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

MAY 01 2006

IN THE MATTER OF:

JAMES RANDY DEMING

Cert. No. 196891F

TEACHER CERTIFICATION
CAUSE NO. 2005-TCD-0004

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

A hearing in the above-entitled matter was held before administrative law judge (ALJ) Janice E. Shave on January 24, 25, 26, 27 (at Bellingham, Washington), January 31, February 1 and 2 (at White Swan, Washington), February 3, 6, 7, 8, 2006 (at Yakima, Washington) and March 1, 2006 (by telephone).

Post-hearing briefs were due to be postmarked March 17, 2006. The record was to close effective March 17, 2006. However, the record actually closed March 31, 2006, following a post-hearing telephone conference held that date to address the admissibility of Exhibit A-27 (8-19-02 Guardian Ad Litem's Supplemental Report regarding former student N.V.B.).

The parties agreed the due date for the written decision would be the close of the record, plus thirty days. The written decision due date was then set at April 25, 2006. Due to the change of the date of the close of the record, the written decision due date is returned to the close of record plus 30 days. This results in a due date of April 30, 2006, a Sunday. The written decision is thus due the following business day, May 1, 2006.

The Appellant, James "Randy" Deming, participated in the proceeding and was represented by Kevan Montoya, attorney at law. The Office of Superintendent of Public Instruction (OSPI) participated through Charles Schreck, director of OSPI's Office of Professional Practices (OPP), and was represented by Anne Shaw, assistant attorney general.

Persons testifying included the following: Warren Aller (former Blaine School District (hereinafter Blaine) principal); William Kelly (former principal Blaine Middle School); Mac Duffie Setter (Whatcom County prosecuting attorney, chief of the criminal division); William Murphy (former Blaine High School principal); Judith Tucker (Blaine fifth grade teacher); Debbie Eymann (former Blaine PE teacher, direct testimony by declaration); Erma A. Quist (former Blaine head custodian, direct testimony by declaration); Sheryl Havens (former Blaine middle school counselor, direct testimony by declaration, appeared by telephone);

K.S. (former Blaine student); J.S. (mother of K.S.); Gordon Dolman, Ph.D., (former Blaine principal and superintendent); Katy Wade (formerly Katy James, OSPI investigator); [REDACTED] (former Blaine student); [REDACTED] (former Blaine student); [REDACTED] (former Blaine student, direct testimony by declaration, appeared by telephone); Robert Nunamaker (former Blaine elementary principal); [REDACTED] (formerly known as [REDACTED], former Blaine student); Patricia Baldwin (former Blaine third grade teacher); [REDACTED] (former Blaine student, direct testimony by declaration, appeared by telephone); Major [REDACTED] (former Blaine student, direct testimony by declaration, appeared by telephone); John (Jack) Eastman (former assistant Blaine football coach to the Appellant, direct testimony by declaration); [REDACTED] (former Blaine student); Rob Ridnour (Blaine PE teacher); Lee Andersen (Ferndale coach); [REDACTED] (former Blaine student, direct testimony by declaration); [REDACTED] (former Blaine student, direct testimony by declaration, appeared by telephone); [REDACTED] (former Blaine student); Adelle Nore (OSPI investigator, appeared by telephone); K.C.¹ (Mt. Adams student, direct testimony by declaration); L.A. (Mt. Adams student, direct testimony by declaration); A.P. (Mt. Adams student, direct testimony by declaration); A.R. (Mt. Adams student, direct testimony by declaration); L.B. (Mt. Adams student, direct testimony by declaration); L.H. (Mt. Adams student, direct testimony by declaration); [REDACTED] (former Mt. Adams student); I.P. (Mt. Adams student, direct testimony by declaration); Mary Hall, Ph.D. (Mt. Adams superintendent); Tracy Lawrence Savage (Mt. Adams principal); Kyle Young (Mt. Adams principal); Kevin Enzminger (Mt. Adams teacher and teachers' union officer); [REDACTED] (former Mt. Adams student, direct testimony by declaration, appeared by telephone); Shelly Craig Marceau (Mt. Adams special education teacher); Jennifer Tenney (former Mt. Adams para-professional (non-certificated classroom assistant), direct testimony by declaration, appeared by telephone); Darcy Bator (former head softball coach for Cle Elum School District, direct testimony by declaration); Suellen White (former superintendent Methow Valley School District); Charles Schreck (director of OSPI's OPP); Jerry Painter (general counsel and former sexual harassment trainer with Washington Education Association (WEA)); T.W. (Mt. Adams student); S.W. (Mt. Adams student); S.A.H (former Mt. Adams student); S.W. (Mt. Adams student); Don Harris (Mt. Adams softball coach, direct testimony by declaration); Dave Mendoza (Mabton School District assistant softball coach, direct testimony by declaration); Dan Robillard (Zillah School District softball coach, direct testimony by declaration); Jesus Sustaita (Mabton School District head softball coach); S.S. (former Mt. Adams Student); M.O. (former Mt. Adams student); Tracy King (former Mt. Adams teacher and assistant softball coach to the Appellant at Mt. Adams); Pernell Watlamett (Mt. Adams teacher and former assistant wrestling coach to Appellant); Lon Henry (former Mt. Adams athletic

¹Initials of current students and their parents are used in order to protect their privacy, while names of former students are generally used, except in circumstances where use of the former student's name appears inappropriate due to the nature of the allegations.

director); Kim Parker (Mt. Adams teacher); Jack Adams, Ph.D. (former Blaine shop teacher and varsity basketball coach, former principal, athletic director, superintendent and current director of an Oregon Educational Service District, direct testimony by sworn statement); Gary Fendell (former Mt. Adams principal, direct testimony by sworn statement); and Donna Holden (former Mt. Adams teaching assistant to the Appellant and the Appellant's significant other from 2001 to present).

The following exhibits were admitted: OSPI exhibits S-1 through 91 with the exception of S-41, which was withdrawn. Appellant exhibits A-1 through A-35 were admitted. Exhibit A-27, Guardian Ad Litem's Supplemental Report, was admitted in its entirety for the purpose of attacking the credibility of N.V.B.'s statements, as she is unavailable as a witness, and the documents address prior circumstances in her life which might affect her truthfulness. Exhibit A-28 was admitted solely to prove a lawsuit was pending between N.V.B. and Blaine as of May, 2001.

STATEMENT OF THE CASE

On April 9, 1991, Blaine's superintendent sent a letter to OSPI's OPP, alleging a lack of good moral character or personal fitness on the part of the Appellant. The complaint was received by OSPI on April 15, 1991. Exhibit S-8. OSPI began an investigation; however, prior to completion of the investigation OSPI dismissed the complaint without prejudice on January 16, 1992.

On March 17, 2003, OSPI's OPP received a second written complaint against the Appellant, dated March 13, 2003, from the Mt. Adams School District (Mt. Adams) alleging the Appellant demonstrated a lack of good moral character or personal fitness, and had possibly committed acts of unprofessional conduct. Exhibit S-2. OSPI issued a letter to the Appellant, dated March 26, 2003, which provided notice to the Appellant of the receipt of Mt. Adams's complaint, and advised him he could submit materials for OSPI to consider. Exhibit S-3.

On February 10, 2004, OSPI issued an Order of Suspension for twelve (12) months. Exhibit A-16. On September 7, 2004, OSPI issued an Order of Suspension against the Appellant, suspending his teaching certification for sixty (60) months. Exhibit S-4. The Appellant appealed that suspension on September 16, 2004. Exhibit S-5. An internal proceeding was held before the Admissions and Professional Conduct Advisory Committee (APCAC) which issued a Final Order of Revocation on June 22, 2005. Exhibit S-6. The Appellant appealed the Final Order of Revocation by letter to OSPI on July 11, 2005, and the matter was assigned to the Office of Administrative Hearings (OAH) to assign an ALJ to conduct a hearing and issue a decision. Exhibit S-7.

OAH mailed the parties a Notice of Prehearing Conference and Notice of Hearing on July 13, 2005, scheduling the prehearing conference for August 10, 2005, and the hearing for August 26, 2005, respectively. A series of prehearing conferences were held, resulting in scheduling of the above hearing dates by agreement of the parties. In the interest of administrative efficiency, the parties were instructed to present their witnesses' direct testimony, as much as possible, through declarations submitted in advance of the hearing, and make their witnesses available at the hearing for cross examination and reexamination.

ISSUE

Whether the Appellant's teaching certificate should be revoked pursuant to Revised Code of Washington (RCW) 28A.410.090 based upon lack of good moral character and personal fitness (Washington Administrative Code (WAC) 180-86-013, -014), disregard or abandonment of generally recognized professional standards, and abandonment of contract for professional services (WAC 180-87-060, -080).

FINDINGS OF FACT

1. The Appellant was issued a Washington State education certificate in 1973. That certificate is valid for teaching grades K through 12.
2. The Appellant began his teaching career in Blaine in the 1973-74 school year. Over the course of his career there, he taught in Blaine's various schools, which shared a campus. He was supervised by the principal where he taught the majority of his time. He interacted with students of widely varying ages, from 1st grade through high school seniors. He often had high school female and male students assist him as teaching assistants in his classes.
3. The Appellant was coach of the Blaine football team for several years, but did not enjoy great success in that position. He was also Blaine's head wrestling coach for many years, and was extremely successful in that position. His teams did extremely well. The Appellant was very popular in the town with many people, due in large part to his great successes as a wrestling coach. He made a positive difference to many young men and boys in Blaine through his coaching. He also interacted with female students in Blaine, significantly wrestling cheerleaders and mat maids. He engaged in horseplay with both male and female students, and gave back massages and spinal adjustments to students of both genders.
4. There are many allegations against the Appellant. The major allegations which are relied upon in the Conclusions of Law and the Order are addressed separately.

5. K.S. During the 1976-77 school year, K.S. was a six year old female student in the Appellant's first grade PE class. She and her family had recently moved to the U.S. from Canada. K.S. liked school, and went on to do extremely well, graduating as class valedictorian, receiving several scholarships, earning a Bachelor's Degree from Rensselaer Polytechnic Institute in the state of New York, a Master's in Science from Mississippi State, and is scheduled to receive her Ph.D. in geo-technical engineering from Georgia Institute of Technology. The Appellant was her PE teacher, at least in the first, third and fourth grades.

6. K.S. was afraid of the Appellant due to his size, volume and physicality. She told her mother the Appellant poked his finger through a hole in her pants, close to her crotch, and touched her underwear. He then allegedly stated "You've got a hole in your pants, girlie-girl." Exhibits S-9(a)(b). K.S.'s Mother, J.S. or Ms. S., spoke to the first grade teacher, Mrs. Baldwin, about her daughter's report, and fear of the Appellant. K.S. refused to go to PE class because of her fear of the Appellant. She remained out of PE class for over a year.

7. K.S. was disturbed by her interactions with the Appellant in first grade. She was upset when she saw the Appellant interacting in what she felt were inappropriate ways with older female students in the gym. K.S. was disturbed to observe the Appellant give massages and spinal adjustments to female students, including manipulating shoulders, necks, backs, and hips. From her perspective as a first grader, his behavior was not right, and it was intimidating. She now interprets his behavior as flirtatious toward female high school students. K.S. recalls the Appellant made comments about female students' bodies, including that they looked "hot" and that they looked "good." Although K.S. was only six years old in 1st grade, these comments, and the Appellant's physical contact with high school girls made her uncomfortable. She was aware that other teachers did not behave or speak in this fashion.

8. There was no evidence of any motivation on the part of K.S. or her mother to fabricate these allegations of unacceptable behavior. However, there is no record of these complaints being made, and no record of any appearance by Ms. S. at school board meetings, as she alleged occurred. Further, the documentary record, in the form of high school yearbook photos, does not support K.S.'s allegations that the Appellant massaged cheerleaders wearing halter tops.

9. It is noted that memory generally does not improve after thirty years. A teacher massaging or doing a spinal manipulation on a cheerleader, as the Appellant admits he did from time to time, may have appeared sexually charged, whether it was or was not in actuality. A sleeveless top with a small V-neck may have seemed to be a great deal of bare skin to a young child as K.S. was in 1976. K.S.'s allegation that the Appellant sent

the first graders out in the rain to run unsupervised laps while he remained behind with a cheerleader is likewise not corroborated by any other evidence. To a young child, being sent outdoors even in a light mist while a teacher remains behind for a minute or two may appear scary. The young child would not necessarily realize that another teacher may have agreed to watch the students, or a high school teaching assistant may have watched the students. It is difficult to determine the credibility of that six year old child, twenty-nine years later, since the circumstances that would bear on her credibility then are not known now. It is uncontested that the Appellant was aware in 1976 or 1977 that K.S. was frightened of him, she did not attend his class for a long period of time, he met with her mother about her non-attendance, and he gave massages and did spinal manipulations on cheerleaders and some other females at school in the gym.

10. **Erma Quist** Erma Quist began to work at Blaine in 1966. She became the head custodian. She retired in 1987. On an unspecified date, Ms. Quist entered the main gym (not the elementary gym) to ensure it was locked for the evening. The Appellant was in the gym with several male students and one female student. That female student was sitting on the Appellant's lap. The Appellant was touching and tickling the female. It does not appear Ms. Quist reported the incident, which she regarded as inappropriate conduct, to any Blaine administrator.

11. **Jeremiah** Jeremiah was a student in a class taught by the Appellant in his early days of teaching at Blaine Elementary. The Appellant teased Jeremiah by reciting a line from the pop song, "Jeremiah was a bullfrog." This made the student uncomfortable, according to the principal. The joking and excessive familiarity with Jeremiah, without awareness of, or concern for how the student felt about being on the receiving end, was an early incident that was repeated throughout the years the Appellant taught and coached.

12. **M.C.** On or about January 3, 1983, William Murphy, then the Blaine High School principal, received a letter of that same date from RC, stepmother of M.C. M.C. was a tenth grade female student in the Appellant's PE class. On or about January 3, 1983, M.C. made an inappropriate statement to the Appellant, telling him "she would kick his butt." The Appellant held M.C. down on a wrestling mat, lying by her side. He placed his hand over her mouth so that she was only able to breathe through her nose. He then questioned her, removing his hand from her mouth so that she could answer his questions, then replacing his hand. M.C. had cystic fibrosis. She had difficulty breathing even without having her mouth obstructed.

13. Debbie Eymann, another Blaine PE teacher during the 1982-1983 school year, was in the gym and observed this incident. M.C. was visibly upset, and told Ms. Eymann she was not able to breathe. Ms. Eymann encouraged M.C. to report the incident to her

parents, which M.C. did. M.C.'s parents reported the incident to William Murphy, Blaine High School principal from 1972 to 1985.

14. Mr. Murphy met with the Appellant, who admitted he had done what was stated in the letter from M.C.'s parents. Mr. Murphy advised the Appellant his behavior was very unprofessional, and that in the future, the Appellant was to have "no physical contact or make any verbal comments to any student that could be interpreted as being detrimental to health, student safety, indecent or in any way suggestive." Exhibit S-12.

15. The Appellant wrote a memo addressed to his personnel file on May 18, 1983, in which he stated "I have assured Mr. Murphy that I will avoid such situations in the future," and admitted his actions exhibited poor judgment. Exhibit S-13.

16. It is of concern that the Appellant still does not admit he interfered with M.C.'s breathing, despite records to the contrary which were made right after the incident. The Appellant described the incident to Mr. Murphy as have been done in "fun." There is no recognition by the Appellant, even as of the date of the hearing some 23 years later, that his actions were inappropriate and indefensible, rather than merely a good joke gone bad due to the interference of meddling adults.

17. **Debbie Eymann** On a different occasion during the 1982-1983 school year, the Appellant called Ms. Eymann over to where he was talking with a number of male high school student/athletes. In front of the students, the Appellant showed Ms. Eymann a photo of a topless woman with extremely large breasts. He asked Ms. Eymann to tell him and the boys whether the woman's breasts were real or otherwise. The Appellant persisted showing the photo and asking Ms. Eymann the question. Ms. Eymann felt it was inappropriate to show the photo and ask the question. She was offended by the Appellant's behavior. It does not appear she complained to any administrators. Ms. Eymann's testimony was uncontested by the Appellant.

18. **C.S.** Mr. Aller, Blaine elementary school principal in the early 1980s, received a complaint on or about November 16, 1983, from parents of C.S. that their 2nd grade daughter was very uncomfortable in the Appellant's class based on comments made by him. The child was walking down the hallway in school, holding hands with a boy. The Appellant called out, "Is that your boyfriend?" as he explained at the hearing, to tease her.

19. Mr. Aller investigated and issued a warning memorandum to the Appellant on November 16, 1983, advising the Appellant he had engaged in inappropriate behavior with students. Exhibit S-14. The principal concluded the Appellant was too informal with C.S. He advised the Appellant he should be professional and avoid any sort of joking and teasing which could be misconstrued by either parents or students. Exhibit S-14.

20. L.F. On or about November 4, 1985, the Appellant was in the hall at Blaine High School, when two students walked by, Y.R. and L.F. Student L.F. called out to him, "I saved your life yesterday - I killed a shit-eating dog." The Appellant responded by saying, "Do you have any pictures of yourself naked? Do you want to buy one?" The Appellant did not have any photos of L.F. naked. He was joking. The Appellant also asked, "If I said you had a nice body, would you hold it against me?"

21. At the hearing, some 21 years later, the Appellant testified that L.F. "took offense for some reason" at his comments to her. The original comments were unprofessional and unacceptable under any circumstances between a teacher and a student. The Appellant's comment decades later demonstrates he neither understands nor accepts the complete inappropriateness of his comment.

22. The student reported the incident to her parents on November 4, 1985, who sent a letter to the high school principal. Exhibit S-16. The principal, Dr. Dolman, interviewed the two girls, who said they were subjected to inappropriate comments regarding their personal physical development.

23. On November 7, 1985, Gordon Dolman wrote a memo to the Appellant, confirming a meeting to discuss the L.F. complaint about statements made by the Appellant that "were of a suggestive and sexual nature." Exhibit S-17. The Appellant admitted to making the comments, and apologized. According to the memo, Dr. Dolman recommended to the Appellant "that all remarks, sexual or sexist, should be withheld from the Appellant's vocabulary in the future in dealing with students." Exhibit S-17. Dr. Dolman issued a verbal warning to the Appellant, who specifically advised he should not contact the student in question, in any way, including any recriminations for having reported the incident. Because of the prior memo on a similar subject dated January 19, 1983, the Appellant was further warned that any similar incidents would result in a letter of reprimand and suspension with pay as a means to gain the Appellant's attention, and further discussion about personal counseling and possible job choice would also take place. Exhibit S-15.

24. M.R.B. In November 1985, Dr. Dolman walked into the boys' locker room and observed the Appellant giving an upper torso/neck massage or spinal manipulation to M.R.B., a female high school student. The student was a teaching assistant for the Appellant, and had requested the spinal adjustment. No other students were present at the time. The Appellant told Dr. Dolman that M.R.B.'s parents were aware of the practice. The Appellant had done prior adjustments to M.R.B.'s spine. Dr. Dolman called the father, and learned he had not given permission for the adjustment, and did not approve and would not allow it. The Appellant was friends with M.R.B.'s family outside of school. There is no evidence the physical contact was sexually motivated on the Appellant's part; however, it was done in an inappropriate location, without other witnesses in the event of

any accusations, and it was done without the permission of the parents. In summary, it was inappropriate physical contact between the Appellant and a female student.

25. At the hearing, the Appellant did not appear to understand the circumstances of that physical contact exceeded acceptable boundaries for teacher-student contact. The fact that M.R. asked for the manipulation, and did not believe any inappropriate contact occurred, does not make the contact appropriate.

26. Dr. Dolman issued a formal written reprimand for the locker room incident, which advised the Appellant he had put himself "in a compromising situation of having a female student in a male changing area." The Appellant was reminded there had been previous discussions concerning his conduct with female students. Exhibit S-20. Dr. Dolman issued a separate letter, dated November 18, 1985, directing the Appellant as follows: "Effective immediately you are to cease and desist in any osteopathic or chiropractic manipulations to the spinal column of students in the Blaine School District." Exhibit S-21.

27. A high school student, even a senior, is not in a good position to make a determination of inappropriate touching. A student who is accustomed to seeing a teacher touch or massage or adjust students's spines might think that is normal and appropriate conduct, having been desensitized to it. Further, the student who receives such contact can only provide testimony regarding her experience, not the teacher's motivation or experience.

28. **Aller Concerns** On April 14, 1986, Warren Aller, who was the Appellant's supervising principal at Blaine Elementary School, met with the Appellant because of concerns Mr. Aller had about several areas relating to Appellant's PE classes. Those concerns were (1) the PE curriculum centered around highly organized games, not skill acquisition; (2) the Appellant's teaching style, including his informal relationship with students; (3) the Appellant's professional image; and (4) the public's view of the physical education program. Mr. Aller believed the Appellant made comments to students that were uncalled for. For example, Mr. Aller's daughter was in the Appellant's PE class. She was hurt in PE, and the Appellant carried her back to the office after she was injured. The Appellant told Mr. Aller's elementary school daughter "this is our first date." This comment made Mr. Aller's daughter uncomfortable.

29. On April 15, 1986, Mr. Aller memorialized in writing what had taken place at the meeting the day before. He advised the Appellant to say and do nothing that students would find degrading and advised the Appellant not to engage in teasing. Exhibit S-24.

30. **T.B.** While the Appellant was employed as an elementary school teacher in Blaine, T.B., a fourth grade student, reported that the Appellant had walked his fingers up her leg, stopping at her crotch. This was reported to the elementary school principal, Mr.

Aller, who spoke with T.B. and T.B.'s mother. T.B. was a student with problems of her own. Mr. Aller was never certain whether her allegations were true. He encouraged T.B.'s mother to report the incident to the police, which she did. The police referred the matter to the prosecuting attorney; however no criminal charges were filed. No credible evidence was offered regarding the events reported by T.B.; however, the events she reported were sufficiently similar to other incidents the Appellant was involved in that concerned Blaine administrators.

31. On November 23, 1987, Blaine superintendent, Robert S. Gilden, issued a letter to the Appellant. Exhibit S-25. The letter was written with the assistance of Mr. Aller both in researching the content, and in writing the letter itself. The letter advised the Appellant that a review of his personnel file, including evaluations from 1976 to 1987, letters received about the Appellant, and memoranda relating to his conduct showed four recurring types of problems, including (1) informality with students, (2) non-professional comments and profanity, (3) making young students afraid and (4) sexual and sexist remarks. Mr. Gilden's letter stated,

Based on your employment history at Blaine it is apparent that something is seriously wrong to cause consistent concern about your behavior. Blaine strongly recommends that you seek counseling in order to initiate changes in the way you behave and the way you are perceived...

I cannot emphasize too strongly the need for significant changes on your part, Randy...

Exhibit S-25, page 2.

32. Blaine offered to pay for the recommended counseling and pay the Appellant for his time away from the classroom. The Appellant agreed to the recommended counseling, which was provided by John W. Clark, MS. Mr. Clark issued a testing report on May 25, 1988. Exhibit S-28.

33. T.B.'s allegations were not accorded much credibility by those who investigated them at the time, and are not accorded credibility now. What is significant about the allegations which triggered the superintendent's letter of November 23, 1987, is that the Appellant was again put on notice that his behavior with young female students was questionable, and may have exceeded appropriate boundaries. The evidence from the years the Appellant worked for Blaine established he was repeatedly accused of inappropriate conduct, in varying degrees, and was advised and placed on notice that his conduct exceeded acceptable boundaries. He was warned about being too familiar with students, and about not touching students. He was warned not to joke or tease, and not

to say things that could be misconstrued. He was warned about unacceptable sexist and sexual comments.

34. **Profanity** Various individuals reported to Blaine administrators that the Appellant used profanity with older students on his Blaine athletic teams. No credible evidence of the use of profanity was offered at the hearing.

35. **Evaluations** All Blaine Elementary School teachers, including the Appellant, were evaluated by the principal twice each year, at the beginning and the end of each school year. These evaluations were based upon classroom observation. The Appellant's overall ratings were satisfactory; however, the evaluations noted problems with unprofessional comments made to students. Exhibit S-36, page 3. The Appellant was awarded significant numbers of "outstanding" grades on specific factors of the evaluation, within the overall ratings of satisfactory. On the evaluation in 1986-1987 school year, Mr. Aller wrote "Randy is a master communicator. His conflict solving skills are excellent...." Exhibit S-37, page 5.

36. Mr. Aller never personally saw the Appellant touch a student inappropriately. He supervised the Appellant from 1979 through 1983 while at Blaine Elementary School. The Appellant was not placed on a formal plan of remediation, because most of his evaluations were satisfactory or better, and when problems occurred the Appellant was spoken to and instructed about acceptable behavior on an incident by incident basis.

37. On the 1983-1984 school year evaluation, Mr. Aller commented, "Randy needs to keep especially alert building the kinds of relationships that cannot be misconstrued." Exhibit S-35, page 5. Mr. Aller did not place the Appellant on a formal remediation plan, because Mr. Aller believed remediation plans are specifically targeted at a teacher's teaching efficacy. Mr. Aller felt the real problem with the Appellant was his professional relationships with students. Mr. Aller believes, in retrospect, that he failed as a principal because although he did the best he could, he now takes part of the blame for allowing the Appellant to continue to teach. Mr. Aller believes the Appellant is not competent, and does not deal with people appropriately. Although each of the elementary school incidents involving the Appellant was either explained away or dealt with at the time, according to Mr. Aller, the cumulative effect of those incidents, along with incidents that occurred later at the Blaine middle school, add up to a teacher with inappropriate conduct who should not be allowed to continue to teach.

38. **Blaine Middle School** William Kelly was the principal of Blaine's middle school beginning in 1987. He supervised the Appellant while the Appellant taught three periods of PE classes at the middle school during the 1989-1990 school year. He worked with the Appellant on several issues.

39. Mr. Kelly issued a letter of reprimand to the Appellant, dated January 5, 1990, based on the Appellant being late to a monthly faculty meeting, and then missing three faculty meetings. Exhibit S-29. On February 14, 1990, Mr. Kelly went to the gym to speak with the Appellant during a PE class period. Although students were present, milling about unsupervised and out of control, the Appellant was not present in his class for nine or ten minutes. Mr. Kelly issued a letter to the Appellant on that same date, February 14, 1990. Exhibit S-30. A copy of the letter was also sent to Blaine's superintendent and the high school principal. The Appellant taught at both the middle school and the high school at that time.

40. As the Appellant's supervising principal, Mr. Kelly completed an evaluation of the Appellant at least during the 1989-1990 school year. During a scheduled observation of the Appellant's teaching for the 1989-1990 annual evaluation, Mr. Kelly observed the Appellant in a classroom teasing several students. This episode resulted in a yelling match in the room between the students and the Appellant which lasted approximately five minutes. When Mr. Kelly spoke with the Appellant about this the next day, the Appellant did not remember the yelling match had taken place. Mr. Kelly felt the teasing and the yelling match were both inappropriate for a teacher/student relationship. Mr. Kelly spoke with the Appellant about the incident and included it in the observation.

41. N.V.B. On October 1, 1990, N.V.B. complained to her teacher, Mrs. Tucker, that she did not want to go to PE class that day and did not want to be around the Appellant. N.V.B. explained that the Appellant was saying things she did not like and touching her in ways she did not like. According to N.V.B., the Appellant said she was his girlfriend, and he had touched her inappropriately. Exhibit S-38. Mrs. Tucker took N.V.B. to the middle school counselor, Sheryl Havens. N.V.B. reported essentially the same story to Ms. Havens.

42. N.V.B. reported that on the second day of PE class during that school year, the Appellant had patted her on the buttocks. On a couple occasions the Appellant had called out to N.V.B., "hey, good looking," "you're a heartbreaker," and "this is my girlfriend." He also patted or lightly grabbed her on the buttocks when he walked past her, passing between N.V.B. and a girlfriend on one occasion. On another occasion he walked up behind her, put his arms over her shoulders and had run his hands down her front, including briefly placing his hands on her breasts. N.V.B. also said the Appellant later poked her with one finger in an area below her waist by approximately one inch. On October 1, 1990, Mr. Kelly was informed of N.V.B.'s allegation.

43. N.V.B. recounted essentially the same story to Mrs. Tucker, Ms. Havens, and Mr. Murphy. Her version was virtually the same for the police, as well. Exhibits S-39, S-40, S-41, S-42 and S-43 (A)(B). She stated virtually the same version in her deposition taken

March 4, 1991, in an action to terminate the Appellant's employment. At least a portion of that deposition was videotaped. Exhibit S-43 (A0(B)).

44. By the age of ten or eleven, N.V.B. already had a troubled family history. She had been shot by either her father or her mother's boyfriend a few years before the October 1990 incident with the Appellant. Her mother would question N.V.B. about possible inappropriate contact from her father when N.V.B. returned from visitations with him. N.V.B. and her mother had moved around a great deal. Her mother had a significant drug involvement, and died of a heroine overdose within a few years after the incident with the Appellant. Administrative staff in Blaine were not aware of any reason they should not believe N.V.B.'s testimony. The record is not clear whether or not Blaine administrative staff were aware of N.V.B.'s personal history in October 1990, at the time she made her allegations.

45. Mrs. Tucker submitted a Declaration in lieu of live testimony for direct examination. Mrs. Tucker relied, in largest part, upon a review of her prior statement made to the police during their 1990 investigation in order to complete and sign her declaration. She no longer has a significant independent recollection of the N.V.B. events from October 1990.

46. Mr. Kelly did not investigate the incident; he listened to N.V.B. and took notes. Mr. Kelly spoke with Ms. Havens, who reported N.V.B. had told the same story to Mrs. Tucker and Ms. Havens. N.V.B.'s friend, E.H., was also interviewed October 1, 1990, by Mr. Kelly and separately by Ms. Havens. E.H. reported a similar story to that of N.V.B. Mr. Kelly contacted Blaine's superintendent, Gordon Dolman. The police were contacted, and on October 2, 1990, the police began an investigation of the Appellant. Exhibits S-38, S-39, S-40, S-42, S-45, and S-46.

47. Following N.V.B.'s October 1, 1990 allegations, the police conducted an inquiry. Criminal charges were filed November 26, 1990, by the Whatcom County prosecuting attorney. Mr. Mac Duffie Setter was the prosecutor on the case. He filed an Affidavit for Probable Cause Determination in Whatcom County Superior Court, Cause No. 90-1-00680-1, alleging details learned from police interviews with N.V.B., E.H., fifth grade teacher Mrs. Tucker, school psychologist Sheryl Havens, principal Mr. Kelly, and N.V.B.'s mother. The Appellant was charged with communication with a minor for immoral purposes, which is a gross misdemeanor, and child molestation in the first degree, which is a class A felony. Exhibit S-48.

48. On March 12, 1991, Mr. Setter, the prosecuting attorney, received a letter from the Appellant's private criminal attorney, Warren J. Page. Exhibit S-49. Mr. Page proposed a settlement of the dispute. According to Mr. Page, the Appellant felt the criminal process had, "virtually destroyed his long-term relationship of trust with School District officials." Further, Mr. Page said neither the Appellant nor Blaine would be appropriately served

through continuing the employment relationship with Blaine. The letter went on to state "perhaps most devastating is his realization that the allegations have forever jeopardized his future in education." The letter also stated that the Appellant would immediately resign his position with Blaine and would "actively pursue other employment opportunities outside of the teaching profession." Exhibit S-49, page 2. The Appellant requested in return that the state dismiss the criminal charges that were then pending.

49. Mr. Setter was interested in settling the case and in ensuring that the Appellant would no longer be a teacher, in a position of authority and trust with students. He discussed the surrender of the Appellant's teaching certificate with Mr. Page. Mr. Setter recalled Mr. Page explained that the Appellant had undergone so much negative response from the significant news media attention that he was unwilling to give up his teaching certificate at the same time he gave up his job, and the same time the criminal charges were dropped. Mr. Page and Mr. Setter entered into a gentleman's agreement that the Appellant would resign his position with Blaine, the prosecuting attorney would drop the criminal charges, and the Appellant would shortly thereafter surrender his teaching certificate, meaning he would voluntarily give up being certificated.

50. The prosecuting attorney, Mr. Setter, filed a Motion and Affidavit for Order of Dismissal, dated March 18, 1991. Exhibit S-50(a). The Motion and Affidavit did not specify that the Appellant would give up his teaching certificate. Instead, there were several oblique references to the Appellant no longer teaching, including references to the Appellant not having the opportunity to be in a position of responsibility and trust with students again, and his immediate voluntary resignation of his position with Blaine and intention to "pursue other employment." The prosecutor's Affidavit repeatedly mentioned the Appellant pursuing other employment. Exhibit S-50(a), page 2.

51. Mr. Setter did not include any terms or any written documentation, either to the Court in support of the request to dismiss the criminal charges, or directly to Mr. Page, which clearly identified that the voluntary surrender of the teaching certificate was a factor in the decision to settle the criminal case. Mr. Setter chose to leave those terms out of any written documentation at the request of the Appellant's attorney, Mr. Page, in an effort to get the matter concluded and in effect, as a courtesy to the Appellant. Mr. Setter had occasional contact with OSPI through its investigator, Adelle Nore. Mr. Setter advised Ms. Nore that the Appellant would voluntarily surrender his certificate, since that was Mr. Setter's understanding at the time.

52. The Appellant voluntarily resigned his position with Blaine, the criminal charges were dismissed, and the Appellant sought employment outside of education for approximately one year. The Appellant credibly testified he never agreed to voluntarily surrender his teaching certificate, and there is no documentary or testimonial evidence that he entered into such an agreement. Mr. Duffie's testimony was clear that he strongly desired the

Appellant would surrender his certificate, and he believed that was the deal he had agreed to with the Appellant's attorney. Without any such agreement in writing, either from the Appellant himself, or from his attorney on his behalf, Whatcom County could not require the Appellant to surrender the certificate.

53. On April 15, 1991, OSPI's OPP received a complaint letter regarding the Appellant from the Superintendent of Blaine alleging a lack of good moral character or personal fitness. Exhibit S-8. OSPI investigated that complaint through investigator Adelle Nore. The complaint was eventually dismissed without prejudice on January 16, 1992. Exhibit S-55. At the time that complaint was under investigation, OSPI underwent a reorganization and created the OPP. There were hundreds of complaints then pending, and far too few staff to investigate them all. OSPI decided to dismiss all pending complaints except those cases involving allegations of teachers putting students at immediate risk of physical harm or sexual contact. The Appellant's complaint did not allege either of those circumstances and was, therefore, dismissed by OSPI without prejudice.

54. In December of 1991, the Appellant applied for teacher certification in Oregon, within nine months of resigning from Blaine. Exhibit S-57. In an addendum to that application, the Appellant informed the Oregon Teacher Standards and Practices Commission that all criminal charges against him "were dropped with prejudice." He did not reveal to Oregon that he had offered to resign his teaching position and to seek employment outside of education. The criminal charges were not dropped "with prejudice;" they were dropped without prejudice, meaning they could be re-filed. Exhibit S-57. He answered "yes" to the question "have you ever resigned from an educational position while under investigation for misconduct or unsatisfactory service." On July 21, 1992, Oregon offered the Appellant a "Basic Teaching License" with the provision that the Appellant would be on probation during the life of the license. Exhibit S-57. The Appellant accepted Oregon's offer on August 21, 1992.

55. **Other School District Employment** The Appellant taught in the Clover Park School District (Clover Park) as a conflict mediation coordinator, and head wrestling coach. No evidence of complaints about his behavior in that position was offered.

56. The Appellant applied for a teaching position at the Methow Valley School District (Methow) in May 1992. Exhibits S-58(a) and (b). His application was favorably received, and he progressed through the hiring process. He was verbally advised he was in line for the position after an interview. However, Methow's then-superintendent, Suellen White, learned from a source outside the hiring process certain details which caused her significant concern. The Appellant disclosed the criminal investigation from Whatcom County. He told Methow that the Whatcom (N.V.B.) criminal charges were dismissed because the allegations were unfounded; he did not reveal he had agreed to resign his job as part of the deal to get the criminal charges dropped. He wrote to Methow, "The

complaint was dismissed because there was absolutely no evidence of any impropriety on my part." Exhibit S-58(b). This statement was incorrect. The Methow hiring committee felt the Appellant had misrepresented the circumstances of his Blaine resignation and of the dismissal of the criminal charges. Methow did not employ the Appellant.

57. **Mt. Adams School District in White Swan, Washington** The Appellant applied for and was hired by the Mt. Adams School District in White Swan, Washington, in August of 1995, to work in a program for at-risk youth. Mt. Adams is located inside the Yakama Indian Reservation. The Appellant remained in that program for a few years, then switched and became a teacher in the general student population.

58. The Appellant coached football, wrestling and girls' softball teams for several years. He was successful as a coach. His teams did well. He was the president of the coaches' association. The Appellant was popular with students, due in large part to his successes as a coach. He made a positive difference to many young men and boys, as well as female athletes, in White Swan through his coaching. He was liked and respected by some of the Mt. Adams teaching staff, especially the other teacher-coaches.

59. In January 2001, the Appellant attended a training session for Mt. Adams staff dealing with appropriate/inappropriate touching, and sexual harassment. The instructor was Jerry Painter, staff attorney (now general counsel) for the WES. Mr. Painter has historically provided training to school district employees throughout Washington State on sexual harassment. The training covered the 'universal safe touch zone' for a teacher to touch a student, among many other topics.

60. **Savage Discipline Notice** Tracy Lawrence Savage was been the Mt. Adams high school principal for the past six years. Prior to that she was the vice principal for Mt. Adams' middle school. On April 30, 2001, Ms. Savage issued a written reprimand to the Appellant for comments he made to a student, and inappropriate comments about a special needs student made to another student. Exhibit S-64(a), pages 4 and 5. The reprimand advised the Appellant "...we need to be good role models by expressing ourselves with a professional and positive demeanor." Ms. Savage instructed the Appellant "to refrain from making inappropriate comments toward and about students." Exhibit S-65.

61. The inappropriate comments made about the special needs occurred on April 20, 2001, when a Mt. Adams female student, T.D.L., spoke to the Appellant in an attempt to raise money for modifications to be made so that a senior special education student could

attend the senior prom.² The special education student was in a wheelchair, and had significant problems with swallowing and regurgitation. The Appellant refused to contribute to the effort, which was his right. He asked the fund-raising student, T.D.L. why the disabled student should go to the prom, saying the student's regurgitation would gross people out, the student wouldn't understand the meaning of the prom, the student didn't deserve to go anywhere, and there was nothing the student could do at the prom. Exhibit S-64(a4). Ms. Savage issued a written reprimand to the Appellant based on his comments, advising him he was to refrain from inappropriate comments. Exhibit S-65.

62. On or about October 29, 2001, Ms. Savage mentioned at a staff meeting that she had recently started a Corvette. The Appellant commented that Ms. Savage was "just a girl" and couldn't have started a car like that. Ms. Savage ignored the comment and continued with the meeting.

63. **Jennifer Tenney** On or about October 25, 2001, the Appellant was in the school office, joking with a female staff member there. No students were present. Jennifer Tenney, a para-educator in Shelly Craig Marceau's special education classroom, overheard the Appellant's joking, which she found to be offensive sexist remarks. Ms. Tenney told the Appellant it sounded like he didn't like women very much. He replied "No, I like them. I think everybody should own one." Ms. Tenney found this comment even more offensive, and warned the Appellant he was on thin ice and had better not step over the line. The Appellant laughed at the warning and said "Oh, what are you going to do, spank me?" This again was offensive to Ms. Tenney, who reported the incident to Kyle Young middle school principal. Mr. Young stated that was "just Randy Deming," and advised Ms. Tenney to speak directly to the Appellant.

64. Ms. Tenney heard the Appellant make other comments including "women should be in the kitchen, serving men," "women should know their place" and "women are only good for one thing." The Appellant apparently intended these comments to be humorous. They were offensive to some people who heard them. A verbal reprimand was issued November 1, 2001, for the offensive comments. The Appellant apologized and explained his comments were just his way of joking around. He acknowledged such joking was not appropriate, and conceded his remarks were offensive to some women. Exhibit S-67(b).

65. **A & W** On February 3, 2001, the Appellant, the wrestling team and wrestling cheerleaders stopped at the Toppenish A & W restaurant while returning from a wrestling match. The Appellant was overheard being loud, obnoxious and disrespectful. The offended customer wrote to Mt. Adams to complain. Exhibit S-63. A customer was

² This decision does not address the school district's duty to provide a special education student with access to the senior prom.

offended that the Appellant called out to a wrestler about going on a double date. The Appellant was dating that student's mother at the time. The Appellant did not feel his comment was inappropriate. When informed of the complaint, the Appellant's response was that it was none of the complainer's business. This defense misses the point of the complaint, which was his behavior was loud and obnoxious, and did not serve as a role model for the team members. Ms. Savage issued a written reprimand to the Appellant for the A & W incident, which was later withdrawn. Exhibit S-63.

66. **Cle Elum Softball** The Appellant coached the Mt. Adams girls' softball team in a game in April 2002 at Cle Elum. The Appellant was ejected from the first game of a double header for non-sporting comments made to a game official, the umpire. The official was a young man, new to the position, and the Appellant alleged the umpire favored Cle Elum in his calls. The umpire was apparently a recent Cle Elum graduate. The Appellant was disciplined by Mt. Adams. He did not formally challenge the discipline then or later. However, credible corroborating evidence was offered by S.W., catcher for Mt. Adams, during this hearing that game participants made unacceptable racist comments about the Mt. Adams players, many of whom were Native American.

67. Darcy Bator, the Cle Elum softball coach, complained to Cle Elum's athletic director, Coach Sherrill, about comments made by the Appellant. He asked her to write a report about it. Exhibit A-14. The Appellant asked Ms. Bator whether she was sleeping with the umpire. Sherrill forwarded Ms. Bator's written comments to Mt. Adams' athletic director, Ray Funk, and the Appellant was suspended for one game. Exhibit S-69.

68. The Appellant next saw Cle Elum's coach, Darcy Bator, at an all-league coaches' meeting. The Appellant made comments to Ms. Bator about her sleeping with or being married to the official at that earlier game. Ms. Bator, who was pregnant at the time, found the Appellant's comments insulting and unacceptable. Ms. Bator felt further insulted when she was not nominated for coach of the year. Ms. Bator's Cle Elum team was the conference champion that year. Traditionally, the top team's coach was named coach of the year. The Appellant nominated the Mabton coach, saying he voted for Mabton because the Cle Elum coach (Bator) was sleeping with the umpire.

69. Umpires are assigned out of a central place by an individual not controlled by the Cle Elum coach. The coaches do not have control over who is assigned. Ms. Bator was offended by the allegation she had controlled the selection of the umpire, since she felt it was completely baseless.

70. Other league coaches present at the all-league meeting did not hear the comments the Appellant made to Ms. Bator. One coach, Dave Mendoza, testified he did not hear comments which the Appellant admits he said to Ms. Bator. Mr. Mendoza's testimony is accorded less weight, accordingly. Mr. Mendoza testified that the all-league coaches'

meeting room was uncomfortable because of tension in the room. Dan Robillard, who was also present and also testified he heard everything said in the room, said there was no tension in the meeting room, but there was a lot of joking around. Jesus Sustaita was another coach present at the all-league meeting. He did not recall hearing the Appellant say anything wrong at the meeting, but as Mr. Sustaita conceded, what sounds wrong to a man might not be the same as what sounds wrong to a woman.

71. According to Mr. Robillard, it is not appropriate for a male coach to massage a student in a regular classroom, as contrasted with a gym or playfield location, and it is not appropriate for a coach to massage non-athlete students.

72. Cle Elum's athletic director made a formal complaint to Mt. Adams's athletic director, Mr. Funk, asserting the Appellant's comments at that meeting were offensive, showed a lack of professionalism, and could be construed as sexual harassment. Mr Funk investigated the complaint. Exhibit S-70(c)(e)(f). The Appellant explained his comments were in jest. Mt. Adams' athletic director Funk and Principal Savage issued a written warning to the Appellant, instructing him to refrain from making inappropriate comments that could lead to harassment claims. They required him to write an apology to Ms. Bator.

73. Throughout the time he coached and taught at Mt. Adams, the Appellant was motivated to help his student athletes stay in school and earn adequate grades to be eligible for sports. To that end, he arrived at school early and stayed after school, offering tutoring and a place for students to hang out. He assisted many students in this manner. He was paid for some, but not nearly all, of the time he spent at Mt. Adams before and after school with students. When he was paid, he provided the same service for non-athletes. However, before school, he would demonstrate wrestling moves on the students, including holds, and kid around and be physical in his classroom.

74. **L.B.** The Appellant was assigned to be a math teacher in the 2003-2004 school year for a class which included a special education student named L.B. That student had a miserable family and academic history, and moved back and forth, living with his mother and then living with some other individual, changing school districts annually for the past six years. Beginning prior to 2003 and continuing to the time of the hearing, L.B. has been frequently involved in fights at school. On September 5, 2003, the school year had just begin. L.B. was goofing around in the Appellant's class, not being an ideal student. The Appellant grabbed L.B. by the neck so hard that it hurt. The action dropped L.B. to his knees in front of the rest of the class. L.B. then swore at the Appellant. The student was embarrassed at being physically intimidated and at being dropped to his knees, even if only briefly. He had red marks, but not bruises.

75. L.B. reported the incident to his special education teacher, Shelly Craig Marceau. The report was corroborated by other students who had been in the same class. Ms.

Marceau wrote a memo about the incident to the principal, Kyle Young, because she felt it was her duty to do so when students were in unsafe situations. Exhibit S-71. Mr. Young shared Ms. Marceau's memo with the Appellant that day or the next. Ms. Marceau also wrote a memo to the Mt. Adams' special education director, again expressing her concerns about the Appellant's interaction with students. Exhibits S-73, S-74.

76. On September 6, 2002, the Appellant went to Ms. Marceau's classroom during passing time between classes. He either yelled or spoke so loudly that students and other staff inside the classroom could hear through the wall and closed door. The focus of the tirade was initially R.V., a special education student who had also claimed he had been hurt by the Appellant, and who had corroborated L.B.'s report of the events that occurred the day before in the Appellant's classroom.

77. Ms. Marceau did not feel it was appropriate to allow the Appellant to be alone with the special education student, yelling at him in the hallway, so she remained in the hall. The Appellant then called for L.B. to come out of the classroom, and grabbed him. The Appellant accused L.B. of telling falsehoods about what had happened in the classroom. The incident with the Appellant yelling at the two male students in the hallway lasted ten to fifteen minutes. Staff and students were all upset. When the two boys reentered their special education classroom, they were shaken, trying to be tough, but they cried. The students and Ms. Marceau felt intimidated by the Appellant.

78. The incident was reported to Mr. Young, middle school principal, who conducted a brief investigation. At the time, it appeared he did not believe the students' allegations about inappropriate touching and intimidation. Mr. Young now asserts he did believe the allegations. Mr. Young instructed the Appellant not to touch students and took no further action. Mr. Young did not report the incident to the police or to the Department of Social and Health Services, which is the agency to which mandatory reporters are required to report incidents of suspected child abuse.

79. **Comments to students** The Appellant made inappropriate comments to Mt. Adams students, including calling female middle school students honey, sweetheart, and sweetie. Exhibits S-80(a), S-81(a), S-82 and S-86. He commented at school that one female student's "butt's getting bigger." Exhibit S-82. He told another female student she should wear skirts more often because she had nice looking legs. Exhibits S-80(a), S-81(a)(b).

80. While at Mt. Adams, the Appellant also called students "dummy," "stupid," "dingbat" and other demeaning labels. He denied this, asserting instead he merely labeled the questions students asked as dumb or stupid. That testimony, when balanced against the testimony of many students, is not found to be credible. In any event, even if the

Appellant's testimony on that point was found to be credible, it still would not be appropriate conduct to demean a student or his question.

81. **A.R. and I.P.** During the autumn of the 2002-2003 school year, the Appellant taught a lower-level math class at the middle school. Two female students in that class, A.R. and I.P., spent a lot of class time kidding around with the Appellant, which significantly disrupted class. The Appellant allowed the girls to misbehave some of the time, including allowing them to sit in his chair at his desk. The students escalated in their bad behavior, and the Appellant did not take appropriate steps to control this behavior. The Appellant did not make it clear that they were not allowed to be disruptive, sit in his chair and go through his desk, and talk back to the Appellant. The Appellant conducted the class in a casual, informal manner. He did not provide clear behavioral boundaries for the students. Sometimes the Appellant yelled at the students to get out of his chair. Sometimes they complied. The Appellant occasionally sent one or both the girls to a neighboring classroom as a type of discipline, in order to allow them time to reflect on their behavior, and redirect their actions. This was the first step of discipline in the school district's new student behavior program. The Appellant did not seek the administrator's assistance in getting the girls to behave better. The Appellant had been in education many years longer than the principal, Mr. Young, and had dealt with significant discipline problems through his years of teaching. He did not feel he needed assistance with the girls, who behaved poorly, but were not a safety threat to other students.

82. When the Appellant was no longer able to get A.R. and I.P. to leave his chair by asking, ordering or yelling, he turned to grabbing and shaking the chair to get them out, and then to pinching, tickling, and squeezing the students. He touched the girls on their stomach, side, neck, shoulder, knee and thigh. This occurred on many occasions. On one or more occasions, the Appellant sat on the girls' laps as they sat in his chair. On one or more occasion one or both of the girls sat on his lap in his chair. The girls and The Appellant often laughed as these chair tussles occurred.

83. On one occasion, the Appellant pulled I.T.'s hair. He placed a choke hold on I.P., who then bit him. The Appellant responded that he thought he was going to get rabies from the bite. Class was significantly disrupted when this activity occurred. No instruction occurred. I.P. and A.R. laughed, as did the Appellant.

84. In January 2003, A.R. became upset at school, and told a staff member she did not want to be in school because of the Appellant. Exhibit S-78. An investigation of the Appellant's touching of A.R. and I.P. was conducted. The Appellant was charged by the Yakima County Sheriff's Office with two counts of fourth degree assault, with sexual motivation, a gross misdemeanor. He was found not guilty on both counts, following a jury trial. Exhibit S-87.

85. The Mt. Adams superintendent issued a Notice of Probable Cause for Discharge to the Appellant on April 21, 2003. Exhibit S-88. The Appellant appealed the discharge through arbitration. That hearing took place February 9 - 13, 2004. The discharge was upheld. Exhibit S-90.

86. On March 17, 2003, OSPI's OPP received a written complaint from the Mt. Adams superintendent, alleging that the Appellant demonstrated a lack of good moral character or personal fitness, and had possibly committed acts of unprofessional conduct. Exhibit S-2. OSPI responded with a letter dated March 26, 2003, which gave notice to the Appellant of the complaint, and invited submission of materials on his behalf.

87. OSPI conducted an investigation, and issued an Order of Suspension for sixty (60) months, dated September 7, 2004. Exhibit S-4. The Appellant appealed the suspension. Exhibit S-5. An informal hearing was held before OSPI's APCAC on June 1, 2005. APCAC issued a Final Order of Revocation on June 22, 2005, imposing a heavier penalty than OSPI's OPP. Exhibit S-6. The Appellant appealed that order. Exhibit S-7.

88. L.A. L.A. was a student in the same math class with A.R. and I.P. She was uncomfortable around the Appellant, because he got too close inside the physical space comfort zone of girls, but not boys. He grabbed boys more roughly by the neck in class. He put his arms around either side of L.A. when he responded to questions. She stopped asking for help. On one occasion when L.A. was in fifth or sixth grade, he told her she was beautiful. This made her uncomfortable, as she "didn't know whether he was hitting on me or complimenting me." Declaration of L.A.

89. L.H. L.H. was in the same math class in the 2002-2003 school year with L.A., I.P. and A.R. The Appellant would go over to L.H.'s desk, lean over it, and put his arm around her shoulder. She felt he was invading her bubble of personal space. Sometimes he rubbed the middle of her back. That made L.H. uncomfortable. She told the Appellant to stop, which he did for awhile, but then he did it again later. L.H. did not feel the Appellant's physical touching was appropriate.

90. Credibility Many Blaine witnesses testified that it is difficult to recall exact details after so many years. Witnesses testified on opposite sides of specific incidents. Some witnesses gave blanket testimony, such as Dr. Dolman's testimony to the effect that he never saw the Appellant massage a cheerleader, although he was the administrator who disciplined the Appellant for a spinal manipulation of a female student. Dr. Dolman labeled questions about the Appellant massaging a cheerleader "silly." Since the Appellant admitted having massaged and manipulated spines for cheerleaders, and student athletes, such blanket testimony serves to lessen the credibility of those witnesses.

91. Jack Adams was a shop teacher and coach in Blaine when the Appellant first became employed there. Dr. Adams went on to earn several graduate degrees and become an administrator, including school district superintendent (Toutle Lake and Colville) and educational service district superintendent (in Oregon). Dr. Adams clearly respects and admires the Appellant. He has been a big supporter of the Appellant. However, his testimony was so uncritical of the Appellant, so unreservedly supportive, that it lost credibility. Dr. Adams' testimony was that of an advocate for the Appellant, not a fact witness. Dr. Adams testified, for instance, that the Appellant's practice of calling eighth grade female students "honey" and "sweetie" was not the best method, but not inappropriate. He insisted he had never heard the Appellant talk like this, which is not surprising, since the men have not worked together for approximately 30 years, but get together for fishing and spent weekends together. However, the Appellant readily admitted he uses these terms for female students. Dr. Adams also stated he would never believe that the Appellant did anything inappropriate, meaning sexually motivated, to any child. This blanket statement reduces Dr. Adams' credibility. Adams sworn statement. Further, Dr. Adams was completely unaware that the criminal charges in Whatcom County which stemmed from the N.V.B. allegations were dropped in exchange for the Appellant's resignation. Much of Dr. Adam's knowledge of the Appellant is derived directly from what the Appellant told him, rather than his own observation of incidents.

92. Regarding massaging cheerleaders, Dr. Dolman posed the rhetorical question "Why would he, he's a grown man, why would he be touching cheerleaders?" The Appellant answered that question in part by explaining he was trained to do massage and manipulation of student athletes as part of his education to be a PE teacher, coach, and team trainer, back in the early 1970s. However, the Appellant performed massage and manipulation on students who were not his athletes. He clearly enjoys his positions as teacher, coach, trainer, and as friend to students.

93. Other men who serve as PE teachers, coaches and trainers testified on behalf of the Appellant. Testimony of Ridnour and Andersen. Even those individuals who received the same training as the Appellant, do not do manipulations and massage on just anyone who asks for it, and do not touch female students without another individual present currently. Lee Andersen, Ferndale coach, has allowed the Appellant to do a manipulation on his daughter, but was physically present at the time. The standard for physical touching between a coach or trainer was different in the 1970s and 1980s than today.

94. The other coaches who were present at the all-league coaches' meeting provided blanket denials of having heard the Appellant make offensive statements to Ms. Bator. However, the Appellant admits having made some of the statements. This decreases the credibility of those witnesses who issued blanket denials. Further, in a meeting involving 5 or more individuals, it is not credible that an individual heard everything that was said in the room.

95. The Appellant demonstrated he did not understand or observe appropriate teacher-student physical boundaries in the past, and has not adequately updated his understanding to the significantly more conservative standards of appropriate teacher-student touching today.

96. There was no evidence that the Appellant is sexually motivated in his interactions with students. He appears to be motivated to assist his athletes to achieve in school and in athletics, but appears to also be motivated, in part, by the significant position of power he holds over students.

97. The Appellant is a large, physical person, who was observed in the hearing room hugging witnesses, including current female Mt. Adams students, who provided testimony favorable to him. This continued touching of students, despite years of being instructed not to touch students, supports the Appellant's testimony that he does not see anything wrong with hugging students. His family kisses, so he kisses, he explained. The Appellant continues to be a very physical person. He did not appear to understand the fundamental difference between how a teacher treats his own family members, and how he is required to treat students.

98. The Appellant admitted that he jokes around with students, making up nicknames, and calling out, "hey, good looking, what's cooking (presumably for girls)," "hey, studley dudley (presumably for boys)," "bubba" and "dude." The Appellant explained these comments are intended to build up students' egos. It is not clear how sexual references and innuendos aimed at elementary and middle school students would achieve this goal. It was clear the Appellant did not understand the inappropriateness of such greetings.

99. Credibility determinations of witnesses can be difficult to make when the testimony comes many years after an alleged incident. They are even more so when some of the individuals involved in the alleged incidents are not available to testify at the hearing. In both such circumstances, the totality of the circumstances, including corroborating testimony, documents made at or near the time of the alleged incident, apparent motivation to fabricate, and degree of similarity different iterations of the same incident are all considered.

CONCLUSIONS OF LAW

1. OAH has jurisdiction over the parties and subject matter of this action to issue a final decision by OSPI as authorized in Chapter 28A.410 RCW, Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including Chapter 10-08 WAC, Chapter 180-86 WAC, and 392-101 WAC.

2. The State Board of Education (SBE) is the agency responsible for issuance and publication of rules and regulations governing the eligibility for teaching certificates in Washington State. OSPI is responsible for the administration of these rules and is empowered to issue or revoke teaching certificates. RCW 28A.410.010.³

3. Any certificate authorized under Chapter 28A.405 or 28A.410 RCW, or under the rules promulgated under those Chapters, may be revoked or suspended by OSPI for a variety of specified reasons. Those include unprofessional conduct. RCW 28A.410.090 (1).

4. The teacher certification statute was significantly amended in 1992. Beginning with that year, OSPI was authorized to initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations or of noncompliance with Chapter 28A.410 RCW or with any rules adopted under it.

5. Any teacher whose certificate to teach has been questioned under RCW 28A.410.090 (revocation or suspension including for acts of unprofessional conduct) has the right to be heard by the issuing authority before the certificate is revoked. Any teacher whose certificate to teach has been revoked has a right of appeal to the SBE if notice of appeal is given by written affidavit to the Board within thirty days after the certificate is revoked. RCW 28A.410.100.

6. A person holding an education certification may be disciplined for lack of personal fitness, under WAC 180-86-070, or for an act of unprofessional conduct under WAC 180-87-055. WAC 180-86-070(1) and (2) sets forth the standard for a suspension:

(1) The certificate holder has admitted the commission of an act of unprofessional conduct or lack of good moral character or personal fitness and has presented to the superintendent of public instruction an agreed order to not serve as an education practitioner for a stated period of time and the superintendent of public instruction has agreed 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. 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.

(2) The certificate holder has committed an act of unprofessional conduct or lacks good moral character but the superintendent of public instruction has determined

³ It is noted that many of the responsibilities of the SBE were transferred to the Professional Educator Standards Board as of January 1, 2006. That transfer does not affect the standards to be applied to the alleged conduct, or the authority of OAH to conduct this hearing.

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.

7. The standard is somewhat different for a revocation. WAC 180-86-075 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.

8. "Good moral character and personal fitness" are defined at WAC 180-86-013 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.

9. According to WAC 180-86-014, "The good moral character and personal fitness requirement of applicants for certification under laws of the state of Washington is a continuing requirement..."

10. Unprofessional conduct is defined at WAC 180-87-060 as follows:

Disregard or abandonment of generally recognized professional standards. Any performance of unprofessional 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.
- (2) Employment or evaluation of personnel.
- (3) Management of moneys or property.

11. Unprofessional conduct is also defined at WAC 180-87-080 in part as follows:

Sexual misconduct with students...

(4) Sexual contact, i.e., the intentional touching of the sexual or other intimate parts of a student except to the extent necessary and appropriate to attend to the hygienic or health needs of the student.

12. OSPI "may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or non-compliance with" Chapter 28A410.

13. The SBE's regulations are codified in Ch. 180-79A WAC **Standards for Teacher, Administrator, and Educational Staff Associate Certification.**

14. A certificated individual may be disciplined, including revocation or suspension, for disregard or abandonment of generally recognized professional standards. WAC 180-87-060.

15. A point which must be addressed during any evaluation of unprofessional conduct includes allegations of abuse or neglect of a child. The incident involving M.C. in 1983, which was the hand over the mouth and complete restriction of breathing through the mouth, must be analyzed. The definition of child abuse in effect at that time existed at RCW 26.44.020:

[T]he injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed thereby.

16. RCW 9A.16.100 was enacted in 1986. It contained defenses available to persons accused of criminal acts. Among those are particular acts related to the use of force on children. It states the policy of the State of Washington is to protect children from abuse and neglect, and encourage parent and teachers to use methods of correction and restraint of children that are not dangerous to children. It allows physical discipline of children for

purposes of restraining or correcting a child. Such use of force on a child is presumed to be unlawful unless it is reasonable and moderate and authorized in advance by the child's parent or guardian for purposes of restraining or correcting the child.

17. Certain acts are presumed to be unreasonable when used to correct or restrain a child. Among that list which is codified at RCW 9A16.100(4), are included the following: hitting, throwing, kicking, burning, shaking and threatening a child with a deadly weapon. Also included is interfering with a child's breathing. The Department of Social and Health Services (DSHS) reinforced the Legislature's concern by including "interfering with a child's breathing" in the definition of child abuse. WAC 388-15-009. However, interfering with a child's breathing was not included in the definition of child abuse in 1983, and the definition will not be applied retroactively.

18. The Appellant purposefully interfered with a child's (M.C.'s) breathing by holding his hand over her mouth. This was not done for disciplinary purposes or to correct or restrain her; it was done for fun, as a joke. It was not a joke to the student; she was frightened. The fact that she initiated the contact by making an inappropriate comment to the Appellant is not relevant; the burden for appropriate behavior is on the education professional. The Appellant's behavior toward M.C. showed a flagrant disregard and clear abandonment of generally recognized professional standards. However, that was not the standard to apply in 1983.

19. The disregard or abandonment of generally recognized professional standards test set forth at WAC 180-87-060 does apply to the Appellant's actions at Mt. Adams.

20. The Appellant grabbed L.B., a special education student, by the neck and squeezed hard, causing the student to drop to his knees and leaving red marks. The Appellant did not provide evidence of an acceptable rationale for his behavior. He then yelled at L.B. and R.V., also a special education student, loud enough so that other students and their teachers were able to hear. Both boys were quite upset by the encounter, and were further upset and embarrassed when they cried in front of their classmates about it. These actions meet the definition of unprofessional conduct.⁴

21. The Appellant's repeated physical touching of I.P. and A.R. were unprofessional conduct. This is true even though there is no evidence the Appellant was sexually motivated in his physical contact with the girls.

⁴It is inexplicable why Mr. Young did not report the conduct to DSHS, but it is the Appellant's conduct and professionalism which are under scrutiny here, not Mr. Young's.

22. His poor classroom management did not meet the standard of unprofessional conduct.

23. The Appellant's repeated labeling of elementary and middle school students as Dumb, Dummy, Dingbat, Sweetie, Sweetheart, Honey and Studley in the classroom demonstrated poor judgment and poor classroom management, but on their own, did not meet the standard of unprofessional conduct. The comments were unwelcome, unwise, and inappropriate. That is not the standard for unprofessional conduct.

24. However, his use of those terms, coupled with references to female middle school students' body parts ("I.P.'s butt is getting bigger") and comments about a first date with an elementary student, and about a female middle school student having nice legs, must be analyzed in context. The Appellant was warned repeatedly about inappropriate comments. It is understandable that an individual might not understand the parameters of acceptable, professional comments and might exceed those boundaries once, twice, even a handful of times. However, the Appellant received warning and instruction on these subjects from a variety of administrators over years, and even over decades. Yet he persisted in making inappropriate comments which were sometimes hurtful (Dummy, Stupid, Dingbat), and sometimes sexual in nature. The comments were part of a larger pattern of inappropriate conduct which demonstrated a lack of understanding of appropriate student - teacher, and professional, boundaries.

25. Also, the Appellant's comments about the wheelchair-bound special education student who was significantly disabled were inappropriate, at best. Those types of comments might have been somewhat more accepted thirty years ago, although they would still have been crude and insensitive. At the time the comments were made they demonstrated a failure to understand appropriate teacher - student boundaries. The Appellant might harbor those feelings about a special education student, but as a professional, as a certificated teacher at a public school, he was required to keep such sentiments to himself.

26. The Appellant had been warned and disciplined about offensive comments decades earlier than 2002 or 2003, in Blaine. He did not learn that lesson, no matter how often it was taught to him.

27. Students testified the Appellant liked to have fun and was a good friend. While it is probably better to be liked than hated, a teacher's role is to behave as a professional, not as a friend. The Appellant demonstrated year after year that he either did not understand, or did not accept, appropriate teacher - student boundaries. As testified to by Jerry Painter, a student should never have to say no to inappropriate touching. Certainly, students should not have to say no to a teacher's repeated touching. A teacher should not have to be told repeatedly not to touch. A student should never have to say no to

inappropriate comments. The burden is on the teacher as the adult, as the professional, to establish and maintain appropriate boundaries. By the end of the Appellant's teaching career, his middle school female students were wondering if he was 'hitting on' them, or clumsily trying to compliment them. They had stopped asking for assistance with classroom subject matter, because it led to unwelcome touching. They had come to expect an almost daily show in class of the Appellant yelling at, pinching, tickling and ultimately failing to instruct

28. In order to suspend or revoke, OPP "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 180-86-170(2). In all other proceedings, "including reprimand, the standard of proof shall be a preponderance of evidence." WAC 180-86-170(3).

29. OSPI proved by clear and convincing evidence that the Appellant committed acts of unprofessional conduct during the time he taught at Mt. Adams, in that he demonstrated a disregard of generally recognized professional standards through a clear abandonment of generally accepted professional standards in the course of his professional practices, including instruction and supervision of students. This determination serves as the basis for this decision. Having reached this determination, it is unnecessary to determine whether he also lacked good moral character and personal fitness.

30. That determination is not the end of the inquiry. The appropriate sanction for the discipline must be determined next. OSPI or its designee must consider certain specified factors, at a minimum, prior to issuing any disciplinary order, in order to determine the appropriate level and range of discipline. 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 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.

31. The above factors have been considered. Factor (1). The seriousness of the acts and the actual or potential harm to multiple students was demonstrated by the pain L.B. experienced, and by the reaction of the female middle school students to the Appellant. One of the students involved in the chair issued did not want to attend that class any longer, because of the classroom dynamic, including the unwanted touching. Other female students gave up asking questions in class to avoid unwelcome touching. A female student was unsure whether the Appellant was making advances to her. These consequences of the Appellant's acts are serious and significant.

32. Factor (2). The Appellant has had three complaints to police about his interactions with young female students, include criminal charges filed on two occasions, and one trial. However, he has not been convicted of any crime.

33. Factor (3). The Mt. Adams students whose experiences with the Appellant form the basis of this decision were middle school-aged, both male and female. It is a vulnerable age, particularly for girls, and a time when it is especially important for teachers to model appropriate behavior.

34. Factor (4). The acts in Mt. Adams occurred relatively recently, and were fresh at the time the disciplinary action first occurred.

35. Factor (5). The repeated touching of the girls' bodies, in front of their classmates coupled with comments about their bodies at the vulnerable middle school age, demonstrated a disregard for the welfare of the girls. The labeling of students as Dummy, Stupid, Dingbat, were not terms of endearment. They were hurtful, and demonstrated a disregard for students.

36. Factor (6). There is no evidence of a diagnosed mental illness, but there is evidence of repeated unacceptable behavior in the form of unwanted touching and comments. The Appellant's continued touching, including the hugging of female student witnesses at the hearing, underscored the conclusion that the Appellant cannot, or will not, control that behavior. Hugging and touching of family members is acceptable; the Appellant's students are not family members.

37. Factor (7). There was no evidence that demonstrated a lack of physical fitness for teaching.

38. Factor (8). Two governmental entities (Blaine and Mt. Adams) have imposed discipline against the Appellant for his behaviors.

39. Factor (9). There were no aggravating circumstances other than the years of warnings, and the persistence in the unacceptable behaviors. There was significant

evidence of mitigating circumstances. The Appellant was a winning coach, liked by many athletes and cheerleaders. He made a difference in the lives of many students. He worked early and late, beyond the requirements of the job, to provide assistance to some students. He was liked and respected by some fellow teachers.

40. Factor (10). The Appellant submitted information and evidence that he is a good coach, with many loyal friends who strongly believe in him. He is not a mean person. He simply did not appear to recognize the inappropriateness of his actions, despite years of warning. He provided information from friends and former students and co-workers that he is a person of good character and fitness. However, this case, with all its years of acts and warnings, is like a blindfolded person describing an elephant. The trunk and tail and body and ears are each described separately, but there is no opportunity for that one individual to see the subject in its entirety. Witnesses came forward who testified to this bit of information or that bit of information, but each only saw a small amount of the total picture that eleven and a half days of testimony provided. The testimony about individual acts was more credible than the testimony from friends and supporters about the Appellant's general good character and disinclination to do anything wrong.

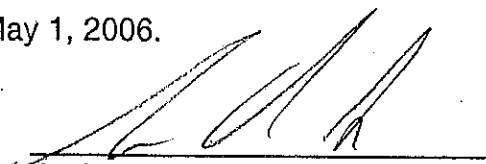
41. Consideration of the above factors leads to the conclusion that the appropriate discipline for a teacher who has been warned repeatedly but has failed or refused to correct unacceptable, inappropriate behavior is to revoke the certification. Warnings and provision of the opportunity to cure the behavior have not proven effective.

42. All arguments made by the parties have been considered. Arguments that are not specifically addressed have been duly considered but are found to have no merit or to not substantially affect a party's rights, and are therefore not addressed specifically in the findings or the conclusions.

ORDER

OSPI's revocation order is affirmed. The Appellant's certification is revoked.

Dated at Seattle, Washington on May 1, 2006.



Janice E. Shave
Administrative Law Judge
Office of Administrative Hearings

PETITION FOR RECONSIDERATION

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

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.

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.

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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. nlh

Via Certified Mail + US Mail (nlh)
James "Randy" Deming
[REDACTED]

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