

OCT 17 2007

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

OFFICE OF  
ADMINISTRATIVE HEARINGS

IN THE MATTER OF:

TEACHER CERTIFICATION  
CAUSE NO. 2007-TCD-0001

CLARENCE PAULS

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

CERT. NO. 256711C

**This is a Corrected Findings of Fact, Conclusions of Law, and Order. The corrections are indicated in bold and underlined.**

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Janice E. Shave in Spokane, Washington, on June 18, 19, 20, 21, 22, and July 16, 2007, in Seattle, Washington, on June 29, 2007, and by telephone on July 31, 2007. The Appellant, Clarence "Skip" Pauls, was represented by Larry J. Kuznetz, attorney at law. Charlie Schreck, director of the Office of Superintendent of Public Instruction's (OSPI's) Office of Professional Practices (OPP) appeared. OSPI was represented by Anne Shaw, assistant attorney general. The ALJ, having sworn the witnesses, heard testimony, and considered the admitted exhibits and arguments of the parties, hereby enters the following:

Testimony was taken under oath or affirmation from the following: JF<sup>1</sup> (former teacher's assistant (TA) to the Appellant, testimony taken by telephone), Kenneth Black (former superintendent of Hagerman School District (Hagerman SD), Idaho), Charlie Schreck (director of OSPI's OPP), David Iverson (former superintendent of Davenport School District (Davenport SD) and current superintendent of Keller School District (Keller SD)), [REDACTED] [REDACTED] (Davenport SD graduate), [REDACTED] [REDACTED] (former Davenport High School (Davenport HS) principal), DD<sup>2</sup> (Davenport SD graduate), EB (Davenport SD graduate), KS (Davenport SD graduate), BS (Davenport SD graduate), Gary Greene (former superintendent of Davenport SD, current superintendent of Wahluke School District), Clark Muscat (assistant high school principal of Jerome School District, Idaho, testimony taken by telephone), Sandy Buchanon (Davenport resident and former Davenport School Board member, testimony taken by telephone), [REDACTED] [REDACTED] (Davenport SD graduate, testimony taken by telephone), Brandon Walsh (Almeda/Coulee/Hartline School District graduate, teacher and coach), [REDACTED] (Davenport SD graduate), [REDACTED] [REDACTED] (Davenport SD graduate, testimony taken by telephone), Duane Green, Ph.D.

<sup>1</sup> The TA's initials are used to protect her privacy. She will be referred to as the TA.

<sup>2</sup> Recent Davenport SD female graduates' initials are used to protect their privacy.

**CORRECTED** Findings of Fact, Conclusions of Law and Order

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Superintendent of Public Instruction  
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(Appellant's treating psychologist), Hazel Miller (Davenport resident), Paul Wert, Ph.D. (licensed psychologist and certified sex offender treatment provider), Jeannette Harkin (Davenport resident), [REDACTED] [REDACTED] (Davenport SD graduate, testimony taken by telephone), and KK (Davenport SD graduate).

In the interest of administrative efficiency, the parties were encouraged, but not required, 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.

The following exhibits were admitted: Court Exhibit 1, Appellant's Exhibits A1 through A60, A62 through A101, and A103 through A105 and OSPI's Exhibits S1 through S36, S38 through S42 and S45.

### STATEMENT OF THE CASE

A complaint regarding the Appellant's fitness to teach, dated June 2, 2005, was sent by the superintendent of Davenport SD to OSPI, and received June 9, 2005. Exhibit S2. OSPI issued an Order of Revocation on May 18, 2006. Exhibit S4. OSPI received the Appellant's appeal of the revocation on May 30, 2006. Exhibit S5. OSPI then held an internal review process through the Admissions and Professional Conduct Advisory Committee (APCAC). On December 4, 2006, OSPI issued a Final Order of Revocation of the Appellant's teaching certification. Exhibit A47.

The Appellant filed a request for an administrative due process hearing with OSPI on January 3, 2007. Exhibit C1. A prehearing conference was scheduled to be held January 11, 2007, and a hearing February 28, 2007. A series of prehearing conferences was held. The matter proceeded to hearing by agreement of the parties on June 18, 19, 20, 21, 22, 29 and July 16, 2007. The record closed August 7, 2007.

### ISSUES

As stated in the January 23, 2007, Prehearing Order, the issue is as follows:

Whether the decision issued by OSPI's review officer, which revoked the Appellant's teaching certification, should be upheld or reversed.

### FINDINGS OF FACT

#### Appellant's Teaching Credentials and Hagerman, Idaho

1. The Appellant graduated from Northwest Nazarene College in Nampa, Idaho, in 1980. He obtained a teaching certificate from Idaho in 1980 and from Washington in 1983. He began teaching in Idaho at Hagerman SD in 1980, where he taught elementary

school physical education (PE). The Appellant obtained a Master's degree in education in 1987 and Washington State principal's certification in 1988.

2. During the 1982-1983 school year, which was the Appellant's third year of teaching, a TA was assigned to him for one hour per day during his planning period. The Appellant, then 26 years old, and the TA, a 17 year old female senior, became close. The Appellant confided personal marital information to the TA, including information about his marital problems. His wife had recently had a baby after significant medical problems and a difficult delivery. His wife became pregnant again in the autumn of 1982. The Appellant confided this information to his TA. She was a rebellious teenager. The Appellant and the TA entered into a sexual relationship. They both believed they were in love with one another, and discussed a divorce for the Appellant and remarriage to the TA. She felt guilty about their relationship, however, including having sex with a married man who had one or more children, about lying to her parents and friends, and about sneaking around. She worried it was all her fault, and feared the Appellant would lose his job and family over their relationship. Although the TA believed she loved the Appellant, she also believed their relationship would not survive long, given that the Appellant was married with children. She fundamentally believed the relationship was wrong. After her graduation, the TA ended the relationship.

3. The Appellant blames the TA for initiating the affair. In his mind, the TA was the one who brought it about, who increased the level of intimacy, and he was in essence an innocent victim. He describes her as just someone he could talk to, and the relationship as one that ended up going someplace he never thought it would. Given the Appellant's age at the time of his relationship with the TA (24) and the TA's age (17 until February 1983, then 18), the Appellant's version of the affair, with him as the innocent bystander, is not adopted as credible.

4. In his testimony, the Appellant appeared to blame Hagerman SD for assigning the TA to him during his planning period, thereby allowing the unsupervised and unstructured time which provided time to talk and exchange intimate confidences and which fostered the sexual relationship.

5. The Hagerman SD superintendent heard a rumor of the sexual relationship during the summer of 1983. While the Appellant was at a summer football camp that year, the Hagerman SD superintendent traveled to the sports camp and asked the Appellant whether he had been having a sexual relationship with a student. The Appellant denied the relationship. The superintendent advised the Appellant the rumor would make it difficult for the Appellant to be effective in the classroom and warned it would be investigated in the event he returned to Hagerman SD. The Appellant chose not to return to Hagerman SD and instead sought to relocate to a new school district in a new state.

6. The Appellant left Hagerman SD shortly after his discussion with the Hagerman superintendent, who gave a positive referral to the Appellant. Over the summer of 1983, in time for the beginning of the 1983-1984 school year, the Appellant became

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employed at Davenport SD in Washington State. Davenport SD did not contact Hagerman SD to inquire about the Appellant's teaching career. The Appellant did not offer information about his affair to his new employer, since it was not inquired about, and did not disclose it to anyone.

#### Davenport Prior to 2004-2005 School Year

7. Davenport SD is a small school district, with 400-500 students divided between the elementary and high school buildings. The Appellant taught elementary school PE, various elementary school academic subjects as needed, and coached various high school sports, including football and track. The track team is a coed team with a spring competition season.

8. The Appellant was appointed as the part-time principal at the Davenport elementary school during the 1993-1994 and 1994-1995 school years. However, he was not well-liked or respected by his fellow teachers at that school during that period. His appointment was not well received by the elementary school teachers at Davenport. His appointment followed that of a well-liked female teacher/principal. The teachers were vocal in their expression of concerns to Davenport SD's superintendent, David Iverson. The teaching staff was almost all female. They did not believe the Appellant had sufficient experience as a classroom teacher to be effective as a principal. In essence, they were concerned that as a PE teacher he was not sufficiently familiar with their classroom experiences and problems. The elementary school teaching staff also lodged complaints against the Appellant about divisive gender-based comments he made.

9. The terms of the part-time elementary school principalship were ½ time spent teaching and ½ time spent on principal duties. In practice, the Appellant spent more time on the principal duties. He felt the first year, 1993-1994, went well. He believed he was a consensus builder, and the superintendent believed he was getting along acceptably well with the elementary school teachers. The second year went poorly, and got worse rather than better. By the end of the 1994-1995 school year, the superintendent determined the Appellant was not appropriately suited to the principal position, and the Appellant was reverted to full time teaching.

10. The concerns which led to the reversion to teaching consisted primarily of a lack of leadership qualities, including poor judgment. The staff was not supportive of the Appellant in the principalship and it appeared the situation was not going to change. There were no allegations of sexual misconduct or inappropriate touching. However, teaching staff complained the Appellant made sexist, gender-based comments to them, such as "that's because you are a woman." These comments were unwelcome. The Appellant was on his best behavior, and tried to win over the teachers. He did not have sufficient leadership skills to do so, or to realize the impact of his words. Beginning in 1998 and continuing through 2004, the Appellant was required to attend gender sensitivity training as a result of his conduct as a principal.

11. On one occasion, the superintendent determined the Appellant displayed poor judgment in the way he structured a spelling contest in an academic class he taught. According to the superintendent, the Appellant put the students at physical risk of harm by having elementary students stand on their desktops and chairs. The Appellant was verbally counseled by the superintendent, and the incident was not repeated. This was one of the incidents which led to Davenport SD's determination that the Appellant was not ready to be a leader among school staff, and contributed to his reversion to teaching. On one other occasion, the Appellant was disciplined for pushing an elementary student back into his chair. He received a one-day suspension from teaching duties with pay.

12. The Appellant received satisfactory or better than satisfactory classroom evaluations during all the years he taught at Davenport SD, from 1983 through May 2005. He was counseled on one occasion about a report that he was providing male high school athletes with tobacco and 'girlie' magazines. However, the Appellant denied the allegations. Since there was no additional information to substantiate the reports, the matter ended with the counseling.

13. The Appellant was well-liked by his athletes. He was an effective football coach. He coached the tiny Davenport High School (Davenport HS) football team to a state championship. Many parents and students were very supportive of him while he was there, and some remain supportive to this date. He focused his energy on his job as a teacher and coach, often to the exclusion of his family. He worked extra-long hours, working directly with elementary students in PE, high school students in athletics, and fellow coaches. Davenport HS students were welcome at his home, whether there as friends of his own three children, or because the students liked the Appellant or wanted some advice. He genuinely liked working with students. He maintained special, close relationships with various male and female students through the years he taught at Davenport. There is no allegation or evidence the Appellant behaved inappropriately with any students at his home, or anywhere else, with the exception of the TA in 1983 and the events which began in or around the 2003-2004 school year and continued until he was terminated from his coaching and teaching positions in May 2005.

14. The Appellant worked to be a friend to Davenport HS students, not just their coach. He wanted them to feel comfortable talking to him. He sought their friendship and approval. In his effort to be a friend to the students, he did not establish or maintain appropriate adult-child or teacher-student boundaries. He joked with the students as if he were their peer, instead of establishing an appropriate adult-child or teacher-student relationship. He did not realize this was inappropriate. He did not realize the statements he made as an authority figure were received differently than the same statements made by a teen.

15. During the 2003-2004 school year, the Appellant was the track coach. He joked and bantered with athletes on all his teams, but in particular with two high school girls on the track team, VP and DD. He had a high tolerance of sexual comments. The joking

and bantering did not appear to bother either of the girls during that school year, although the two of them received the lion's share of it. VP graduated in 2004.

16. At least as early as DD's freshman year, the Appellant taped DD's legs for track, and he made comments about her legs being unshaven. The comments were funny at first, but DD tired of having her body be the subject of the coach's comments and jokes.

#### 2004-2005 School Year

17. The Appellant was 48 years old from November 2004 through the rest of this school year.

18. The Appellant took several football team players (all male) to a game in Seattle during the late summer of 2004, at or about the start of the 2004-2005 school year. One of the players in the van was DD's boyfriend. They drove over and back in one day, leaving very early in the morning. During the several hours of driving, one of the boys joked he would take care of DD for her boyfriend the next year, after the boyfriend graduated. The Appellant told DD's boyfriend he was already taking care of DD. The sense of the student's comment was that 'taking care of' meant in a boyfriend-type manner, not in a general nurturing sense. Not all students in the van heard all comments. Some slept part of the time.

19. During the 2004-2005 school year, the Appellant was again the track coach. The co-ed track team consisted of 17 students total; nine boys and seven girls. Three senior girls were chosen by the Appellant to be team co-captains. They were DD, KS and BS. The Appellant now directed all the joking and bantering primarily at DD, instead of dividing it between two students (VP and DD) as he had done in the 2003-2004 school year. What DD had found amusing and acceptable banter during the 2003-2004 school year, consisting of occasional comments to her and VP, became increasingly unwelcome when it was all directed at her in the 2004-2005 school year. According to DD, the frequency of the comments increased, although it may have been simply the intensity of the comments which increased when she became the sole target.

20. The Appellant tolerated and participated in a great deal of sexual banter on the track team between students. He also joined in the sexual comments. He was heard by several students, including some of the individuals he called as witnesses, to comment on DD's breast size. He compared DD's breast size to other female students' breast sizes, including DD's sister. He commented DD could be employed at Hooter's Restaurant when she turned 18. He also said he would see DD working at Stateline, a strip club over the Idaho border which Davenport students liked to visit, after she turned 18. These comments were made by the Appellant on more than one occasion.

21. Davenport employed a school counselor sometime prior to the 2003-2004 school year who was terminated for actions which involved inappropriate photos of female students and the Internet. The Appellant was aware of this incident. The Appellant should

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have been exceptionally careful with students because of this incident. Instead, on at least one occasion during the 2004-2005 school year, the Appellant made comments to some of the female track team members about obtaining nude photos of them from the locker room showers and selling them on the Internet for lots of money. DD was in the group about whom and to whom the comment was made. The Appellant's comment was inappropriate and unwelcome, and made DD uncomfortable. The Appellant concedes he made the comment, but asserts he was merely joking.

22. DD and a friend, another female senior who was not on the track team, dressed alike for Halloween 2004 in what they described as "Catholic schoolgirl" outfits. The costume consisted of knee socks, short skirts, and white button-down collared shirts. DD and her friend drove around town showing off their Halloween costumes. They visited the Appellant at his house to show him their outfits. They had jackets on, but under the jackets their white shirts were unbuttoned quite low, and also tied up high to reveal their cleavage and midriffs. DD wore her hair in braids. The Appellant felt uncomfortable at the semi-private showing he received in his TV room. His wife was at the end of the room, answering the door to trick-or-treaters. An assistant coach was also in the room, but the two girls were focused on the Appellant, with their backs to the assistant coach and to Mrs. Pauls. The Appellant did not tell the girls their outfits or behavior were inappropriate. Instead, he told DD he would pay her \$20 to wear the Catholic schoolgirl outfit to school.

23. This idea of paying young females for their appearance, specifically sexualized appearance, was consistent with the comments the Appellant repeatedly made about DD working at Hooters and Stateline, but was wholly inappropriate for a teacher or coach to say.

24. The Appellant later spoke about the inappropriate Halloween outfit to the youth minister at the church DD's parents and brother attended, but did not speak to the girls or their parents. The youth minister did not speak to anyone about the incident. DD did not attend her parents' church.

25. DD had a history of getting into trouble from certain staff members because of her 'inappropriate' clothing. She believed she wore the same sorts of clothes to school as other girls, but things looked different on her because of her build. However, she concedes the Catholic school girl Halloween outfit was revealing, was intended to shock, and was not appropriate school clothing.

26. The Appellant spoke to DD about the Halloween outfit at the high school, and again encouraged her to wear it to school. He told her "the Catholic schoolgirl look is so hot. I love it when you wear your hair that way (in braids)."

27. The Appellant liked the way DD looked with her hair in braids. He complimented her on that hair style, and asked her to wear braids again. He did not compliment other female students on their hairstyle.

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28. On one occasion during track season, the Appellant commented on DD's hair, and gave her a small package of candy at the track team bus. He did not provide candy to other students, then or on other occasions. He purchased the candy for himself, but decided he should not have it, due to health concerns. The gift of candy was problematic for DD because no one else received candy from the Appellant. It made her stand out and seem different from other students, and emphasized that she and the Appellant were somehow extra-close.

29. The Appellant told DD on one occasion on the way to a track meet that she looked so cute the day before that he "could not stop thinking about you last night." DD wore her hair in braids the previous day.

30. The Appellant explained the purpose of the comments was to increase the student's self-esteem. This explanation is not adopted as the Appellant's true motivation in making the comments to DD about her hair in braids.

31. The Appellant called DD one time from his cell phone to her cell phone on a Sunday, while he and his family were at church. DD's parents and brother were also there. The Appellant called to ask DD why she was not there and to encourage her to come to church that day. The Appellant did not call any other students to encourage them to attend church.

32. The Appellant called DD on her cell phone approximately ten times during the 2004-2005 school year. The other track team co-captains also had cell phones, and were called approximately 2-4 times. The Appellant was more comfortable dealing with DD. He sat near the three co-captains briefly on the track bus to meets, but more often sat nearest to DD. He then returned to his seat at the front of the bus. He felt it was just easier to call DD on her cell phone, or to sit nearest her, because the other co-captains did not always attend practice or games, or did not do what he instructed them to do. He was unaware DD was becoming increasingly uncomfortable at being the primary point of the Appellant's interest and attention. The Appellant was unaware he was demonstrating preference toward DD. DD and her friends began to believe the Appellant placed himself closest to DD at track practice on purpose.

33. The Appellant asked DD to do some athletic-team related typing for him (team rosters, information sheets, and so forth) for pay. He had done this previously with other female students, as a way to utilize their typing skills. He had paid for the typing and offered to pay DD for typing. DD thought it was odd that the Appellant tried to pay her to do work. She was unaware he had utilized other students for this purpose in the past. There is no evidence the Appellant had an inappropriate intent in hiring someone, including DD, to do typing.

34. The Appellant wanted a high school student to sign up to be his TA for the 2005-2006 the school year. He asked the entire track team on one occasion. No one signed up. He then asked DD several more times to be his TA. She thought he was

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asking her to be TA during a time when he had a planning period, and did not want that much contact with the Appellant. The time he wanted a TA was not a planning period. No one signed up. DD became uncomfortable at being singled out by the Appellant so often regarding being a TA.

35. The Appellant has poor hearing, which he attributes to Davenport SD not providing him with hearing protection in the noisy gyms. He often places himself physically close to others when speaking to them in order to hear. He denies he stood extra close to DD.

36. Some of the track warmup exercises required the athletes to run around on the field. DD and her friends began to believe the Appellant kept moving himself close to DD during these particular exercises in order to see her breasts bounce. Other people in attendance at the practices did not notice this occur.

37. During the 2004-2005 school year, the Appellant encouraged some female high school students, including DD, to wear revealing, sexy clothing, in order to entrap certain other male high school staff members into ogling the girls. The Appellant told DD the other staff members did not like him, and were out to "get his job." He wanted to get them in trouble first. He advised the girls to have a witness ready, so the witness could attest to the fact that the men had ogled them. The male staff members were people the Appellant felt he did not get along well with. The girls were aware of the Appellant's motivation in asking them to entrap the staff members, did not follow through on his suggestion, or file a complaint against the other male staff members.

38. Another female student transferred to Davenport HS as a junior for the 2004-2005 school year. She noticed the personal and sexual comments the Appellant made about DD. This other student had participated in high school sports as a freshman and sophomore, but had never witnessed such comments between a coach and a high school athlete. She concluded from the comments that the Appellant and DD must have an exceptionally close relationship.

39. The Appellant often went to the high school during the last class period. It was his habit to go into a particular class where DD and some other female track students were and chat with them. His presence in the classroom was apparently acceptable to the class teacher. On one occasion during the 2004-2005 school year, while DD was in school doing homework, the Appellant flicked DD's ear, then asked her if that was what her boyfriend did to turn her on. DD replied "No. Do you do that to your wife?" The Appellant responded "No," that he "plays with her boobs, but she doesn't like it."

40. On one occasion, the Appellant asked DD what she and her boyfriend had done the night or weekend before. When she told him they had watched a movie, the Appellant responded that he meant what had they done "under the covers."

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41. The Appellant provided gift certificates to the local ice cream shop to the track team members, as a general inducement and reward. He did not provide any ice cream or gift certificates, flowers or notes, to DD other than the ice cream gift certificates, which he provided to the entire team. There was nothing inappropriate about the provision of the gift certificates under these circumstances.

42. On one occasion during the spring 2005 track season, the Appellant and the team saw a girl who had previously attended Davenport HS, but had moved away. She had gained weight. The Appellant commented to his athletes on how fat the other girl was, made fun of her weight, and pulled on the bottom of the front of DD's shirt to show how large the other girl had become. This made DD uncomfortable, because of the uninvited physical touch to her clothing, and because the comments were disrespectful to the other girl.

43. At one point during the track season, the Appellant was aware DD had problems with her back. He began massaging her back at one track meet, acting in his capacity as the team trainer, without asking DD first whether she would like a massage. The massage took place out in full view of others in a public area, not in private or secret. The physical contact made DD extremely uncomfortable, but she did not move away or object to the touch. She believed the Appellant's fingers came around her rib cage and up under her breasts. The Appellant denies he touched her near her breasts, but concedes his hands were around her waist and sides. By the time this contact occurred, DD was hyper-alert to the Appellant's contact with, and attention to, her. The touch was unexpected and uninvited. Any contact would have seemed excessive to DD at that point. The Appellant concedes it was not appropriate for him to massage an athlete without first asking.

44. Coaches and trainers assist athletes by helping with muscle stretches. The hamstring stretch is accomplished by the athlete lying on her back on the ground, and the trainer or helper standing/kneeling/leaning over the athlete, with the trainer's body placed very close to the athlete, between the athlete's legs. The athlete places one leg up on the trainer's shoulder, and the other leg remains straight, flat on the ground.

45. There is a hip stretch that is also done in combination with the hamstring stretch. The hamstring stretch involves the athlete bending one knee, again with the other leg remaining straight and flat out on the ground. The trainer places one hand on the leg which is flat on the ground, and one hand on the athlete's other leg. Different trainers place their hands in slightly different spots on the different phases of this stretch. The goal is to keep the one leg flat on the ground, and not allow the knee or hip to lift up, in order to maximize the stretch to the other leg. Some trainers place one hand near the athlete's crotch. Some place their hand on the top of the athlete's thigh, or toward the middle of the thigh, and some more toward the knee. The exact placement of the trainer's hands seems to depend on the portion of the stretch under way at a particular moment.

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46. Other male coaches generally refuse to do the hamstring stretch on female high school athletes. The Appellant was aware of this, or should have been. It was the Appellant's general practice to have females stretch other females, and males stretch other males. However, he admitted he did on occasion stretch some female athletes. He violated his own guidelines when he stretched DD in May 2005. It was unnecessary for him to do so, as another female athlete and track-team co-captain was present in the track tent at the time of the stretch.

47. At an away track meet during late May 2005, DD and another team co-captain had stretched, but the Appellant was unaware of this. He asked or told DD he would stretch her, doing a hamstring stretch. DD either verbally agreed to be stretched, or simply complied by lying on her back on the ground. One of the co-captains was present at the start of the stretch, but moved out of the team tent at the time of the physical contact. No one else was left in the tent at this time. The tent was open on three sides. DD believed the Appellant placed his hand on her crotch during the stretch. She was mortified at the contact. Her teammate, KS, saw the contact. The teammate expressed significant concern about the contact. The two girls agreed the situation could not continue as it was, with the unwelcome sexual comments, and now the unwelcome back massage and stretch.

48. The Appellant denies he touched DD's crotch or upper thigh during the stretch.

49. DD treated the Appellant's comments as jokes and harmless banter for the first year or more. Eventually, the bantering got on her nerves, and no longer seemed funny. After the track meet stretch, witnessed by co-captain KS, the situation seemed much different to DD. She did not feel safe around the Appellant, and the comments he had made for years, which she had laughed at but had begun to feel a bit uncomfortable about, appeared to her in a different light.

50. The day after the stretching incident, on or about May 21, 2005, DD reported some of the unwelcome comments and touch to a high school staff member (Miss Ryan), at the urging of the other track team co-captain who had witnessed the stretch. Miss Ryan told the high school principal. The principal suggested Miss Ryan could watch a few track practices, to see how things went. Miss Ryan instructed the girls to make a list of what had happened so far. The girls worked together and compiled Exhibit S22.

51. DD initially stated and also testified under oath that the Appellant had touched her "upper thigh" during the track meet. As the investigation process wore on, and grew into something DD had not envisioned or wanted, she gave testimony under oath that the stretch had involved her upper thigh. She knew she was not being completely truthful when she originally claimed it was her 'upper thigh' but she "toned it down" on purpose. Her goal was not to get the Appellant in trouble, but to get him removed as track coach so she would not be subjected to the comments and contact. In this administrative hearing, she testified that the Appellant had touched her crotch.

52. In both the 2004-2005 and 2005-2006 school years, DD was a good student and athlete. She was on various student governance boards. She was popular. She felt she was unable to say "No" to the Appellant, so she wanted him removed as coach. DD felt guilty after the meet where the stretching contact occurred. She blamed herself for the contact. After she complained to Miss Ryan, she felt worse, because of the scope of the inquiry and the negative consequences to the Appellant. The following year, she did not want to remain as a student at Davenport HS, and was absent more than usual as a result. She was in counseling treatment two times per week throughout much of her senior year, which was the 2005-2006 school year.

53. During the following school year, DD had nightmares about being raped. Her mind-set was that she had never been able to say "No" to the Appellant during the past two school years, and continued to be unable to say "No" to him in her dreams and fears. The inquiry was a miserable time for DD. She felt ashamed and embarrassed. It seemed to her the people doing the inquiry into the Appellant's actions did not care about her, they just wanted information from her.

54. On May 31, 2005, Davenport SD placed the Appellant on administrative leave. Davenport SD hired a firm to investigate the Appellant and referred the matter to the local sheriff. The private investigation revealed the affair in Hagerman SD. When asked during the investigation whether the affair had occurred, the Appellant denied it. He was concerned his wife would find out about it before he could get home and tell her first. After telling his wife, the Appellant later, within a day or two, admitted the affair to Davenport SD.

55. Based upon DD's claims that the Appellant had touched her upper thigh, but not her crotch, the sheriff's office concluded the Appellant's conduct did not rise to the level of criminal assault, and no criminal charges were filed against him.

56. On August 19, 2005, Davenport SD issued a Notice of Probable Cause for Discharge pursuant to RCW 28A.405.300, terminating the Appellant's employment. A termination hearing was held in January 2006. A hearing officer issued Findings of Fact and Conclusions of Law and Ruling on February 26, 2006, upholding the termination of the Appellant's employment at Davenport SD. Exhibit A46.

Other Factors: Counseling, Employment 2006-Present, Rehabilitation

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**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)**

## Credibility

68. The Appellant testified at length. He does not recall making many of the comments he is accused of making, but concedes he joked a lot and could have made some of them. He did admit repeating some sexual comments to and about DD, but also denied the same comments. He asserts that if he did make some of the comments attributed to him, it was in fun, just jest, and the comments were generally made after others, usually students, made them first. He denies making some of the statements which some of his own witnesses concede the Appellant made. Where the Appellant provided a general denial but a lack of specific memory about specific statements which multiple witnesses, called by both OSPI and by the Appellant, testified he did make, his general denial is not sufficient to overcome the specific recollection and testimony of other witnesses.

69. In general, the student witnesses provided convincing testimony that the Appellant was a good coach, and that he merely engaged in sexual banter which did not appear unwelcome at the time. Some of his witnesses testified the Appellant never made any sexual comments about DD or any other female. This testimony was at odds with the Appellant's own admissions and was not credible. It is more believable that the Appellant did not make sexual comments in front of certain students and adults.

70. The Davenport HS girls who testified about the bulk of the allegations, DD, BS and KS, provided credible testimony. As noted above, corroborating evidence about sexual comments came from many witnesses. Regarding DD's testimony, the internal conflicts, from statements made close in time to the track meet stretch and moving forward more than two years, are understandable in light of the explanation she provided. That explanation, that she felt embarrassed and ashamed by what happened, by the touch (whether to the upper or inner thigh or to the crotch) and wanted to minimize the description to minimize the damage to the Appellant, and minimize the investigation, is found to be credible. It is clear that DD was highly sensitized to the Appellant's attention, comments, physical presence and touch.

71. The Appellant is found on a more probable than not basis to have placed his hand for the hamstring stretch on or near her crotch. Given the change in testimony over the years, he is not found to have done so by clear and convincing evidence.

## 2006-2007 School Year and Later

72. The Appellant became employed by a Nevada lock-down facility for juvenile offenders in May 2006. He obtained training for that position beginning in May 2006, then began working with male students in June 2006. The Appellant is an assistant coach and counselor to the adjudicated male youths who are resident students in the Rite of Passage program in Nevada. He does not have contact with any female students, as there are no female students in that program. He gets along well with female staff. Each and every interaction with the students is tightly controlled, with specific protocols for adult-student

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interaction and behavior. The Appellant admitted that if he behaved toward students at his current school as he did at Davenport HS, he would not have a job. He concedes that while at Davenport HS, he was unaware of appropriate boundaries between students and school staff. He asserts he has learned a great deal from his current employment about appropriate comments and boundaries between students and staff. It is clear he has done so.

73. The Appellant believes he is rehabilitated and is not a risk to students. He is certain he will never have another affair with a student, will never provide an unwelcome massage or stretch or other touch to a student, and will never make unwelcome comments to female students. However, the Appellant did not see his contact, conduct, or comments as inappropriate at the time he made them.

74. It is concerning that the Appellant blames others for the problems that beset him. He blamed the TA for the affair, and for having disclosed it 23 years later, when he had determined to take the secret to the grave. He seemed to blame his wife somewhat for the affair (he alleged she did not speak to him so he was desperate for communication, which drove him into intimacy with a 17-18 year old student), blamed Hagerman for assigning a TA to him during his planning period, blamed Davenport SD for his hearing problems which cause him to stand close to people in order to communicate, and ultimately blamed DD for the problems that occurred in 2005, because she did not tell him his sexual comments were unwelcome, so he did not know to stop making them. He blamed Davenport SD for his own lie during the investigation about the affair.

75. The Appellant testified he did not wish to cause any of the female students any harm, and specifically noted he did not want to have the female students to have to testify again, acknowledging the tremendous strain testifying is to witnesses in such circumstances. In light of the fact that some of the Appellant's own witnesses testified consistent with the female students about inappropriate sexual comments (breast size, Hooters, Stateline) which the Appellant denies or had no recollection about, the Appellant's claim of concern for the girls as evidence of his rehabilitation is not credible or logical. Since some of his own witnesses testified the comments did occur and were made by the Appellant, he could have admitted those facts and saved the girls the additional stress of testifying, if he was concerned about them as he claimed.

76. The weight of the evidence is clear that the Appellant made several unwelcome sexual comments to DD, in particular. The fact that he does not recall making the statements is credible, because he did not assign any particular importance to the comments. In his mind, the comments were simply jokes he heard others say and he repeated, they were funny things he thought of, or they were just part of his exceptionally close relationship with DD. To the Appellant, the comments directed at DD did not signify anything more than a close friendship.

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## CONCLUSIONS OF LAW

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

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

3. OSPI is required to initiate an investigation regarding the allegations of all complaints filed against certificated personnel. WAC 181-86-100. The complaint letter received by OSPI on June 9, 2005, triggered OSPI's duty to investigate the Appellant.

4. Any certificate authorized under Chapter 28A.405 RCW may be revoked or suspended based upon the complaint of any school district superintendent for immorality or unprofessional conduct, among other categories of behavior. RCW 28A.410.090.

5. Good moral character and personal fitness required of certificated personnel are a continuing requirement for holding a professional educational certificate under the regulations of the PESB. WAC 181-87-014. The terms are defined as follows:

As used in this chapter, the terms 'good moral character and personal fitness' means character and personal fitness necessary to serve as a certificated employee in schools in the state of Washington, including character and personal fitness to have contact with, to teach, and to perform supervision of children. Good moral character and personal fitness includes, but is not limited to, the following:

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

WAC 181-86-013.

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

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

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

7. The Appellant's conduct in 1983, when he entered into an extramarital affair with a high school student who was his TA, was unprofessional conduct.

8. The Appellant committed numerous acts of unprofessional conduct during the 2004-2005 school year. The comments he made about a student's body, breasts, legs, boyfriend and sexual activity, along with comments about a different student's body, and the comments about his own sexual behavior with his wife, as well as his behavior toward a single student, were unprofessional conduct during the course of his supervision of students.

9. It was inappropriate and unnecessary for the Appellant to violate his own guidelines in May 2005 and stretch a female athlete. If the stretch had been just a stretch with no inappropriate contact, it would have been poor judgment, but perhaps not unprofessional conduct or demonstration of a behavioral problem. However, under the circumstances presented here, the male coach to specific female athlete hamstring stretch appears as part of the pattern of excessively familiar - to the point of inappropriate - conduct. Clear and convincing evidence supports the determination that the touch was to the upper thigh, not just above the knee or mid-thigh, as asserted by the Appellant. A touch to the upper thigh was not appropriate. If physical contact to the crotch or upper thigh was a necessary part of the stretch, the stretch should have been done by someone else - a female athlete or parent, if no female coach was available.

10. The Appellant's comments and conduct described above were done both in flagrant disregard and clear abandonment of generally recognized professional practices. The fact that the Appellant did not realize his conduct was unprofessional is not a defense.

11. 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. WAC 181-86-150. The Appellant's appeal was timely.

12. In order to suspend or revoke certification, OSPI "must prove by clear and convincing evidence that the certificate holder is not of good moral character or personal fitness, or has committed an act of unprofessional conduct." WAC 181-86-170(2). In all other proceedings, "including reprimand, the standard of proof shall be a preponderance of evidence." WAC 181-86-170(3). (Emphasis added.)

13. The standard for suspension of a teaching certification are set forth at WAC 181-86-070(1) and (2) as follows:

(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

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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 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.

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

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

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

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

15. Unprofessional conduct is also defined at WAC 181-87-080 in part as follows:

**Sexual misconduct with students...**

...  
(2) Sexual intercourse as defined in RCW 9A.44.010;

...  
(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.

16. The Appellant's conduct in 1983 with the TA clearly meets the definition of sexual misconduct. The Appellant's conduct with DD and the hamstring stretch in May 2005 does not meet that threshold for purposes of a revocation or suspension, since the conduct itself was proven by a preponderance of the evidence, not by clear and convincing

evidence. The Appellant's conduct with DD and the back massage does not meet the definition of sexual misconduct, because, although the back massage was unwelcome and inappropriate, it did not involve the intimate parts of a student. The testimony was that the Appellant's hands were below, but not touching, the student's breasts.

17. The Appellant's repeated references to a female student's body parts, including legs and breasts, and to future employment based upon body parts (Hooters and the strip club), were unprofessional conduct. Further, they were part of a larger pattern of inappropriate conduct which demonstrated a lack of understanding of appropriate student-teacher, and professional, boundaries.

18. Students testified that the Appellant was a friend, someone they could talk to about anything. The Appellant concedes he used this approach, concedes this approach was inappropriate, and agrees that his job as a teacher and coach was to behave as a professional, not as a friend. It is beyond dispute, based upon the uncontroverted testimony of witnesses from both parties, that the burden is on the teacher as the adult, as the professional, to establish and maintain appropriate boundaries. A student should not have to say "No" to inappropriate sexual comments and jokes from a teacher or coach. A student should not have to say "No" to unwelcome touch from a teacher or coach. Yet the Appellant repeatedly blamed the female students for not telling him to stop. The Appellant blamed Davenport SD for his hearing loss. He blamed the TA for the affair, and he blamed his wife for the affair, as well, for not communicating with him and, in essence, for driving him to the affair. He blamed Hagerman SD for assigning a TA to him when he did not have a class. The Appellant demonstrated a consistent habit of blaming others for his unprofessional conduct and shortcomings. This tendency to blame others and the failure to take full responsibility for his own actions are factors to be considered in the appropriate sanction to be imposed.

19. OSPI proved by clear and convincing evidence that the Appellant committed acts of unprofessional conduct during 2005, in that he demonstrated a disregard of generally recognized professional standards. He showed a clear abandonment of generally accepted professional standards in the course of his professional practices, including 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.

20. Even if the Appellant's conduct were not found to meet the unprofessional conduct standard, his conduct in 2005 fell below the acceptable level in that it demonstrated a behavioral problem which endangered the educational welfare and personal safety of students within the educational setting. The repeated sexualized comments, including comments about breast size and working as a stripper, offering a young female student money for wearing revealing, inappropriate clothing, and his encouragement of the wearing of inappropriate clothing to entrap other male faculty, endangered the educational welfare of students.

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21. The Appellant's conduct as a principal in 1995-1997 does not meet the definition of either unprofessional conduct or a lack of good moral character or personal fitness. It was simply poor judgment and a lack of professionalism. A lack of professionalism is not equal to 'unprofessional conduct.'

22. The Appellant's assertion that his actions as a teacher are not at issue, and that it is only his actions as a coach that are at issue, is not adopted.

23. The determination of unprofessional conduct and of a behavioral problem which endangered the educational welfare of students does not end the inquiry. The appropriate sanction for the discipline must be determined next. In order to determine the appropriate level and range of discipline, OSPI or its designee must consider certain specified factors, at a minimum, prior to issuing any disciplinary order. WAC 180-86-080. These factors include the following:

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

24. The above factors have been considered.

25. **Factor (1).** The seriousness of the acts and the actual or potential harm to at least two students was demonstrated by the sexual affair with the TA, by DD's need for counseling twice a week throughout much of her senior year in high school, and by DD's nightmares of rape. The potential of harm to 16, 17, or 18 year old female students, from treating them and referring to them in sexual terms, and offering money for revealing clothing, and repeatedly stating the teacher would see them working in a sex trade job (stripper) or in a sexualized job (Hooters) is significant. The Appellant does not seem to understand this point. Further, the damage to students' reputations is part of Factor 1. Another student assumed the Appellant and DD had a special, exceptionally close relationship, because of the nature of the comments. This damage to a high school girl's reputation is serious.

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26. **Factor (2).** The Appellant was the subject of one complaint to police about his interactions with young female students. It did not result in a criminal charge or trial.

27. **Factor (3).** The students were in their junior and senior years of high school. They were old enough to know some of their own behavior was not appropriate (the TA's guilt over the potential breakup of a marriage, and DD's exhibitionism of the Catholic school girl Halloween costume modeled to a teacher - but while his wife was home and at the other end of the living room) but not yet old enough to realize how inappropriate the Appellant's behavior was. The Appellant was 26 in 1983, and 48 or 49 in the spring of 2005. The TA and the Appellant were eight years apart in age at the time of the 1983 affair. After completing college and teaching a few years, the Appellant was not so young in 1983 that his conduct with a 17-18 year old should be excused. He ought to have been significantly more mature in his conduct than he was, given his age and experience level. The Appellant was certainly old enough at 49 to realize the inappropriateness of commenting on breast size, and of offering money to a 16 or 17 year old girl to wear inappropriate, revealing clothing.

28. **Factor (4).** The affair in 1983 was 23 years old at the time it was discovered. It was remote in time. Although the affair would have justified a significant sanction if it had been discovered much sooner, it does not weigh heavily in the imposition of a sanction in 2007. This does not mean the Appellant escapes without consequences to his certification because he successfully hid it so long; instead, it means it was eclipsed in importance by his subsequent actions. The affair with a student exists more as a background fact than as a foreground reason to discipline. However, since the Appellant claimed to have learned from his 1983 mistake, it is a factor which informed his choices in 2004-2005.

29. **Factor (5).** The repeated sexualized comments about DD's body, in front of classmates and in combination with other sexualized comments about his own marriage and his general over-familiarity with DD, demonstrated a disregard for the welfare of students. Further, his uninvited and unwelcome touching of DD's body also demonstrates a disregard for the welfare of at least one student.

30. **Factor (6).** There is no evidence of a diagnosed mental illness, but there is evidence of a behavioral problem which manifested itself in repeated inappropriate, sexualized comments, two occasions of unwelcome touching, and a significant lack of comprehension of appropriate adult-adolescent boundaries.

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

32. **Factor (8).** One governmental entity (Davenport SD) imposed discipline against the Appellant for his behavior, and Hagerman SD threatened discipline if he chose to return.

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33. **Factors (9) and (10).** There were no aggravating circumstances. There was significant evidence of mitigating circumstances. The Appellant was a popular, winning coach. Many students and parents liked him. He had more than two decades of good evaluations as a teacher. He made a difference in the lives of many students. He was accessible to students outside of school and outside of school hours, beyond the requirements of the job, to provide assistance to some students.

34. The Appellant's claim to be a man of good character who made mistakes due to lack of insight, but who has now been rehabilitated, is the most significant mitigating factor left to address. He concedes he was unaware of the inappropriateness of his actions. The Appellant called witnesses who testified that the Appellant would never do specific things the Appellant concedes he did. However, those witnesses did little to bolster the Appellant's case, since they demonstrated their lack of awareness of the Appellant's range of conduct. If anything, those witnesses bolstered OSPI's case, since they demonstrated the Appellant was aware on some level of the inappropriateness of his sexualized conduct and comments toward DD, as he picked and chose his audience. 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.

35. The Appellant did not demonstrate that he has been sufficiently rehabilitated yet, such that he may avoid the consequences of his actions. He has not yet accepted responsibility for his actions. He is still blaming the girls involved, who were high school juniors at the time he made a school year's worth of sexualized comments, for his own conduct. He claimed to still be in therapy, and admitted he has more progress to make in therapy. However, the Appellant has not made therapy a sufficient priority to have actually had a session in over six months.

36. Consideration of the above factors leads to the following conclusion: The appropriate discipline for a certificated individual who has had a sexual affair with a student many years ago, who asserts he learned from that incident, but who engages in repeated sexual joking, bantering, excessively familiar comments and conduct, including uninvited and unwelcome physical touching of the same female high school student toward whom he has directed all his unacceptable, inappropriate behavior sexual comments, is revocation of the certification.

37. Any teacher whose certificate to teach has been revoked has a right of appeal to the PESB if notice of appeal is given by written affidavit to the Board within 30 days after the certificate is revoked. RCW 28A.410.100.

38. An individual whose educational certificate has been revoked may apply to OSPI for reinstatement. OSPI has the authority to reinstate upon satisfaction of conditions which it has the power to impose. The imposition of conditions and potential reinstatement are internal OSPI matters, not to be reviewed in an administrative proceeding.

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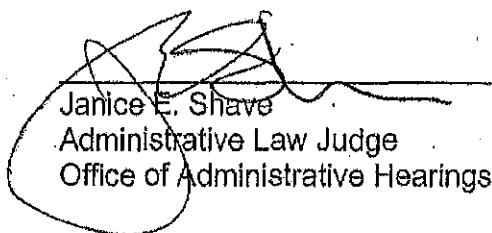
39. All arguments made by the parties have been considered. Arguments that are not specifically addressed have been duly considered but found to have no merit or to not substantially affect a party's rights, and are therefore not addressed specifically in the findings or the conclusions.

### ORDER

OSPI has demonstrated by clear and convincing evidence that the Appellant's teaching certificate should be revoked.

This Order takes effect upon signing. No stay of reprimand, suspension, or revocation shall exist until the Appellant files an appeal in a timely manner pursuant to WAC 181-86-155.

Dated at Seattle, Washington on October 17, 2007.

  
Janice E. Shave  
Administrative Law Judge  
Office of Administrative Hearings

### APPEAL RIGHTS

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

Any person whose certificate has been suspended or revoked by OSPI in accordance with the procedures of WAC 181-86-155 may appeal that decision to the PESB by filing a notice of appeal with OSPI or the secretary of the Professional Educator Standards Board within 30 days of the date of mailing the decision of the superintendent of public instruction.

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 30 days after service of the final order of the PESB.

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In accordance to WAC 181-86-150(3), the decision of the ALJ shall be sent by certified mail to the Appellant's last known address and if the decision is to reprimand, suspend, or revoke, the Appellant shall be notified that such order takes effect upon signing of the final order and that no stay of reprimand, suspension, or revocation shall exist until the Appellant files an appeal in a timely manner pursuant to WAC 181-86-155.

CERTIFICATE OF SERVICE

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

**Via Certified Mail and US Mail**  
Clarence G. Pauls



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