J-2, Tab 7. The letter advised the Appellant:

In order to preserve the integrity of the District's investigation, until further notice you are directed not to contact or communicate in any way with current or former students of the District, current or former staff of the District and witnesses to the events of this investigation, except through this office. Failure to comply with this directive will result in disciplinary action, including the possibility of termination.

54. On February 12, 2007, PASD issued a letter to the Appellant, advising her it had retained an outside investigator. Exhibit J-2, Tab 8. Her administrative leave with pay was continued, and she was again advised not to discuss the matter with anyone other than her attorney, union representatives, minister/priest, therapist, etc. Failure to comply with the no-contact directives was punishable by disciplinary action.

55. A predetermination meeting was held May 24, 2007. During that meeting the Appellant admitted she was again having contact with the Student for tutoring, and disclosed additional sleepovers about which PASD had been unaware. She conceded she was aware of the no-contact directives, but explained it was more important to help the Student with his schoolwork than to comply with the directives.

56. On May 25, 2007, PASD issued another letter to the Appellant, reiterating the no-contact directive. Exhibit J-2, Tab 10.

57. On August 24, 2007, PASD's superintendent, Dr. Cohn, issued a letter to the Appellant, acknowledging receipt of her appeal of the notice for probable cause. Exhibit J-2, Tab 12. Her termination from employment was stayed pending resolution of the appeal. She was advised that until the termination was final, she remained an employee of PASD and was subject to its direction. PASD reiterated the no-contact directives.

58. Thus, PASD provided written notice to the Appellant on five different occasions over eight months (January through August 2007) that she was not allowed by PASD to contact the Student or any of his family members, pending completion of its investigation.

59. The Appellant did not see the Student or his family for a short while after receipt of the initial no-contact directives. Sometime after January 4, 2007, she ran into him at the Dream Center, where she volunteered, and said hello, but did not speak to him. She requested permission to attend his step-great-grandfather's funeral when he died soon after the no-contact directive was imposed. PASD administration heard from some of the Student's family members they did not want the Appellant at the funeral, so PASD did not grant permission.

60. The Student initiated contact with the Appellant by calling her each of the three times he was confined in juvenile detention in or about February, March and April, 2007.

61. The Appellant and her daughter sent two or three letters by mail to the Student while he was in juvenile detention. They wrote the letters as if the letters had been written by a kitten the Student had given to the Appellant. They used fictitious names and addresses for the envelopes' return address. One of the letters included a candy bar, which was considered contraband at the juvenile detention facility. When it was attempted to return the contraband candy bar to the sender, it was discovered that the fictitious name and address had been used. The letters were ultimately determined to have been sent by the Appellant, who admitted sending them. Her explanation was that it was essentially a harmless prank, done for fun. The letters violated the no-contact directives.

62. The Student and his great-grandmother went to the Appellant's house in or about March or April 2007, to pick up the many possessions he had left there. The Appellant spoke with the Student briefly on that occasion, and spoke with his great-grandmother. This was a violation of the PASD no-contact directives. The Appellant attended a church fundraiser with the Student's great-grandmother in April 2007 at the home of another extended family member, in violation of PASD's no-contact directives. She began tutoring the Student again in May 2007, in violation of PASD's no-contact directives. She conceded in testimony that she did not think about the directives "that much." She knew they had not been lifted, but her priority was to get the Student's grades back up. She thought PSD's directives were about to be lifted soon, as she was aware the investigation was about to be concluded.

63. The Appellant's involvement with the Student and his great-grandmother was not well received by the Student's extended family. Initially some family members felt the Appellant's involvement was a good thing, as she assisted him with his academics and took him to AA and NA meetings, and drove him around town. However, when some family members saw the Appellant wearing the Student's black leather jacket, heard about some of the sleepovers, and learned of the degree of the Appellant's involvement, they no longer believed the relationship was good for the Student or for the extended family.

64. The Appellant wanted to take the Student with her to South Carolina during Summer 2007, to a conference put on by her church. Exhibit J-3, Tab 17. The Appellant's proposed

sleeping arrangements at the conference would have placed her and the Student in the same motel room at night. The Appellant requested permission from Ms. Rutten, juvenile probation officer, for the Student to go to the church conference. The Student was not legally able to leave Port Angeles, even to travel to a family member's house in a neighboring town, without Ms. Rutten's permission. Travel to another state would have required contact with and permission of the South Carolina equivalent of Washington's juvenile rehabilitation agency, as the receiving state. Ms. Rutten did not give permission for the Student to travel to South Carolina with the Appellant. The Appellant did not request PASD permission for the trip. The trip would have violated PASD's no-contact directives.

65. Although the Appellant testified she told at least two PASD staff members about the sleepovers prior to Winter break 2006, this testimony is found not to be credible. There is no corroborating evidence any PASD staff member received such information from the Appellant prior to her being placed on administrative leave.

66. The certificated educators who testified expressed the opinion that the Appellant's overnights were inappropriate, unprofessional, and not to the standard of conduct expected by professional educator staff/teachers. Even the Appellant admitted the conduct would not generally be considered appropriate.

67. Disrespect for and challenges to authority figures are particularly inappropriate types of behavior for adults to model for this Student, because of his significant criminal activities. Similarly, respect for rules is important behavior to model for the Student. The Appellant did not consider these factors in her interactions with the Student. The Appellant's conduct is reviewed in the context of this particular Student. This Student's significant juvenile justice involvement, history of conflict with authority figures (juvenile justice determination of guilty of resisting officers in August 2006, and multiple school truancies), the Appellant's actions of allowing the car driving, promising the gift of a car, spending multiple overnights together, warning the Student that others learning of their relationship would not approve and not understand, providing multiple inappropriate gifts, speaking disrespectfully of a school

administrator, and giggling at the Student's sad personal history were at best examples of poor judgment and inappropriate conduct.

68. The Appellant testified credibly that she did not have sexual contact with the Student, and was not attempting to groom him for sexual purposes. PASD initially investigated this matter as one involving inappropriate conduct, and/or sexual grooming. No issue of sexual contact between the Appellant and the Student is alleged by OSPI in this matter.

69. However, the Appellant single-mindedly believed that she and only she could rescue the Student. She hid the extent, nature and degree of intimacy of her relationship with him, including sleepovers, gifts, promises and driving privileges, from PASD staff and from his juvenile probation officer. She was clearly aware, because she conceded at the hearing, that much of what she did was not generally acceptable conduct between a teacher and student, and that people would talk about it, if they knew, and would not understand. Her actions were wilful, and demonstrated a clear abandonment of generally recognized professional standards, and a fundamental disregard of the Student's safety.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action, and authority to issue a final decision by OSPI as authorized in Chapter 28A.410 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including Chapter 10-08 Washington Administrative Code (WAC), Chapter 181-86 WAC, and 392-101 WAC.

2. The Professional Educator Standards Board (PESB) has the authority to develop regulations determining eligibility for and certification of personnel employed in the common schools of the state of Washington. OSPI is the administrator of those statutes and regulations and is empowered to issue, suspend, or revoke teaching certificates. RCW 28A.410.010.

3. Any certificate authorized under Chapter 28A.405 RCW may be revoked or suspended based upon the complaint of any school district superintendent for unprofessional conduct,

among other categories of behavior. RCW 28A.410.090. The April 11, 2007, complaint letter sent by Superintendent Cohn triggered OSPI's duty to investigate the Appellant.

4. Good moral character and personal fitness required of certificated personnel are a continuing requirement for holding a professional educational certificate under the regulations of the PESB. WAC 181-86-014. The terms are defined as follows:

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:

...

(3) No behavioral problem which endangers the educational welfare or personal safety of students, teachers, or other colleagues within the educational setting.

WAC 181-86-013.

5. Unprofessional conduct is defined by WAC 181-86-060 as:

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

(1) Assessment, treatment, instruction, or supervision of students.

6. In order to suspend or revoke certification, OSPI "must prove by 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." WAC 181-86-170(2). In all other proceedings, "including reprimand, the standard of proof shall be a preponderance of evidence." WAC 181-86-170(3). (Emphasis added.)

7. Title 181-87 WAC (Professional Educator Standards Board - Professional Certification) generally does not apply to the private conduct of educational practitioners except where the education practitioner's role as a private person is not clearly distinguishable from the role of an education practitioner and the fulfillment of professional obligations. WAC 181-87-020. Although not cited by the Appellant, this appears to be the basis of her defense. She asserts her relationship with the Student was that of an extended family member or a guardian, and were not related to her being a teacher. This view is not adopted.

8. The Appellant's relationship with the Student was founded upon her standing as a teacher at the high school. She met the Student through PASD, and got to know him through tutoring him in her classroom at the high school. She thought he was assigned to her classroom during 4th period, or was going to be, and that he should be. She worked hard to get him assigned to her 4th period classroom, including writing emails, and lobbying his great-grandmother, his school counselor, and the principal. When she resumed contact with the Student in violation of multiple no-contact directives, according to her own admission it was for the purpose of tutoring him. Her explanation of her motivation to defy the no-contact directives underscores the foundation of the Appellant's relationship with the Student rested on her being a teacher and him a student.

9. The Appellant substituted her judgment for that of other professionals in the Student's life, including his juvenile probation officer and his school counselor. She was so certain her involvement with the Student was the only way he could be rescued from his negative family situation that she was willing to violate the no-contact restrictions placed upon her by PASD in order to maintain contact. This conduct meets the definition of unprofessional conduct; it was flagrant disregard or clear abandonment of generally recognized professional standards in the course of her supervision of the Student.

10. The Appellant understood at the time of her actions, and acknowledged during the hearing, that her contact with the Student would not be considered appropriate if people knew of it. Under the circumstances, an unrelated female adult teacher and male 15 year old student, sleeping in the same room/house/trailer ten or eleven nights in a one month period was clearly inappropriate. According to other certificated educational professionals, it was conduct that did not meet professional standards.

11. The inappropriate and unprofessional nature of that conduct was compounded when the Appellant misrepresented the extent of her relationship with the Student to PASD administrators. At her meetings with Mr. Harker and Dr. Jacobson in early December 2006, the Appellant did not disclose the sleepovers, and misrepresented the amount and type of contact she had with the Student. She told Mr. Harker she had not been alone with the Student, except for time spent tutoring him (underscoring the teacher-student nature of the relationship), driving him, and interviewing him. The Appellant's failure to disclose was a material misrepresentation to PASD administrators, and it was conduct which did not meet the standards expected for a certificated education professional.

12. Some of the Appellant's conduct and interaction with the Student does not meet the definition of either unprofessional conduct or a lack of good moral character or personal fitness, but demonstrated poor judgment and a lack of professionalism. A lack of professionalism is not equal to 'unprofessional conduct.'

13. The gifts the Appellant gave to the Student demonstrated her generous heart, but also her poor judgment. A teacher less emotionally involved would not have given so many gifts, including the expensive snowboard, to an unrelated student. A less emotionally involved teacher would more likely have screened or evaluated the items selected by the Student, rather than simply purchasing each and every item the Student chose to put on his on-line Christmas wish-list. That behavior standing alone, however, would not rise to the level of unprofessional conduct.

14. Similarly, the fact that the Appellant wore the Student's jacket did not rise to the level of an act of unprofessional conduct. It was a topic during this proceeding because it was unusual conduct which struck family members as odd, and triggered their concern.

15. The Appellant knew the Student had multiple juvenile justice violations, even if she did not know the specifics of each. Allowing a 15 year old student with multiple juvenile justice violations to drive her car, not only on private property, but also on a public road, was unprofessional conduct. It sent a message to the Student that violating laws is acceptable, so long as one does not get caught. The conduct was unacceptable even though the Student only drove on a public roadway a small amount compared to the amount of driving on his great-grandmother's private property. It is the act that was wrong, and that set a bad example, rather than the number of minutes or miles, or even feet or yards. Further, sending the 'kitten letters' to the Student with a fictitious return address while he was confined by juvenile justice authorities was odd behavior, not appropriate and not professional, given that the letters had the effect of deceiving juvenile justice officials.

16. The context of the Appellant's actions is significant. Their relationship developed over a relatively short time. They were not long-standing family friends. The Appellant first met the Student briefly at the end of the 05-06 SY, then did not see him until October 2006. She very quickly drew very close to the Student. From the first interview with him, she laughed at inappropriate times during the interviews when the Student told of emotionally and physically painful, abusive, drug and alcohol fueled family events. Within less than two months of starting the interviews, she slept in his bedroom and in his own bed, with the Student in the same room, and slept in the trailer and/or in the same house a total of 10-11 time in a one-month period. She gave him inappropriate gifts and promised another inappropriate gift, her car. She also wilfully concealed information about the nature, extent and degree of intimacy in her discussions with PASD administrators and the Student's probation officer. The incidents were not isolated; they were clustered in time and intense.

17. Fundamentally, the Appellant's attitude toward the Student, that she knew what was best for him, and no one else knew as much, or was as well positioned to assist him, was

unprofessional conduct. The Appellant withheld information about the degree of her intimacy with the Student from PASD administrators and staff, and from his probation officer. She ignored the professional opinions of other educators and juvenile justice workers who were also involved in the Student's education and care. Other than allowing the Student to drive on a public road, her conduct was not illegal, but that does not render the conduct appropriate or acceptable for a certificated professional. Certificated staff who engage in unprofessional conduct run the risk that they will be caught, and they will be disciplined, not just by loss of their job, but by a sanction affecting their certification.

18. Behavior does not have to be criminal or sexual in nature to be inappropriate or unprofessional and below acceptable standards. The Appellant's conduct in the course of her professional practice was in flagrant disregard and/or clear abandonment of generally recognized professional standards in the course of her supervision of the Student. The fact that the Appellant realized her conduct would not be considered appropriate is a significant factor which underscores the flagrant disregard and clear abandonment of generally recognized professional teaching standards. The fact that she told the Student that others would not understand also underscores her awareness of the standards and her breach of them. Her belief that she was the only one who understood the Student and could help him is not a defense. The Appellant's assertion that she was not acting as a teacher, but was acting *in loco parentis* to the Student, is not adopted.

19. The pertinent standard for suspension of a teaching certification is set forth at WAC 181-86-070(2) as follows:

...

(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 to resuming practice.

20. The standard is somewhat different for a revocation. WAC 181-86-075 provides:

Grounds for issuance of a revocation order. The superintendent of public instruction may issue a revocation order under one of the following conditions:

(1) The superintendent of public instruction has determined that the certificate holder has committed a felony crime under WAC 180-86-013(1), which bars the certificate holder from any future practice as an education practitioner.

(2) The certificate holder has not committed a felony crime under WAC 180-86-013(1) but the superintendent of public instruction has determined the certificate holder has committed an act of unprofessional conduct or lacks good moral character or personal fitness and revocation is appropriate.

21. Unprofessional conduct is also defined at WAC 181-87-080 to include sexual misconduct. That is not alleged or at issue in this proceeding.

22. OSPI proved by clear and convincing evidence that the Appellant committed acts of unprofessional conduct during the 2006-07 SY. Having reached this conclusion, it is unnecessary to determine whether she also lacked good moral character and personal fitness.

23. The determination of acts of unprofessional conduct does not end the inquiry. The appropriate sanction for the discipline must be determined next. In order to determine the appropriate level and range of discipline, OSPI or its designee must consider certain

specified factors, at a minimum, prior to issuing any disciplinary order. WAC 180-86-080. These factors include the following:

- (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 of 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.

24. **Factor (1).** The seriousness of the acts and the actual or potential harm to the Student was testified to by Ms. Rutten, probation officer. Her professional opinion is that the Appellant was in a co-dependent relationship with the Student, and enabled him to continue in his unacceptable ways by providing excuses for him to avoid doing what the court required him to do. The Student's juvenile justice history made it especially important to model good behavior in a law-abiding manner. The potential harm to this 15 year old was significant. The Appellant repeatedly determined that she knew best what the Student needed; she knew better than the probation officer, the court, PASD administrators and the school counselor. She knowingly and intentionally violated five PASD directives to have no contact with the

Student. Those directives were the collective decision of other education professionals. It was not clear from her testimony whether the Appellant understood this point, even in mid-2009, although she had begun to suspect the Student might have been untruthful to her, and manipulated her.

25. **Factor (2).** There is no evidence of any criminal history on the part of the Appellant. Had Ms. Rutten known the Appellant was allowing the Student to drive her car, their might have been contempt of court proceedings against the Appellant for the probation violation, and the Student might have had additional juvenile justice problems.

26. **Factor (3).** The Student was 15 years old, but involved with the criminal and juvenile justice systems far beyond his chronological age. Given his unusual history, it is difficult to assess his maturity level, and easier to assess his vulnerability to inappropriate adult influence, according to his probation officer. The Appellant was in her early 60s, and had been a certificated teacher for approximately 25 years. The Appellant was certainly of sufficient age and experience as a teacher to be able to determine appropriate behavior. It appears she was influenced by her maternal feelings toward the Student, and not sufficiently guided by her professional judgment.

27. **Factor (4).** The acts occurred beginning in October or November 2006. The sleepovers ended, presumably, in December 2007, but the Appellant's insistence on remaining personally and professionally involved with the Student as a tutor continued throughout the following year. She continued to work with him in violation of the no-contact directives, and ultimately lost her job due to that conduct, but testified she didn't pay much attention to the directive. The acts are not remote in time.

28. **Factor (5).** The Appellant's belief that she was the best and only chance the Student had, despite the significant involvement of other professionals (probation officer, juvenile court judge, school counselor, PASD administrators, great-grandmother) and her concealment of important aspects of her relationship with him from those professionals demonstrated a disregard for his health, safety and welfare. The fact that she never even considered that his assignment to attendance office TA was made for any reason other than retaliation against

her was in clear disregard of his safety and welfare. Allowing the Student to drive her car, even a bit, on a public roadway demonstrated a disregard for his health, safety and welfare. This was not an average 15 year old boy, taken out for a fun drive on family property to learn to drive. This was a boy whose extensive involvement with juvenile justice authorities over many years made him particularly susceptible to conduct which defied authority.

29. **Factor (6).** There is no evidence of a behavioral problem, such as a diagnosed mental illness, or criminal conduct.

30. **Factor (7).** The evidence which demonstrated a lack of fitness for teaching does not relate to physical fitness to teach, but relates to the Appellant's lack of professional detachment, and her insistence on seeing herself as the Student's savior or parent, rather than his tutor.

31. **Factor (8).** One governmental entity (PASD) imposed significant discipline (job termination) against the Appellant for her behavior.

32. **Factors (9) and (10).** The aggravating circumstances were the knowing and wilful disregard of decisions made by other education and juvenile justice professionals, and the court (the terms of probation), and the untruthful statements and omissions she made to PASD administrators, along with misrepresentation of the degree of intimacy.

33. There was evidence of mitigating circumstances. The Appellant genuinely and fervently, believed her actions were appropriate, were in the Student's best interest, and were unrelated to her status as a school teacher. That she was wrong on those points does not change the fact that her motivation was to assist the Student. She provided tutoring to the Student which helped his grades. The evidence supports the determination that the Appellant saw herself in a maternal role, and to that end, engaged in unprofessional conduct. She had received good evaluations as a teacher, with no prior discipline.

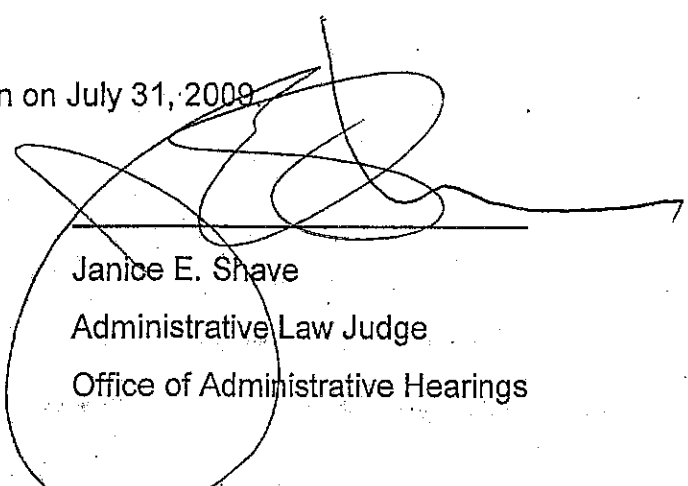
34. Consideration of the above factors leads to the following conclusion: The appropriate discipline for this certificated individual under the above circumstances is suspension for twelve months.

35. OSPI seeks imposition of a twenty-four month suspension. The evidence supports a twelve-month suspension. The Appellant's actions were knowing and wilful, but not sexual or ill-intentioned. The evidence supports the determination that she repeatedly made poor choices, and exercised her own judgment based on faulty premises, but not that she intended to cause harm to the Student. This was unprofessional conduct which should be able to be remedied by a twelve-month sanction, as determined by the professional educators who make up the APCAC. Under the facts presented in this hearing, the twelve-month suspension is appropriate.

ORDER

The Appellant's educational certificate is suspended for a period of twelve (12) months.

Dated at Seattle, Washington on July 31, 2009



Janice E. Shave
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

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 the 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.

In accordance to WAC 181-86-150(3), the decision of the ALJ shall be sent by certified mail to the Appellant's last known address and if the decision is to reprimand, suspend, or revoke, the Appellant shall be notified that such order takes effect upon signing of the final

order and that no stay of reprimand, suspension, or revocation shall exist until the Appellant files an appeal in a timely manner pursuant to WAC 181-86-155.

Any person whose certificate has been suspended or revoked by OSPI in accordance with the procedures of WAC 181-86-155 may appeal that decision to the Professional Educator Standards Board by filing a notice of appeal with OSPI or the secretary of the Professional Educator Standards Board within 30 days of the date of mailing the decision of the OSPI, or his designee, an ALJ at OAH. If a petition for reconsideration is filed, this 30-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 an appeal to the PESB commences with the date of the mailing of this decision.

Following an appeal to the PESB, this matter may be further appealed to a court of law. WAC 181-86-155; RCW 34.05.542.

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. lan

Via Certified Mail and US Mail

Linda Capo
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