

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

IN THE MATTER OF THE TEACHING
CERTIFICATE OF

M. Jeanell Malone
(Certificate No. 224166R)

TEACHER CERTIFICATION
CAUSE NO. 2002-TC-0017

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

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Superintendent of Public Instruction
Legal Services

Pursuant to due and proper notice, a hearing in the above-entitled matter was conducted before Senior Administrative Law Judge David G. Hansen in Spokane, Washington, on March 24, 2003 through March 27, 2003. M. Jeanell Malone, Appellant herein, appeared and represented herself. The Office of the Superintendent of Public Instruction, OSPI herein, appeared and was represented by Sarah Coats, Assistant Attorney General. Having sworn the witnesses, heard the testimony, and considered the admitted exhibits, briefs and arguments of the parties, the Administrative Law Judge hereby enters the following:

STATEMENT OF THE CASE

On December 1, 1995, OSPI received a written complaint dated November 27, 1995, from Spokane Public Schools, District No. 81, the District or District No. 81 herein, apprizing OSPI of allegations of inappropriate and unprofessional conduct on the part of Appellant. *OSPI Exhibit 1.* By notice dated December 11, 1995, OSPI advised Appellant that OSPI had received the complaint and that OSPI had commenced an official investigation. *OSPI Exhibit 2.* On January 12, 1999 OSPI issued a Notice of Case Dismissal advising Appellant that OSPI would be taking no further action on the November 27, 1995 complaint and that the matter was dismissed without prejudice. *OSPI Exhibit 27.* By letter dated August 23, 2000, District No. 81 requested that OSPI reopen the November 27, 1995, complaint regarding Appellant's alleged conduct. *OSPI Exhibit 28.* By letter dated October 10, 2000, OSPI advised Appellant of District No. 81's request. *OSPI Exhibit 29.* A probable cause for discharge hearing, under the provisions of RCW 28A.405.300, was conducted on September 18, 2000 through September 21, 2000. The Hearing Officer in the probable cause for discharge issued a Final Decision on

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February 20, 2001, finding sufficient cause for District No. 81's discharge of Appellant. *OSPI Exhibit 30*. On March 7, 2002, Terry Bergeson, Superintendent of Public Instruction, issued a Proposed Order of Revocation which proposed the revocation of Appellant's Washington Education Certificate No. 224166R. *OSPI Exhibit 31*. Appellant filed a timely appeal from OSPI's Proposed Order of Revocation. *OSPI Exhibit 32*. As the result of Appellant's appeal, the Admissions and Professional Conduct Advisory Committee of OSPI held an informal meeting between OSPI staff and Appellant. On November 25, 2002 OSPI issued a Proposed Final Order of Revocation concluding that Appellant had violated WAC 180-86, WAC 180-87, and RCW 28A.410, and revoked the Washington Education Certificate of Appellant. *OSPI Exhibit 35*. Appellant filed a timely appeal from the Proposed Final Order of Revocation and the matter was referred by OSPI to the Office of Administrative Hearings for hearing.

FINDINGS OF FACT

I.

Appellant was issued a Washington State Education Certificate on September 27, 1977 and holds a Valid Standard Secondary Teacher Certificate. Appellant was employed by District No. 81 from the 1983-1984 academic school year through the 1995-1996 school year. At all times relevant to this proceeding Appellant was a teacher at District No. 81's Sacajawea Middle School. Appellant taught primarily social studies.

II.

Early in the 1988-1989 school year, administration at Sacajawea Middle School began to address behavioral issues with Appellant. Specifically, Appellant met with the middle school's principal, George Renner, on Friday, September 30, 1988. Mr. Renner subsequently prepared a memorandum summarizing the meeting, the subject of which he characterized as "Excessive Response to Student Behavior." *OSPI Exhibit 4*. Appellant had been disciplining students for failure to turn in homework by placing them in after school detention. Mr. Renner, in his summary of the meeting, stated "We discussed what I termed as an excessive response on your part, in disciplining students for not turning in their homework. Placing students in after school detention for lack of performance is counter to our basic philosophy of not disciplining students with, or because of homework." *OSPI Exhibit 4*. During the 1991-1992 school year the District began to receive written complaints from parents. *OSPI Exhibits 5, 6a, and 6b*.

III.

Mr. Renner was called by Appellant as a witness at hearing. He testified that he saw Appellant as being rigid, angry and unyielding. He found this to be especially true when it came to particular students with whom she had difficulties or who had questioned her authority.

IV.

Susan Latendresse has been a school counselor at Sacajawea since 1987. She has a bachelor's degree in social welfare as well as education, and a master's degree in counseling and guidance. In mid May 1992 one of the school counselors at Sacajawea, Ms. Latendresse, began the process of enrolling a new student at the school. At hearing Appellant stated of Ms. Latendresse, that there is "no nicer, kinder, caring person at Sacajawea than Sue Latendresse." The student, Shawn, was considered to be an "at risk" student. Upon completing the paperwork Ms. Latendresse sent Shawn from the conference center to his locker. At the time District No. 81 had a rule requiring that students put their coats and jackets in the locker, and not wear them in the classroom or in the hallways. On the way to the locker Appellant noticed Shawn and advised him that his coat was expected to be in his locker. Shawn responded in an angry tone something to the effect that he didn't have a "fucking locker." Shawn then returned to the counseling center where Ms. Latendresse observed that he was very upset. Shawn alleged to Ms. Latendresse that an unknown teacher had "grabbed him and told him to take his coat off." He further alleged that she was yelling at him. Shawn acknowledged having responded with the profane statement to the teacher. Shawn was subsequently suspended for a number of days.

V.

At some point after the above referenced incident Appellant and Ms. Latendresse spoke one morning before the start of school. Appellant was anxious to know what was going to be done by administration with Shawn. Ms. Latendresse described Appellant as being very upset, and having stated that she expected an apology from Shawn before Shawn would be allowed to return to school. Later during the day Shawn was in the counseling center preparing to return from his suspension and speaking with Ms. Latendresse. He had his coat on. Ms. Latendresse described Shawn's attitude as being "great" and that he was in the process of writing a letter of apology to the Appellant, and even offered to speak with Appellant. While Ms. Latendresse and Shawn were discussing the "coat rule" Appellant came into the counseling center. Upon seeing Shawn she became visibly upset, and asked to speak with Ms. Latendresse. In a raised tone of voice Appellant questioned Ms. Latendresse as to why Shawn still had his coat on. Appellant

was visibly angry with Ms. Latendresse, disfiguring her face, and leaning toward Ms. Latendresse, yelling and pointing in the direction of Shawn. There were other students present and able to hear and observe Appellant. Appellant continued yelling and at one point stated, referring to Shawn, "He doesn't belong in this school." Shawn overheard Appellant's comments. Ms. Latendresse finally had to raise her voice in response to Appellant, and told her they would talk about the matter later. Ms. Latendresse returned to her meeting with Shawn. He was very upset, with tears in his eyes. He proceeded to rip up the written apology. He threw it in the garbage and walked out of the counseling center saying "I don't belong here. I'm not welcome here. I'm not coming back." Shawn never returned to Sacajawea.

VI.

On one occasion in April 1994 Appellant approached Ms. Latendresse in the counseling center. Other students, staff, and parents were present. Ms. Latendresse described Appellant as being quite angry and Appellant's tone of voice as yelling. Appellant was upset over the manner in which Ms. Latendresse had handled a parent's concern about Appellant. Ms. Latendresse was busy with other concerns, and instructed Appellant that they would speak about the situation at a later time. Appellant continued to insist on talking to Ms. Latendresse about the issue. In order to avoid any further confrontation Ms. Latendresse left the counseling center to speak with a teacher in the hallway. Appellant followed Ms. Latendresse, continuing to speak about her concerns in a loud tone of voice. In order to end the conversation Ms. Latendresse had to leave the area.

VII.

Gretchen McDevitt was another counselor at Sacajawea, from 1978 until 2000. She has a bachelor's degree in elementary education as well as a master's degree in psychology. Ms. McDevitt witnessed the April 1994 incident between Ms. Latendresse and Appellant. In a May 27, 1994 memo addressed to the Sacajawea principal, Herb Rotchford, Ms. McDevitt described claimant as follows:

[Appellant] appeared to be very angry as she spoke to Susan. Her voice was loud, her body language was very animated, and her face had tight, scowling expressions. She appeared to be angry because a parent had called Susan rather than her. Jeanell said 'you' should have told the parent to call me. Susan replied, "I did." Then Jeanell said something to the effect, "That's the trouble. The parents call you, you call Nick, they call the principal, they call the vice principal and when they should be calling the teacher."

OSPI Exhibit 11b. The incident took place in a hallway crowded with students on their way to class. Ms. McDevitt credibly testified that the incident occurred as described in her memo. In her capacity as a counselor Ms. McDevitt received numerous complaints from parents regarding Appellant's conduct toward their children. The complaints described Appellant as being angry with the students, intimidating and humiliating them, and embarrassing them. During the 1992-1993 a student named Brad asked Ms. McDevitt to remove him from Appellant's class. He threatened that if he was made to stay in the class he might "do something to" Appellant.

VIII.

During the 1993-1994 school year Richard Simonsen was a Student Assistant Specialist at Sacajawea. On or about May 26, 1994 he observed Appellant with a student named Ashley. Both Appellant and the student appeared to be angry. The exchange between Appellant and Ashley was loud and continued to escalate. Mr. Simonsen observed that as a teacher, Appellant should have not engaged in such an exchange with a student, but should have tried to calm the matter. He did not observe Appellant attempting to do so.

IX.

Sharon Lipton was a Math Teacher at Sacajawea from 1990 to 1994. Her classroom was, for a time, situated across the hall from Appellant's. At the time of hearing she was no longer an employee of District 81. Ms. Lipton often heard and observed Appellant yelling at students that she had brought out into the hallway. During the 1993-1994 school year Ms. Lipton's classroom was moved to the other side of the center hall from Appellant's. During that year a student in Ms. Lipton's class named Tommy apparently put a baseball cap on immediately after he left Ms. Lipton's class. There was a rule at that time that students were not to wear hats in class. Appellant observed Tommy a short distance from the door to Ms. Lipton's classroom. Ms. Lipton overheard Appellant yelling and "screaming" at Tommy about wearing a hat in class. As Ms. Lipton left her classroom to see what was going on, Appellant began to yell at both Ms. Lipton and Tommy stating "[H]e was in your room with a baseball hat on." At this point there were several students gathering around. Ms. Lipton stated to Appellant several times "Not here, Jeanell. Not here. Later." Appellant responded to Ms. Lipton something to the effect that "This is not over. I'm not going to leave it at this. You'll be hearing more about this." Appellant was standing close to Ms. Lipton and pointing her finger at Ms. Lipton's face.

X.

On another occasion, Ms. Lipton was in the hallway outside her classroom between periods. She was attempting to talk with a girl who was crying. Ms. Lipton testified and the undersigned finds as fact, that Appellant came across the hall and was "screaming" at Ms. Lipton that Ms. Lipton was allowing students access to their lockers contrary to school policy. Ms. Lipton responded that she was trying to talk to the girl. Appellant continued "screaming." In order to continue talking with the crying girl Ms. Lipton had to take the student in her classroom and shut the door on Appellant.

XI.

Ms. Lipton, subsequent to these two incidents, attempted to resolve her conflicts with Appellant. She approached Appellant stating that the conflict between the two of them needed to be resolved. Appellant responded something to the effect that she, the Appellant, was extremely bright; that she saw everything; and was capable of doing her job and not missing a thing the students did. Appellant went on to state that she, the Appellant, found it very difficult to work around people who were not on her level and were not as bright as she was. At that point Ms. Lipton abandoned her efforts to reconcile the situation.

XII.

Joanne Cenis has taught English at Sacajawea for the past 21 years. At one point Appellant and Ms. Cenis were what Ms. Cenis described as very close friends. At one time Ms. Cenis' classroom was directly across the hall from Appellant's. She overheard Appellant removing students from Appellant's classroom and verbally disciplining them in the hallway. The volume of Appellant's voice was such that it distracted students in Ms. Cenis' classroom. It also made Ms. Cenis and her students feel uncomfortable. Ms. Cenis would be required to close the door to her own classroom.

XIII.

In March 1994 a student named Shelly was late for after-school detention. When she arrived, Appellant inquired as to why she was late. Shelly responded that she had been talking to one of her teachers. Appellant sent Shelly to get a pass from that teacher, who happened to be Ms. Cenis. When Shelly arrived at Ms. Cenis' classroom, Shelly turned in some papers in an attempt to improve her grade in Ms. Cenis' class. Ms. Cenis, not knowing that Shelly had been sent by Appellant to get a pass, asked Shelly if she would give another student, Nick, a spelling test. Shelly agreed, and proceeded to give Nick the test. After administering the test and entering the grade into the grade book, Shelly asked Ms. Cenis for a pass. At that time Appellant came into the room and

demanded that Shelly return to Appellant's classroom immediately. Nick was still present. Appellant accused Shelly of "using" Ms. Cenis. Ms. Cenis credibly described Appellant as being very loud and intimidating. Her voice was loud enough that other teachers in the hallway could hear Appellant. Ms. Cenis further described Appellant as appearing very angry, confrontational, and intimidating. The following day Appellant came to Ms. Cenis' classroom. Ms. Cenis characterized the conversation as Appellant "reading her up one side and down the other". Appellant accused Ms. Cenis of telephoning Shelly's father the evening before.

XIV.

Susan Poindexter has been an Instructional Assistant for approximately 13 years. Ms. Poindexter was called by Appellant as a witness. During a school year Ms. Poindexter was placed in Appellant's classroom as an Instructional Assistant for two special needs students. Ms. Poindexter could not recall the exact school year. When asked by Appellant if she had observed the tone in Appellant's classroom and how the students felt about being there, Ms. Poindexter responded that she did remember that it was "always kind of tense in there." When asked on cross-examination what she meant, Ms. Poindexter responded that :

[I]t's like what's going on in here. If you are telling her what she wants to hear, it's fine. But if it's something that she doesn't want to hear, it's gets pretty uncomfortable... . It's kind of intimidating like it is now... . She get's pretty upset when things aren't going the way she wants them to go... . Her tone would change, her voice, the manner in which she would speak would change... . She would look like anybody that's upset.

XV.

Ms. Poindexter was very reluctant to testify at hearing. Ms. Poindexter recounted that on several occasions she informed Appellant of her reluctance to testify and that she felt that she would not be a beneficial witness for Appellant. She went on to state "[E]very time I've told you I wouldn't, you'd get angry with me. So that's why I stopped answering your phone calls and tried to avoid you is because you don't want to hear what I'm trying to tell you."

XVI.

Dominic Frucci has been a counselor at Sacajawea for 39 years. He was called as a witness by Appellant. In mid May 1994, Terry, an 8th grade student of Appellant's, came in to the counseling center without a pass. Mr. Frucci was in the counseling center at the time, together with another student and a student aide.

Shortly after Terry's arrival Appellant entered the counseling center. She told Terry that he was not supposed to be in the counseling center because he did not have a pass. She then directed to Terry to leave and return to the hallway outside her classroom. He refused, stating he wanted to see a counselor. Ms. Malone told Terry that he could not see a counselor and that he had to return to her class. Terry again refused. Mr. Frucci credibly testified that he overheard Appellant become increasingly angry and yell at Terry "No, you are not seeing a counselor. You are coming back to class with me." Mr. Frucci overheard the conversation from his office. The student aide was sitting at a table separating Appellant and Terry during the conversation. By the time Mr. Frucci came out of his office Appellant and Terry had left the counseling center. Following the incident Mr. Frucci prepared a report. *OSPI Exhibit 11c.*

XVII.

A copy of Mr. Frucci's report was provided to Appellant on or about June 1, 1994. On June 2, 1994, Appellant responded in writing to Mr. Frucci regarding his May 26 statement. *Appellant's Exhibit 11c4.* In her letter Appellant noted that Mr. Frucci's report was not "supportive" of Appellant "in any way." She went on to advise Mr. Frucci that accuracy of his statement was critical and "that you either withdraw your report or revise it." Appellant ended with the follow: "[I]f you stand by what you wrote as is, I can only come to the very sad conclusion that you will say and do one thing directly to me and something else behind my back."

XVIII.

Kathy Williams served as an Assistant Principal at Sacajawea from 1990 through 1996. She possess a bachelor of science degree in pre-physical therapy and a master's degree in educational administration. During the 1994-1995 school year Ms. Williams was asked to perform basic observations and evaluations of Appellant's classroom performance. Ms. Williams was asked to do so because of Appellant's expressed concerns that she felt that she was being dealt with unfairly and inappropriately by the principal, Herb Rotchford. Ms. Williams had received numerous complaints from students regarding Appellant's treatment of them. Therefore she attempted to assist Appellant develop effective skills and communication techniques to deal with students, thereby avoiding the conflicts. On one occasion Ms. Williams agreed to mediate a conflict between Appellant and one of her students, Martha. Martha had complained to Ms. Williams that Appellant was constantly yelling at her. Ms. Williams characterized the mediation as being unsuccessful. She felt that Appellant continued to focus only on the student's conduct, and did not acknowledge that irrespective of the student's conduct, a portion of the problem was being created by the manner in which Appellant

responded to the student's conduct, namely, the yelling. Ms. Williams also offered to mediate the conflict between Appellant and Ms. McDevitt. Appellant refused to do so unless Ms. McDevitt offered an apology to Appellant first. Ms. Williams found this to be an inappropriate pre-condition to mediation, and therefore mediation did not take place.

XIX.

On or about February 2, 1995, Ms. Williams was approached by Appellant in the school hallway between 5th and 6th period. Ms. Williams described, and the undersigned finds as fact, that Appellant was very angry and screaming. Appellant turned around and pointed at one of her students, Michelle, who was behind her. Appellant then said "Michelle needs to be hurt." This was in the presence of other students. Ms. Williams took Appellant by the arm, telling her to "Stop!" As Ms. Williams led Appellant into an office, Appellant yelled "Something serious needs to happen to her." As Ms. Williams attempted to calm Appellant, Appellant walked away from her and out the office door. As she did so she yelled "She needs to be paddled." At the time Appellant's face was red, her teeth clenched, and she was leaning forward towards whomever she spoke. Ms. Williams characterized Appellant as being "enraged." At some point subsequent to the incident Ms. Williams spoke with Appellant. In that conversation Appellant acknowledged no responsibility for the incident. Appellant noted to Ms. Williams that if Michelle would have simply done what she was supposed to do, and not do things she was not supposed to do, the incident would not have occurred. Appellant advised Ms. Williams that Michelle had been socializing and talking with peers in class excessively, and this is what led to the confrontation.

XX.

In late March 1995, Ms. Williams observed an incident between Appellant and a student named Tim, during a volleyball convocation. Appellant and Tim became involved in an argument in which Tim repeatedly yelled that she, the Appellant, had threatened to slap him. Appellant was responding that Tim had attempted to trip her. Ms. Williams separated the two, sending Tim down the hallway towards the office ahead of herself and Appellant. While walking in the hallway Appellant stated loudly "This student doesn't belong here." The student heard the statement, where upon he kicked a waste basket in the hallway. Ms. Williams credibly described Appellant as being in a "fit of rage" during the confrontation.

XXI.

Herb Rotchford has been the Principal at Sacajawea Middle School since September 1990. He has a bachelor's degree in education and a masters degree in educational administration. He began teaching in 1974 and has been a school administrator since 1985. As principal at Sacajawea, Mr. Rotchford received several complaints from parents of students in Appellant's classes regarding Appellant's conduct. *OSPI Exhibits 5, 6a, 6b, 7, 8b, 8d, 13a, 13b, 13c, 13d, 13e, 13i, 13k*. The general tone of the complaints was that Appellant embarrassed and belittled students, and imposed excessive punishment on the students. In February 1991 he received such a complaint from the parents of a student named Nikki. Upon discussing the parents' concern with Appellant, Appellant advised Mr. Rotchford that she suspected the parents were "rednecks." On or about May 15, 1992, Mr. Rotchford discussed with Appellant the incident between her, Shawn, and Ms. Latendresse. At the beginning of the of the discussion Appellant stated, referring to Shawn, something to effect that "He's a real winner." *Appellant's Exhibit 47*.

XXII.

Upon Mr. Rotchford's continued receipt of complaints from parents of students in Appellant's class, regarding Appellant's conduct toward their child, Mr. Rotchford continued to stress to Appellant the need to treat the students respectfully and professionally, and that she needed to control her anger. He further emphasized that her conduct was creating an adversarial relationship between herself, the students, and their parents. He pointed out to Appellant that she continually focused on the behavior of the student, while ignoring her own behavior. In May 1993 Appellant had a student named Jeremy. Appellant telephoned Jeremy's parent's and left a voice mail containing the following: "Maybe somewhere along the line he'll learn to keep his mouth shut and maybe even pay attention." Mr. Rotchford spoke with Appellant regarding this incident on May 24, 1993. *OSPI Exhibit 8a*. He advised Appellant during the discussion that she was perceived by student's and parents as being non-accepting, inflexible, overbearing and judgmental. At that time Mr. Rotchford advised Appellant that her communication and interaction with students and adults would be a focus of attention for the upcoming academic school year.

XXIII.

On February 4, 1994, Mr. Rotchford met with Appellant and Steven Paulson. Mr. Paulson was, at the time, a representative for the Spokane Education Association. In the meeting Mr. Rotchford advised Appellant that she was

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perceived by the students as being very angry, overreacting to behaviors, and being unfair and unreasonable with the students. This, in turn, caused the students to be angry, and resent Appellant. He discussed with Appellant the baseball hat incident with Ms. Lipton and Tommy. Appellant did not deny the episode and did not acknowledge that her response was inappropriate. She instead responded that the problem was that students chose not to follow school rules, and teachers were not consistent in enforcing those rules.

XXIV.

At the February 4, 1994 meeting Mr. Rotchford, Appellant, and Mr. Paulson agreed to the following points: (1) Appellant agreed that inappropriate disciplining of students in front of another student or staff members is professionally unacceptable; (2) Appellant agreed that excessive displays of anger towards a student or staff member is professionally unacceptable; and, (3) that the administration will work to clarify school wide expectations of students and expectations of staff support as it applies to school rules.

XXV.

On April 25, 1994 Mr. Rotchford issued Appellant an oral warning which was documented in writing. *OSPI Exhibit 8k*. That was issued as a result of his investigation of the March 1994 hall pass incident with Appellant in Ms. Cenis' class regarding the student named Shelly. Mr. Rotchford advised Appellant that her display of anger was excessive and improper, that her conduct was considered aggressive. Mr. Rotchford went on to point out to Appellant that at the February 4, 1994 meeting between himself, Appellant, and Mr. Paulson, it was agreed that this kind of conduct was not acceptable. The warning ended with the caution that a repeat of such behavior would lead to further disciplinary action.

XXVI.

In late June 1994, Mr. Rotchford reviewed reports of Ms. Latendresse regarding her confrontation with Appellant in the hallway in April 1994; the statement of Ms. McDevitt describing the hallway confrontation between the Appellant and Ms. Latendresse in April 1994; the statement of Mr. Frucci regarding the incident between Appellant and Terry in mid 1994; and, the report of Mr. Simonsen regarding the incident in late May 1994, between Appellant and Ashley. On or about June 27, 1994, Mr. Rotchford, met with Appellant, accompanied by her representative, Mr. Paulson. *OSPI Exhibit 11a*. Appellant characterized Ms. McDevitt's statement as an exaggeration of the incident. She went on to point out that Ms. McDevitt had acted inappropriately by involving herself in the situation.

Appellant further questioned why Ms. McDevitt had waited several weeks to write the report. Appellant found it "very coincidental" that it was written at or about the same time Ms. Latendresse's report was written. *OSPI Exhibit 11a, Page 4*. Appellant did not respond to any of the reports in any manner that would indicate or acknowledge she had behaved inappropriately. She continued to assert that either the student or the administration had acted inappropriately, thereby justifying Appellant's concern over the issue. Following the meeting Mr. Rotchford issued Appellant a written warning. *OSPI Exhibit 11a*. The written warning ended with the following:

Your repeated tendency to display excessive anger towards students or colleagues is professionally unacceptable. This type of aggressive behavior, especially in the presence of other staff members or students, cannot be tolerated. You are hereby issued a written warning to refrain from this type of behavior. Should such behavior be repeated in the future, additional disciplinary steps may be taken.

OSPI Exhibit 11a, Page 2.

XXVII.

On June 30, 1994 Appellant grieved the discipline, contending that the discipline was "without just cause." *OSPI Exhibit 12a*. The grievance was settled by the District reducing the June 27, 1994, from a written warning to a verbal warning. It was also agreed that Appellant would attend "a comprehensive anger management class of the district's selection." *OSPI Exhibit 12b*.

XXVIII.

On March 6, 1995 Mr. Rotchford issued Appellant a written reprimand. *OSPI Exhibit 15*. The written reprimand was issued as a result of the February 2, 1995, incident between Appellant, Ms. Williams, and Michelle. Mr. Rotchford concluded with the following:

Your repeated tendency to display excessive anger is unprofessional, inappropriate and unacceptable. This type of aggressive behavior, especially in the presence of other students or the public, cannot be tolerated. You are hereby issued a written reprimand to refrain from this type of behavior. Should such behavior be repeated in the future, additional disciplinary steps may be taken up to and including discharge.

OSPI Exhibit 15, Page 2.

Throughout all of his dealings with Appellant in regard to her conduct with students, staff, and parents, Mr. Rotchford found Appellant unable or unwilling to accept his description, as well as that of others, of how Appellant was perceived by children and adults, and how her approach to dealing with children and adults, either individually or in front of others, was creating the conflicts, and needed to be changed as suggested. He further found her either unwilling or incapable of comprehending that it was her conduct, not the conduct of the student or the lack of support from the administration that led to the escalation of the confrontation she was experiencing. Mr. Rotchford noted that Appellant's continued failure to recognize these matters led to continuing and ongoing confrontations between her, students, staff, and parents.

XXIX.

On or about April 12, 1995, Appellant and her representative, met with Mr. Rotchford and other District employee's. At that time Appellant was notified that the District had continuing concerns that Appellant was acting inappropriately and unprofessionally. Subsequent to the meeting the District's Assistant Superintendent of Human Resources suspended Appellant, with pay, effective April 24, 1995. Following meetings between District personnel, Appellant, and her representatives, the District issued a "Recommendation for Notice of Probable Cause for Discharge Pursuant to RCW 28a.405.300" on June 5, 1995. *OSPI Exhibit 21*. In its Notice the District concluded the Appellant had demonstrated "a pattern of deficiencies in the form of demeaning, inappropriate, cruel, excessive and unacceptable behavior towards children." *OSPI Exhibit 21, Page 3*. The letter concluded that there existed sufficient evidence to believe that the Appellant's conduct would reoccur and that they recommended that a Notice of Probable Cause be issued. *OSPI Exhibit 21, Page 4*. On November 21, 1995, the District's Superintendent issued a "Notice of Probable Cause for Discharge Pursuant to RCW 28a.405.300." *OSPI Exhibit 22*. In the Notice the Superintendent concluded that probable cause existed for the discharge of Appellant.

XXX.

[REDACTED]

Pages Removed

HIPAA Privacy Rule

42.17.260(1); 42.56.070(1);

42.17.310(2); 42.56.210(1);

45 C.F.R. 164.514(b)

XXXII.

At hearing Appellant acknowledge being upset over the incident with Ms. Latendresse and Shawn. Appellant was angry because she felt that the administration was not supporting her, namely, by allowing students to violate the no coat rule. She contends that she was frightened by Shawn's conduct and concerned that the District was not protective of her. When questioned at hearing about the incident in April 1994 with Ms. Latendresse regarding the handling of parent's concerns about Appellant, claimant stated "When I received yet another note in my mailbox in the morning when I arrived at school, that again indicated what I had requested wasn't being addressed. I went to find Mrs. Latendresse in the hallway... I was unhappy with her." Appellant stated that she didn't think that she was yelling as described by Ms. Latendresse, and that Ms. Latendresse was simply exaggerating the incident. When questioned regarding the accuracy of the District's representation of her voice mail from May 1993 on Jeremy's parent's phone, Appellant responded as follows: "I don't doubt that it's probably fairly if not accurate. And, again, if you'll notice here, it was lack of backup from - I was frustrated. It was lack of backup by parents and by administration in having kids do detention." When questioned at hearing regarding her comment to Mr. Rotchford that Shawn was "a real winner." Appellant responded that this was a private conference with Mr. Rotchford and Ms. Latendresse was not present. Appellant went on to state that she was "still really frustrated with having been attacked [by Shawn] and never then having anyone ask me how I was or acknowledge that." Appellant went on to state "[N]ow, as I did just acknowledge, what in retrospect was sad for me was if I hadn't been so frustrated and feeling so unsupported, I think that Ms. Latendresse and I would have worked it through with Shawn... ."

XXXIII.

At hearing Appellant was asked to relate her recollection of the baseball cap incident with Ms. Lipton and Tommy. Appellant's first response was "I had had a very long history with Mrs. Lipton not enforcing rules... ." Appellant went on to state that she wanted Ms. Lipton to enforce school rules in order to help the other teachers. Appellant acknowledged having stated "Sharon we're not done with this one." When asked if she was yelling at Ms. Lipton during the confrontation Appellant responded in the negative and that this was simply "more scripting... and coaching." Appellant had no recollection of the incident with Ms. Lipton, the crying girl, and students accessing lockers between periods. Appellant did offer that "One of our jobs was to not let them [students] in the lockers. That was a stated and enforced rule. And, frankly, Mrs. Lipton didn't ever enforce any rules... . She just didn't." Appellant went on to point out several other examples in which Ms. Lipton failed

to enforce school rules. When asked by the Assistant Attorney General why Ms. Lipton would testify as she did, Appellant responded "[T]o be consistent with her testimony. And I'm wondering if you coached people to make sure they were consistent."

XXXIV.

When explaining the incident with Ms. Cenis, Shelly, and the hall pass, Appellant acknowledged that she was angry. However, she characterized Ms. Cenis' testimony regarding how loud and angry Appellant was as an exaggeration. When questioned why Ms. Cenis would testify as she did, Appellant noted that Ms. Cenis, although a nice person, was "the most gullible teacher in school." She went on to note that she had told Ms. Cenis that she was being "used" by Mr. Rotchford. Appellant characterized Ms. Cenis' testimony as an exaggeration of what actually took place.

XXXV.

In regard to the incident with Appellant and Terry that was overheard by Mr. Frucci, Appellant contended that this was again an exaggeration of what actually happened. Appellant alleged that Mr. Frucci had been "badgered" by Mr. Rotchford to writeup the incident. Appellant denied having yelled. She characterized Mr. Frucci's testimony as "scripted."

XXXVI.

Regarding the incident with Appellant, Michelle, and Ms. Williams, Appellant acknowledged having stated "Michelle needs to be hurt." Appellant acknowledged being embarrassed over that, but states that it was inside the office and not in Michelle's presence. When asked what she meant by the statement Appellant responded that "[S]omething finally needs to be done about Michelle. If you notice how many referrals, discipline slips, I had." When asked if the Appellant's statements were made in a loud tone of voice, Appellant responded that she was "fairly angry" and that she did not know how loud she was. Appellant contended that Mr. Rotchford had threatened Ms. Williams with discipline if she did not writeup the incident. She then stated to the undersigned "I strongly, I believe that I included in my exhibits and I would request that you read it very carefully, an extremely careful analysis of Mrs. Williams' various testimonies and so forth exposing the perjury and the true facts." When asked what would motivate Ms. Williams to testify as she did, Appellant responded "District 81 is very, very political."

XXXVII.

When questioned about the incident with Tim at the volleyball convocation Appellant acknowledged being angry with Ms. Williams because the administration was not holding

kids "accountable." Appellant stated that "I was attacked, threatened with physical assault and verbally assaulted by this ... kid I didn't know." When asked if she made the statement that kids like Tim shouldn't be allowed in Sacajawea Appellant responded "[I]t was a common theme with me." She acknowledged that Tim could have heard her statement. When asked to respond to Ms. Williams' characterization that Appellant was "in a fit of rage with wide eyes, clenched teeth, and labored breathing." Appellant responded:

[A]gain, this is an exaggeration that I feel Mrs. Williams was forced into. And I feel sad that she was forced into, both in the [Michelle] situation and the [Tim] situation, to produce exaggerated testimony. It was totally exaggerated. In fact, the majority of Mrs. Williams' testimony was perjury. I again urge you, please, to very carefully read my analysis of that, which clearly proves that there is something really wrong here and gives documentation of that.

Appellant characterized Ms. McDevitt's testimony regarding her witnessing the incident between Ms. Latendresse and Appellant in the hallway as an exaggeration, and perjury. Similarly, Appellant characterized Mr. Simonsen's testimony as perjury.

XXXVIII.

Appellant offered as exhibits excerpts from her diary. On September 3, 1994 Appellant made the following entry in her diary: "Am looking at kids differently. Treating the possible jerks a little more carefully. Must learn. Hurt. Hurt." When questioned as to what she meant by the entry Appellant responded that she was "hurting so badly by this time because I didn't feel that I could ethically practice my profession." When questioned about referring to the students as "jerks" she indicated that was intended for those students who acted out in class. Appellant also acknowledged having referred to such students as "wretches" in her diary entries.

XXXVIII.

Mr. Rotchford testified that, as a professional educator and having observed the Appellant for several years, he believed that Appellant's return to the classroom would be "devastating". He went on to state as follows:

We are responsible [the student's] health, their safety, their well being. The pattern of behavior that was exhibited over a three and four year period of time by [Appellant] was professional misconduct, in my opinion, that was so egregious that she can't be allowed to be in a classroom with kids again... . [T]he demeaning, the embarrassment. Kids were frightened, kids were humiliated. Kids felt badgered. They felt tormented. In my judgement, it was an emotionally and verbally abusive environment for kids.

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XXXX.

Ms. Latendresse testified that the Appellants behaviors that she observed would negatively impact the welfare of students in a school. Ms. McDevitt was questioned at hearing regarding her opinion of the impact Appellant's angry behavior had on the educational welfare of the students. She responded:

They are intimidated. They are humiliated...[I]t makes them think kind of "[W]hat's going to happen today in there?" Several of them...would change out of the classroom...[A]s I said, she capable, bright, has good ideas, and loves social studies. But the anger was kind of a fatal flaw. It just prevented her from being an okay teacher... . [I]t's destructive when she is angry like this with the students and when she handles the anger in the way she handles the anger. We all get angry. And then when you can't even see what you've done is destructive or counter productive to what your trying to do that's, you know, it prevents you from - you shouldn't be a teacher.

XXXXI.

Ms. Lipton was questioned at hearing on the same subject. She testified that the conduct she observed Appellant display adversely affects the educational welfare of students. She noted:

It's so negative that you've got somebody that is coming over and yelling at you and behaving that way. I just could not deal with the kids and deal with her because you don't have any time to give to the kids. And every time your talking to a child in the hall, you've got somebody coming and interfering. And it just puts a very very negative atmosphere in the school in the area.

XXXXII.

Ms. Cenis testified that the conduct she observed on Appellant's part had a negative impact on the educational welfare of the children. Ms. Cenis stated:

[Appellant] is a very well educated person, very knowledgeable. But for students that were negatively impacted, if they are being treated in any way like what I was being treated, how can you open your mind to get the knowledge you need? How do you develop respect for education, for students that have any kind of altercation like that with a teacher?

In response to the same inquiry, Ms. Williams stated that Appellant's return to the classroom would be "devastating" to the students. She continued "I would be very concerned for the negative impact that it would have on the educational process and for the safety of students."

XXXXIII.

At hearing Appellant offered that the reason she was discharged by District 81 and that OSPI had proposed revocation of her certificate was that she "couldn't betray my kids." Appellant went on to offer:

And so I didn't knuckle under. Now, why, why were these charges addressed against me? What's basically behind this? It's the quashing of dissent. And I do have exhibits concerning that. The quashing of dissent in the public schools. As we have educational philosophy after educational philosophy after educational philosophy. At the time that all of this was occurring, the educational philosophy was self esteem. The touchy feely, virtually no accountability, virtually no respect and so forth... Did administrator's want to enforce this [self esteem educational philosophy]? Yes. Because they would get promoted. This was their job to do. Did counselors buy it and enforce it? Yes. And so we had, of course, what we know since then is that, as with all faulty educational philosophies, this was more injurious than most. It's been dropped. It's gone. Did anyone say, 'Oh, we were wrong. I'm sorry?' And how did that come about? There was those in the education milieu who knew how devastating really this was for kids and our country. And they said, 'How are we going to expose this without having anyone take responsibility?' So testing was devised, and by the way, I have this confirmed by a testing expert. Testing came about in order that people could say, 'Oh, my goodness. The kids don't know what they're supposed to know.' And 'how could this have happened? We better do something.'

Appellant further offered that the motivation of District 81 and OSPI in revoking Appellant's credentials was because Appellant "simply could not not teach." And also I had an official position at the time that happened to place me in conflict with the new principal... "

CONCLUSIONS OF LAW

I.

The Office of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. The hearing was conducted pursuant to the authority and jurisdiction vested in the Superintendent of Public Instruction pursuant to RCW

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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 Chapter 392-101 WAC.

II.

The certificate of a teacher in the state of Washington may be revoked by the superintendent of public instruction for, among other things, "immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state." RCW 28A.410.090(1). Grounds for the issuance of a revocation order by OSPI exists when it has been determined that "the certificate holder has committed an act of unprofessional conduct or lacks good moral character or personal fitness..." WAC 180-86-075(2). Good moral character and personal fitness is defined at WAC 180-86-013 as meaning "character and personal fitness necessary to serve as a certificated employee in the schools of the state of Washington, including character and personal fitness to have contact with, to teach, and to perform supervision of children." The regulations further provide, at WAC 180-86-013(3) that good moral character and personal fitness requires that the individual have "[n]o behavioral problem which endangers the educational welfare or personal safety of students, teachers, or other colleagues within the educational setting." Possessing good moral character and personal fitness is an ongoing, continuing requirement for holding a teaching certificate in the state of Washington. WAC 180-86-014.

III.

Recognizing the gravity of a disciplinary proceeding, the burden of proof in this matter is defined at WAC 180-86-170(2) as follows:

In a suspension or revocation proceeding, the superintendent of public instruction 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.

This requires that the undersigned, as the trier of fact, be convinced that the ultimate facts in issue are shown by evidence to be "highly probable." In re Pawling, 101 Wn.2d 392, 399, 679 P.2d 916 (1984). "Clear, cogent and convincing evidence is evidence which is weightier and more convincing than a preponderance of the evidence, but which need not reach the level of 'beyond a reasonable doubt'." In re Deming, 108 Wn.2d 82, 109, 736 P.2d 639 (1997).

IV.

Applying the above to the case at hand, the undersigned reaches the general conclusion that OSPI has established, by the requisite burden of proof, that the Appellant engaged in acts of unprofessional conduct and that the Appellant lacks the personal fitness to serve as a certificated employee in the schools of the state of Washington. The undersigned recognizes the Appellant as an intelligent, and passionate individual. However, the state of Washington, through OSPI, places a special confidence in those individuals entrusted with the education, care, and supervision of children. Appellant repeatedly violated that trust by visiting unwarranted verbal abuse on students, as well as on other staff and coworkers in the presence of students. Appellant's conduct continued, despite repeated attempts by District 81 personnel to make Appellant aware that her reaction to student conduct was inappropriate, unprofessional, and damaging to the student's educational welfare. Despite all the efforts of District 81, Appellant's inappropriate conduct continued. Appellant was either unwilling, or unable, to make the distinction between the student's conduct and her unprofessional reaction to the student's conduct. Upon being confronted with her inappropriate reaction Appellant was, again, either unwilling or unable to accept any responsibility whatsoever. Appellant has consistently maintained throughout this entire process that if it were not for the administration, the students, the student's parent's, or Appellant's coworkers, that the incidents would not have occurred. Throughout this process Appellant continually justified and excused her conduct by blaming others. The Appellant would have the undersigned believe that a massive conspiracy amongst students, parents, coworkers, school administration, and OSPI was maintained for the sole purpose of "quieting" Appellant's disagreement with educational philosophy. Her contention simply overtaxes the credulity of the undersigned, and is another indication of her continuing, ongoing failure or refusal to accept accountability for her unprofessional conduct. Appellant's refusal to acknowledge that her conduct had an adverse impact on the educational welfare of students displays her continuing lack of personal fitness to be a certificated employee in the schools of the state of Washington.

ORDER

IT IS HEREBY ORDERED that, pursuant to RCW 28A.410.090, the teaching certificate of M. Jeanell Malone, Certificate No. 224166R be and is revoked.

DATED at Spokane, Washington this 27th day of June, 2003.



David G. Hansen
Senior Administrative Law Judge
Office of Administrative Hearings
221 N Wall Street, Suite 540
Spokane, WA 99201-0826

NOTICE OF FURTHER APPEAL RIGHTS

PURSUANT TO RCW 34.05.470, ANY PARTY MAY, WITHIN TEN (10) DAYS OF SERVICE OF THIS FINAL ORDER, FILE A PETITION FOR RECONSIDERATION. SUCH A PETITION SHALL STATE THE SPECIFIC GROUNDS UPON WHICH RELIEF IS REQUESTED. ANY SUCH PETITION FOR RECONSIDERATION MUST BE FILED AT THE OFFICE OF ADMINISTRATIVE HEARINGS, 221 N WALL STREET, SUITE 540, SPOKANE, WA 99201-0826. A COPY OF THE PETITION FOR RECONSIDERATION MUST BE SERVED ON EACH PARTY TO THE PROCEEDING AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

THE FILING OF A PETITION FOR RECONSIDERATION IS NOT A PREREQUISITE TO FILING AN APPEAL OF THIS FINAL ORDER TO THE STATE BOARD OF EDUCATION.

PURSUANT TO WAC 180-86-155, ANY PERSON WHOSE CERTIFICATE HAS BEEN REVOKED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION MAY APPEAL THAT DECISION TO THE STATE BOARD OF EDUCATION BY FILING A NOTICE OF APPEAL WITH THE SUPERINTENDENT OF PUBLIC INSTRUCTION OR THE SECRETARY OF THE STATE BOARD OF EDUCATION WITHIN THIRTY (30) CALENDAR DAYS OF THE DATE OF MAILING OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

This certifies that a copy of this Order was mailed to the interested parties or his/her representative at the address listed below on the 27th day of June, 2003, by depositing same in the United States mail, postage prepaid:

Mailed to the following:

M. Jeanell Malone
[REDACTED]
[REDACTED]

Charlie Schreck, Manager
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Office of State Superintendent of Public Instruction
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Anne O. Shaw, AAG
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cc: Legal Services Office, SPI
Jill Geary, OAH ALJ Hearing Coordinator
Barbara Cleveland, OAH

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