

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

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IN THE MATTER OF

LARRY RICHARDSON

CERTIFICATION NO. 228137F

TEACHER CERTIFICATION
CAUSE NO. 2009-TCD-0001

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

A hearing was held on this matter before Administrative Law Judge (ALJ) Johnette Sullivan on November 9, 10, 13, and 16, 2009, at Yakima, Washington. The Appellant, Larry Richardson, appeared and was represented by Tyler Hinckley, attorney at law, of Velikanje Halverson P.C. The Office of Superintendent of Public Instruction (OSPI) appeared through Charlie Schreck, its Director of Office of Professional Practices (OPP), and was represented by Dierk Meierbachtol, assistant attorney general (AAG).

Testimony was taken under oath or affirmation from the following witnesses: Larry Richardson (Appellant), Charlie Schreck (OPP Director), Helen Capetillo (Adams Elementary School [Adams] para-educator), David Padilla (Adams teacher), Michael Kouletes (former Adams Principal), Rick Doehle (former Yakima School District [District] Assistant Superintendent for Human Resources), Julio Cesar Sanchez (former Adams 21st Century Coordinator), John "Jack" Irion (District Deputy Superintendent), Cheryl La Flamme (Union Gap School District art teacher), Jane Watson (former Adams teacher and Yakima Education Association building representative), Eddie Lee Brown (former Washington Middle School teacher and coach), Mary Wickstrom (former Adams special education teacher), Kimball Klinefelter (Adams special education teacher), and Jane Kucera Thompson, Ph.D (clinical neuropsychologist).

The Final Order of Revocation, and Appeal of Final Order of Revocation and Request for Formal Hearing are part of the court file and admitted for jurisdictional purposes as C1 and C2, respectively.

The following documentary evidence was admitted: Appellant's Exhibits 51-57, and 59-60 (Appellant withdrew Exhibit 58 as a duplicate of OSPI's Exhibit 20); and, OSPI's Exhibits 1, 2, 3, 14, 17-22, and 24. OSPI did not offer Exhibits 4-13, 15, 16, 23, 25, or 26, and those exhibits are not part of the evidentiary record.

The record closed November 16, 2009. The due date for the written decision in this matter is 90 days after the close of the record, pursuant to the Administrative Procedure Act,

Revised Code of Washington (RCW) 34.05.461(8)(a). The 90-day count falls on Sunday, February 14, 2010, so the due date is the next business day, Monday, February 15, 2010.

PROCEDURAL BACKGROUND

On February 17, 2006, the District Superintendent sent a letter to OPP, alleging acts of unprofessional conduct on the part of Appellant. Exhibit 2. On June 3, 2009, OPP issued a Final Order of Revocation against the Appellant's teaching certificate. Exhibit C1.

The Appellant appealed the Final Order of Revocation by letter to OSPI dated June 25, 2009, and received by OSPI on June 29, 2009. Exhibit C2. The matter was assigned to the Office of Administrative Hearings (OAH) to assign an ALJ to conduct an administrative hearing and issue a decision.

OAH mailed the parties a Notice of Prehearing Conference and Notice of Hearing, which scheduled a prehearing conference for July 16, 2009, and a hearing for August 6, 2009. At the first prehearing conference, the parties agreed to reschedule the hearing to August 17-21, 2009. Appellant requested a second continuance which was granted for good cause over the objection of OSPI. The parties agreed to new dates for hearing, November 9-16, 2009.

ISSUE

Whether clear and convincing evidence supports OSPI's determination that Appellant Larry Richardson demonstrated a lack of good moral character and personal fitness and/or committed acts of unprofessional conduct in violation of Washington law, warranting a revocation of his teaching certificate.

FINDINGS OF FACT

1. The Appellant holds a Bachelor and a Masters Degree, and Washington Education Certificate No. 228137F, which was issued on June 9, 1978. He began his career as a special education teacher. He taught in District elementary and middle schools. He later became a physical education teacher to general education and special education students. He was employed by the District for most of his adult career, from 1978 until 2006. He is currently a substitute teacher for the Union Gap School District.

3. In addition to teaching, Appellant sometimes worked as an assistant coach. He and other elementary and middle school teachers assisted the coaches with after-school

sports activities. [REDACTED]

[REDACTED] He was known to have earned his black belt in a martial art. There was nothing about Appellant's service as an assistant coach to cause coaches or [REDACTED]

4. The overall performance of a teacher is not evaluated over a school year or other long-term period. By contract, a teacher's performance is observed once or twice per school year for a period of at least 30 minutes. Usually, experienced teachers are observed just once per year. If poor performance is observed outside of the designated observation, it is addressed only in the context of the discipline policy, subject to grievance if the teacher disagrees.

5. The principal or other supervisor provides advance notice to the teacher of the date and time selected for the observation of classroom teaching performance. The supervisor completes a one page form to record the observations. Through 2004, Appellant's teaching performance during these observation periods consistently satisfied his supervisors.

6. Principal Koulentes was assigned to Adams in the 2004-05 school year. Appellant taught physical education (P.E.) at Adams. As Appellant's supervisor, Principal Koulentes arranged to observe Appellant's classroom performance twice, on November 4, 2004, and April 18, 2005. Principal Koulentes' observation comments were positive.

7. Appellant felt frustrated because he believed Principal Koulentes had not taken action to discipline students who continued to misbehave in P.E. class. Appellant believed Principal Koulentes did not support him.

The November 18, 2005 incident

8. Principal Koulentes selected November 18, 2005, as the next date for Appellant's classroom performance observation, and notified Appellant.

9. Principal Koulentes arrived early for the observation period. He was surprised to see Appellant wearing a bandana folded around his head. Principal Koulentes believed the bandana was unprofessional attire, with colors too similar to "gang" colors.

10. Principal Koulentes' manner of speech at hearing, compared to Appellant's manner, is of considerably louder volume. Entering the gym that morning, Principal Koulentes said in a loud voice that something was inappropriate and to "take that off" or words to that effect. Appellant did not immediately realize the Principal was speaking to him. The Principal said something about a hat. Appellant touched the bandana he was wearing around his head.


11. The Appellant did not appreciate the Principal's loud tone of voice or the brevity of his command. The Principal directed Appellant to step aside into the Appellant's office to permit them to speak privately, but Appellant refused.

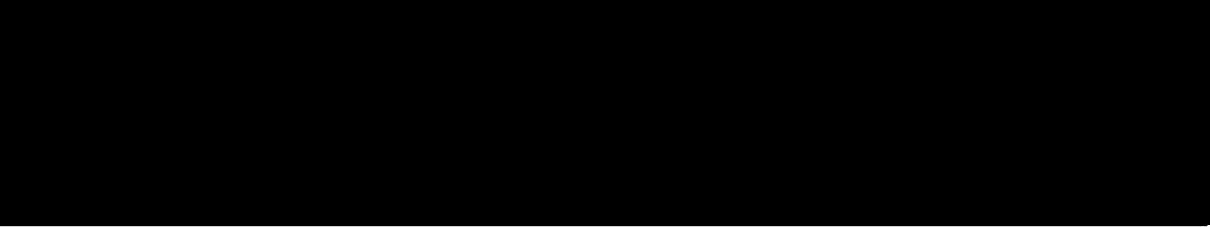
12. The Principal felt disrespected by Appellant's refusal to comply, particularly in the presence of students.

13. A verbal argument arose between Principal Koulentes and Appellant. Each claims the other was the aggressor. Each claims the other was physically aggressive. Students who observed their encounter, now probably in the 8th grade, were not called as witnesses by either party. No adult witnessed their interaction.

14. The District reprimanded Appellant for physically aggressive interaction with Principal Koulentes on November 18, 2005. Appellant filed a grievance on November 21, 2005. After investigation, the District determined the evidence did not substantiate that Appellant physically contacted the Principal. It determined the interaction was verbal, but still denied the grievance. Appellant did not further appeal the reprimand.

15. The District also initiated disciplinary proceedings against Principal Koulentes related to his behavior during the November 18, 2005, verbal interaction with Appellant.

16. Principal Koulentes was not aware of Appellant's 



17. Principal Koulentes gave a statement to OPP in 2008, but that statement was not offered into evidence. It is unknown if there are any discrepancies between the Principal's earlier statement and his testimony at hearing.

18. Appellant gave a statement in November 2005 when he grieved the reprimand, which was admitted into evidence. That statement is substantially similar to the initial description of the events given by Appellant at hearing. However, at hearing Appellant offered an explanation which added significantly to the November 2005 statement.

19. Appellant initially described himself as the one who remained calm, and the Principal as the one who was out of control, yelling, and shouting. Appellant refused to meet privately in the office because he felt physically threatened by the Principal, who was holding a clipboard. The Principal left the gym at least twice, in Appellant's recollection. Appellant returned his attention to the students, until the Principal's final return when the Principal

continued to shout and then physically charged at the Appellant. As the Principal neared, the Appellant decided to turn directly toward the Principal and face him eye-to-eye to explain he was tired of being treated in this manner. Under further questioning, Appellant admitted that he himself had spoken loudly and raised his own voice when speaking to the Principal, his supervisor. Appellant explained that he remembered thinking there were cooks working in the kitchen across the hallway, and he decided to raise his voice to Principal Koulentes in hope of being heard by the cooks. Appellant explained he hoped to attract other adults to come and observe how the Principal was behaving and to come to Appellant's aid.

20. Appellant also explained the reason he refused to remove the bandana was because he did not want to be embarrassed by nappy hair, which he considered unprofessional. Appellant said he wanted to wait until he could step away and groom himself. He explained he could not immediately leave the gym to go to his truck in the parking lot to rake his hair, because the students would be unsupervised during his absence. If Appellant had removed the bandana as his supervisor had instructed, the confrontation would have not occurred.

21. Appellant admits that it is not appropriate for educators to raise their voices at one another in a heated argument in the presence of students.

The January 27, 2006 incident

22. Appellant's classroom was the gym. On January 27, 2006, the planned P.E. activity was volleyball. The last class of the day was Mr. Padilla's fifth grade class, which usually ends at the 3:15 p.m. bell. Usually, the students did not return to Mr. Padilla's classroom, but on this day, Mr. Padilla had not finished on time and needed the students to return to his classroom. He planned to go to the gym and escort them back to the classroom before the bell.

23. Students in this class had previously misbehaved, and Appellant subjectively believed he could not rely on Principal Koulentes for discipline. When the students again misbehaved, Appellant decided to discipline by holding students over for detention. He intended to follow the administration's instruction to not let students "get away with anything."

24. Mr. Padilla arrived early to escort his students back to his classroom, and learned from Appellant of the misbehavior and the planned detention. The students were seated in two groups along the base lines on the gym floor. Appellant had begun dismantling and storing the volleyball equipment. Mr. Padilla reminded Appellant some of the students needed to catch the bus, and persuaded Appellant to consider some other punishment on some other day. Appellant allowed the students to leave with Mr. Padilla.

25. Appellant conducted the volleyball class in one-half of the gym, the half near the equipment storage room. The other half of the gym was not in use, except at the far end, where the after-school program was being set up, near the kitchen area.

26. Appellant continued to take down the volleyball equipment to return the net, support poles, and beach volleyballs to the equipment room. Mr. Padilla began to gather his fifth grade students, and observed a small boy enter the gym. The boy, ■■■, was a kindergarten student who had arrived early for the after-school program.

27. A para-educator, Ms. Capetillo, and at least one other adult had been setting up tables and preparing for the after-school program. ■■■ called out to Ms. Capetillo to announce he was early, but he did not walk directly across the gym floor toward the after-school program.

28. ■■■ began to play with a beach ball used in the volleyball game. He kicked the beach ball. Appellant told the boy not to kick the beach ball, and asked the boy to hand him the beach ball. Appellant held out his hand, palm side up, when he made the request. Appellant's custom is to teach students that balls and other objects are always to be handed to him, not thrown.

29. ■■■ disobeyed Appellant and either threw or kicked the beach ball toward Appellant. Appellant reflexively protected his head by reaching up with his arms and hands. The beach ball did not hit Appellant's head. Ms. Capetillo described how Appellant caught the ball, then intentionally and with great force threw the ball at ■■■, hitting ■■■ in the back of the head. Ms. Capetillo's description of the force exerted by Appellant is somewhat inconsistent with her description of ■■■'s total lack of reaction to being hit. Ms. Capetillo did not observe ■■■ look back, turn around, change his pace, begin to run, or otherwise react in any way to being hit by the ball.

30. Appellant began to run after ■■■. Appellant reached out to try to grab ■■■, and ■■■ stumbled. Appellant tried a second time to grab ■■■ and picked up ■■■ by the neck. Ms. Capetillo was stunned to see Appellant gripping ■■■ by the neck. She saw Appellant stand and shake ■■■ for several seconds while ■■■'s legs dangled in mid-air. She described Appellant as being upset. She was shocked and did not react until after she heard Mr. Padilla's voice.

31. Mr. Padilla's view was from behind the Appellant. He was unable to see Appellant's face or arms or hands as Appellant picked up ■■■. Mr. Padilla saw Appellant stand up, and knew Appellant's arms were extended, but could not see that Appellant's hands were gripped around ■■■'s neck. Mr. Padilla watched for several seconds. He was stunned and shocked to realize Appellant's upper body was moving in a shaking motion. Mr. Padilla reacted by shouting in a loud voice, "Larry", or "Larry, Stop", and Appellant released ■■■. Mr. Padilla described Appellant as being upset.

32. Ms. Capetillo described how the boy's legs had been kicking, and that ■■■'s body was in a position more parallel than perpendicular to the floor as he fell to the floor. She recalls that the top of ■■■'s body, his shoulder and head area, hit the floor before his feet. She recalls ■■■'s head hit the gym floor hard and created a loud sound. Mr. Padilla knew the boy's body fell to the floor because he heard the loud sound produced by the impact of ■■■'s head on the gym floor. Mr. Padilla heard gasps from the fifth grade students. These descriptions of the loud sound created by the impact of ■■■'s head on the gym floor are consistent with a sound loud enough to cause another employee to turn around and look for the source of the sound. See Finding of Fact 34 below. Appellant's contention that upon release ■■■ stood briefly on the floor, only to then stumble or fall down on the floor, with his head being the last part of his body to touch the gym floor, is not credible.

33. Ms. Capetillo and Mr. Padilla each ran toward Appellant and ■■■. Appellant remained standing nearby as Ms. Capetillo attended to the boy at Mr. Padilla's suggestion, she took ■■■ to the office. Mr. Padilla was stunned as well as embarrassed for Appellant and did not know what to say. He recalls he said nothing and that Appellant said nothing. Mr. Padilla turned away and focused on his fifth grade class, because he could observe students' emotional responses. His goal was to protect his class and remove them from the gym quickly.

34. Another employee with the after-school program had turned to look in response to hearing a loud noise. He saw Ms. Capetillo and Mr. Padilla moving toward Appellant and a small boy who was on the gym floor. He saw Mr. Padilla briefly put his arms around Appellant's upper body, telling Appellant to calm down or a few words to that effect. This employee found a camera and went to the office area where he took pictures of ■■■'s bruised neck and the bump on ■■■'s head.

35. During his July 2009 neuropsychological evaluation, and at hearing, Appellant said he chased after ■■■ to prevent injury to the student. He denies that he was upset or angry at the boy. Appellant said he was concerned ■■■ would run into the volleyball net or trip on the floor where the poles insert. However, on the day of the incident and four days later, Appellant twice explained his actions to a District deputy superintendent and did not mention he was concerned about gym equipment posing a danger for injury or being a tripping hazard. Appellant reported in 2005 thinking that ■■■ should not get away with being disobedient, and should also learn how to properly handle the ball. The other three adults present in the gym recall no safety concerns for themselves, or other students, or ■■■ regarding potential injury or tripping hazards due to volleyball equipment. None recall any nets or poles or other hazards posed by gym equipment in the area where they saw Appellant and ■■■ interact. The Appellant's contention that he was not upset with ■■■ and that his primary motive in chasing after ■■■ was to prevent ■■■ from tripping or being injured on gym equipment is not credible.

36. Appellant admits that his hands were gripped around ■■■'s neck, but denies an initial awareness of that fact. Appellant explains he lost his balance when he first reached for

■, and picked up ■ to avoid collision. As he straightened to stand, he explains his head was turned in one direction while his arms were outstretched in the opposite direction. Appellant claims he was not aware he had grabbed ■ by the neck until after he regained his balance and then looked at ■. Appellant explains it was only in that moment when he looked in the direction of his hands that he realized what part of ■'s anatomy he was holding. Appellant reports he felt scared at the sight of his hands around a student's neck.

37. Appellant denies that he intentionally shook ■. If Appellant's arms or upper body shook, he explains the movement was in reaction to his loss of balance, or to the sight of his hands around the boy's neck. At the time of the event, Appellant told the District deputy superintendent that Appellant was thinking about an automobile accident in which he had been involved on the eve of the New Year. He was thinking about what he had learned in First Aid about the need to protect heads and necks from injury. The District deputy superintendent understood Appellant was referring to need to protect himself and ■.

38. Appellant estimates there was a one foot distance between the boy's feet and the gym floor. He has no explanation for why he released the boy mid-air. He knows his actions were unprofessional.

39. Appellant contends the incident with ■ was an accident; however, his explanation of the events following the moment he grabbed ■'s neck are not credible. If Appellant lost his balance, it was only momentarily. In the act of lifting up ■ by the neck, it is not credible that Appellant could have thought his fingers were gripping any other part of ■'s anatomy. Even if Appellant was not looking at ■, the moment his fingers closed beneath ■'s head and around ■'s neck, it is not credible that Appellant was not aware of that fact. The Appellant was standing upright for several seconds and could have lowered ■ down to the gym floor, but did not do so.

40. It is not proven by clear and convincing evidence that Appellant intended to grab ■ by the neck. However, the clear and convincing evidence does prove Appellant knowingly maintained his grip around ■'s neck as Appellant stood and lifted up ■'s body a distance of one foot above the gym floor, and that Appellant knowingly held ■ suspended mid-air for several seconds while shaking ■, until Mr. Padilla shouted for Appellant to stop. Even then Appellant did not lower ■'s body to the gym floor, but let the boy's body fall to the gym floor. The Appellant's actions displayed a reckless disregard for ■'s safety or well being.

41. Appellant asserts that injuries to ■ observed immediately following this incident might not have been caused by Appellant's actions. There is no evidence regarding the condition of ■'s anatomy prior to this incident; however, it is significant that the injuries observed immediately following the event are entirely consistent with Appellant's actions. By clear and convincing evidence, it has been shown that Appellant's actions caused a bump to raise on ■'s head, and red marks to appear around the boy's neck.

42. Appellant suggests that other adults also bear responsibility. [REDACTED] was not in Appellant's class and Appellant had no direct responsibility to supervise [REDACTED]. During Appellant's 2009 neuropsychological evaluation, it was noted that Appellant was suddenly required to supervise and make a snap decision about a child who was not supposed to be in his area and was not supposed to be his responsibility, because another adult failed to supervise the child adequately.

43. Except in an emergency or when administering first aid, none of Appellant's colleagues could conceive of any circumstance in which they would ever pick up a child or place hands around a child's neck. Appellant agrees with the opinion of his colleagues, that it was unprofessional to pick up and release [REDACTED] as Appellant did in January 2006.

Other allegations of temper or physical threats

44. Appellant's former co-workers, familiar with his demeanor and behavior in school settings or school functions, described him with adjectives like kind, soft spoken, positive, respectful, and patient. These adjectives were consistent with Appellant's demeanor during the hearing.

45. Appellant's current and former colleagues have not seen anything in his behavior to suggest physical violence, except for Principal Koulentes and Ms. [REDACTED]. Even Ms. Capetillo described Appellant with adjectives similar to those of her co-workers, but for her observations of an incident involving her own son in P.E. class, and the incident with [REDACTED]

46. Ms. [REDACTED]'s son was a student in Appellant's P.E. class. She recalls an occasion when she entered the gym, realized her son's class was in P.E., and stopped to observe for about one minute. She saw her son standing inside a circle of students who were throwing balls at him. She understood her son was being punished for some bad behavior, but she thought the punishment was humiliating and had potential for injury. However, she did not speak to Appellant or interrupt to stop the action.

47. Ms. [REDACTED] did complain the same day to Principal Koulentes, but never heard back from him regarding action taken as a result of her complaint.

48. OPP's decision to revoke Appellant's teaching certificate is based in part on finding that the incident with Ms. [REDACTED]'s son was an example of Appellant's display of temper or physical aggression toward students. The District expects school principals to document, investigate, and recommend discipline in response to complaints of temper or physical aggression toward students. Principal Koulentes knew the District's policy and likely would have applied the policy if a teacher displayed temper or physical aggression toward a student. Since Principal Koulentes did not apply the policy to Appellant, it is likely that Principal Koulentes did not believe Appellant's actions warranted action at the time.

49. Principal Koulentes and Ms. [REDACTED] recall the gym class incident was sometime in 2005, but could not recall the month. Appellant asserted was not able to reply to the specifics of this allegations without reference to a date. Appellant denied any event as described by Ms. [REDACTED] occurred in his gym class, and Appellant also denied that Principal Koulentes spoke to him about such an event. Appellant disputes Principal Koulentes' memory of Appellant's admission that punishment consisting of throwing balls was meted out to Ms. [REDACTED]'s son during gym class. However, at hearing Appellant described a specific day involving a specific gym class, the specific disobedient act of Ms. [REDACTED]'s son (throwing balls at the heads of other students), and the exact number (three) and gender (female) of students who stood along a line and threw spongy balls at the son, while all other students were seated along the floor base lines. The Appellant's ability to recall in detail a memory of a single dodge ball class conducted at least four years ago is somewhat inconsistent with the claim that the Principal did not express concerns to Appellant about the very class which Appellant so clearly recalls.

50. Although Appellant's lack of recall is not credible, the evidence of the nature of the punishment itself is unclear. OPP has not proven Appellant personally threw balls at Ms. [REDACTED]'s son. OPP has not proven that Appellant instructed students to throw balls at the son, as a form of punishment. OPP has not proven that Appellant punished Ms. [REDACTED]'s son by looking the other way and failing to intervene when other students happened to throw balls at Ms. [REDACTED]'s son.

Substitute Teacher Application

51. Appellant was immediately placed on paid administrative leave pending investigation of the incident with [REDACTED]. He received notice in February 2006 that the Yakima School District believed it had probable cause for discharge, based on the incident with [REDACTED] as well as the November 2005 confrontation with Principal Koulentes. The notice informed Appellant of his right to appeal. Appellant did appeal.

52. On April 6, 2006, the Yakima County Prosecuting Attorney filed criminal charges against Appellant, accusing him of Second Degree Assault of [REDACTED].

53. On April 26, 2006, with the advice and assistance of his attorney, Appellant and the Yakima School District entered into a Resignation, Settlement and Release Agreement, for the purpose of resolving any and all issues arising out of or related to the termination of employment of Appellant with the Yakima School District. Appellant voluntarily resigned effective April 1, 2006. The Agreement was a compromise settlement made without either party making any admission against interest.

54. On August 1, 2006, the Prosecuting Attorney moved for dismissal of the charges without prejudice, for the reason "victim unavailable." A judge granted the motion and the criminal charges were dismissed without prejudice. Appellant did not have a trial before a judge or jury. Appellant knew the case was dismissed because the victim was unavailable.

55. In September 2006, Appellant completed an application for employment with the Wapato School District. He certified that all the information he provided in the application was true and correct. The application contains an Employment History section. Appellant checked the box, "No", that he had not ever been dismissed, discharged, or non-renewed, or separated employment in order to avoid discipline or discharge. Somewhat inconsistently, he then added the following handwritten note:

Resigned at the advise (sic) of my lawyer. Judge found me innocent. She dismissed the case.

Exhibit 22, page 9 of 9.

56. Appellant explained that to his thinking, he had not signed the Resignation agreement to avoid discipline or discharge. He had grieved the discipline and termination. The specifics of the negotiations between the Appellant and the District, and the advice given by Appellant's lawyer, are not known.

57. Appellant is not an attorney, has no legal training, and is not familiar with the legal system. Appellant did not understand the meaning of dismissal "without prejudice". He did not seek advice from his attorney before completing the application form. Appellant does understand the meaning of words he himself uses. See Finding of Fact No. 78. Appellant understood dismissal meant the criminal matter was "over and done with". He knew that in court "you win or you don't" and he understood "it was over." The clear and convincing evidence is that Appellant wanted the Wapato School District officials to believe he had won the criminal case and that a judge had cleared him of any wrongdoing involving [REDACTED]

Factors OPP considered in determining disciplinary sanction

58. OPP staff considered the eleven factors listed in WAC 181-86-080, to determine the appropriate level and range of discipline:

Factor 1. The incident involving [REDACTED] was determined by OPP to be serious with potential for physical, emotional and mental harm to [REDACTED]. However, other than the observations of school staff immediately following the January 2006 incident, OPP has no other knowledge of actual or potential harm to [REDACTED]

Factor 2. Appellant's criminal history contains no convictions. The charge of Second Degree Assault of a Child ([REDACTED]) was dismissed because the witness was unavailable.

Factor 3. Appellant and the adult witnesses and participants each have substantial experience as educators, and each were mature adults, many over 50 years of age.

In comparison, ■ was small in size and 5 or 6 years of age, and the other student witnesses and participants were probably not more than 12 years in age.

Factor 4. The events in November 2005 and January 2006 occurred in close proximity in time to the filing of a complaint against Appellant in February 2006 by the District.

Factor 5. Appellant's verbal interaction with Principal Koulentes and the incident with ■ demonstrated disregard for the health, safety, and welfare of ■ and of the students in the P.E. class.

Factor 6. Appellant's actions with ■ and with Principal Koulentes demonstrated a behavioral problem, even considering that Principal Koulentes was also disciplined.

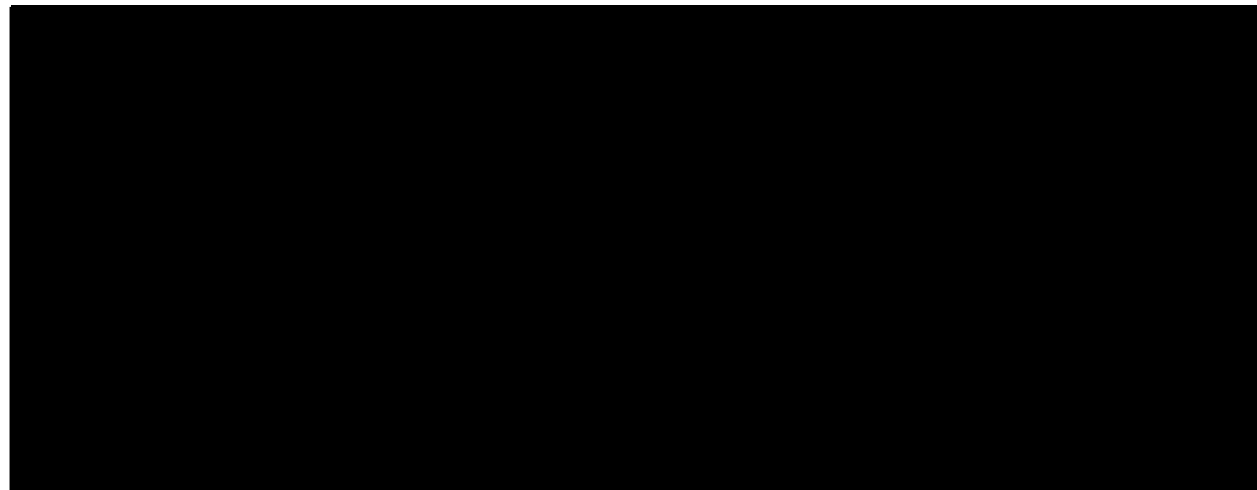
Factor 7. Appellant's actions demonstrated a lack of fitness, but the actions were already considered in Factor 6 above.

Factor 8. OPP was not aware of any other discipline imposed against Appellant.

Factor 9. OPP considered the act of holding the child's neck and the shaking of a young child to be aggravating factors. It considered as mitigating factors the many years Appellant was a successful teacher, and the good opinion of his character witnesses. An assistant superintendent with OPP favored a lower sanction than license revocation.

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

Factor 11. Other relevant information included the Appellant's statements on his employment application with Wapato School District, which OPP considered to be materially false.



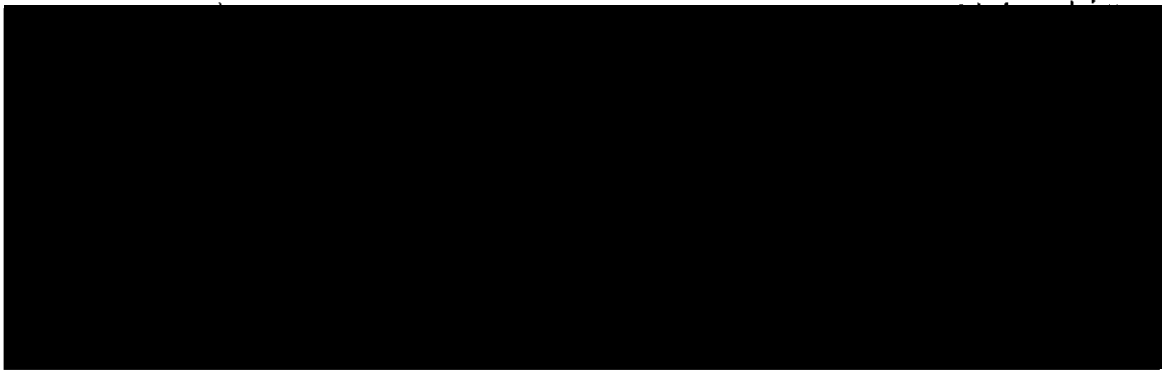
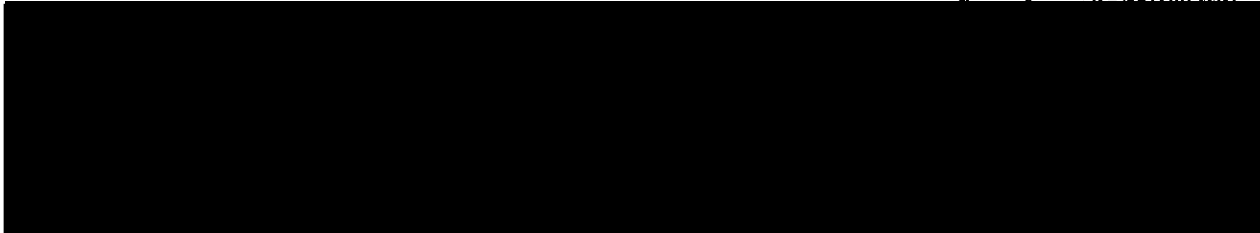
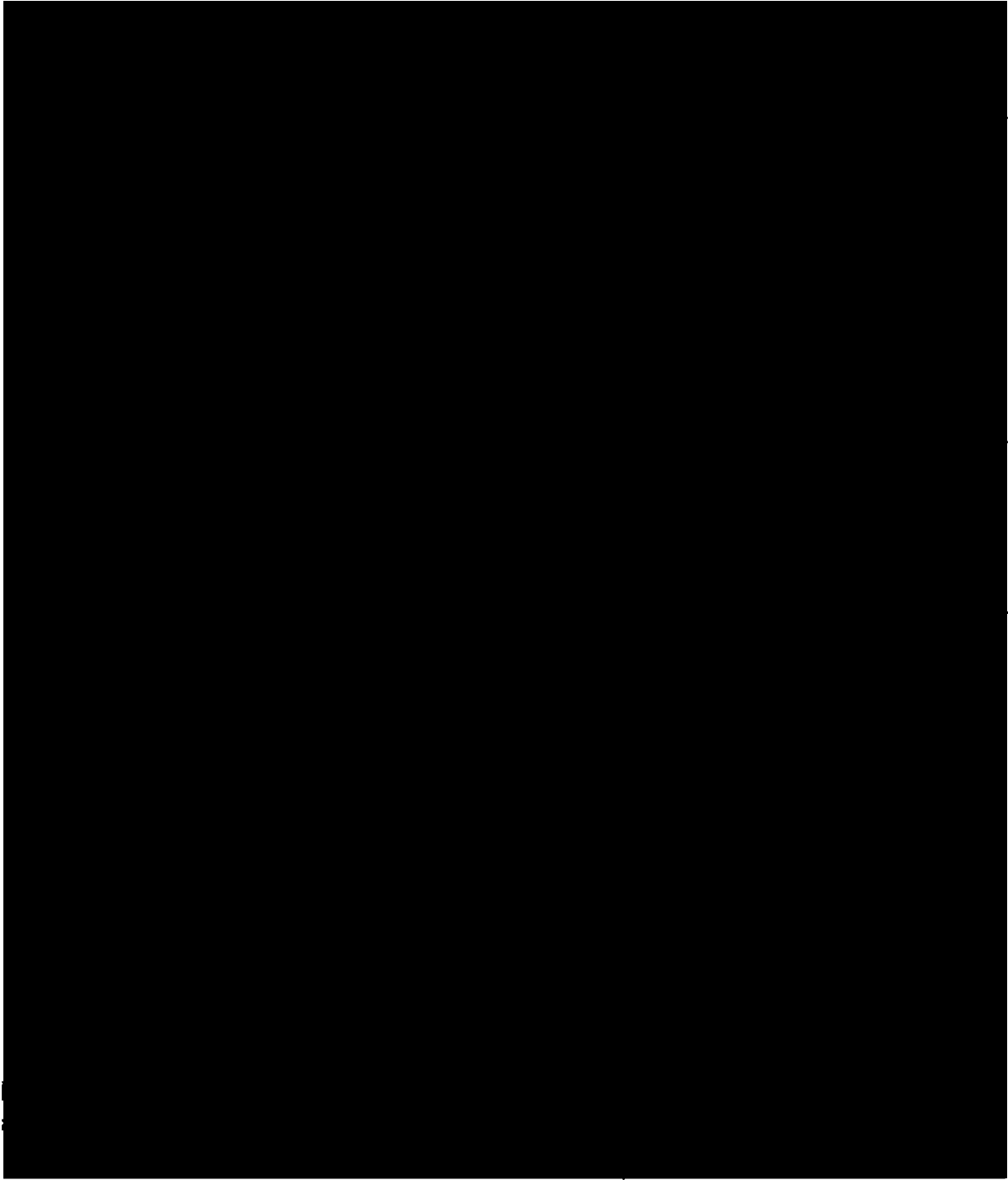
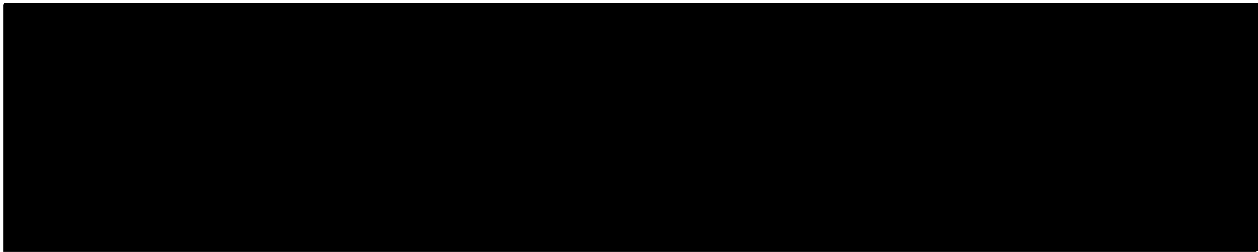
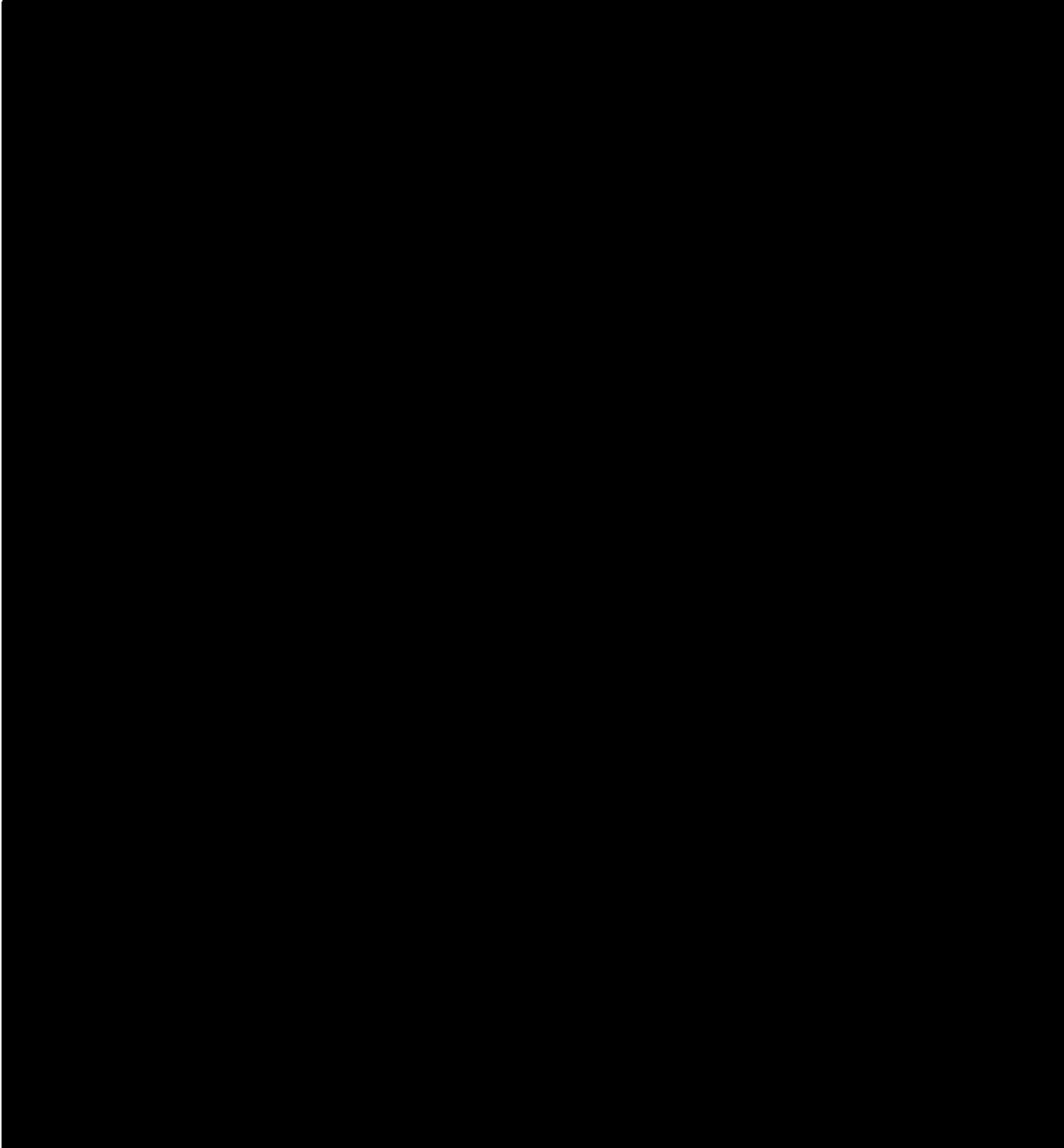
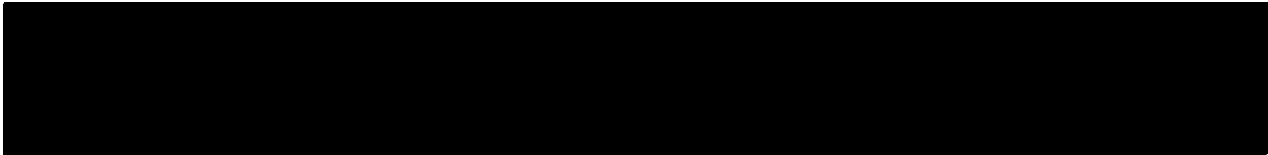
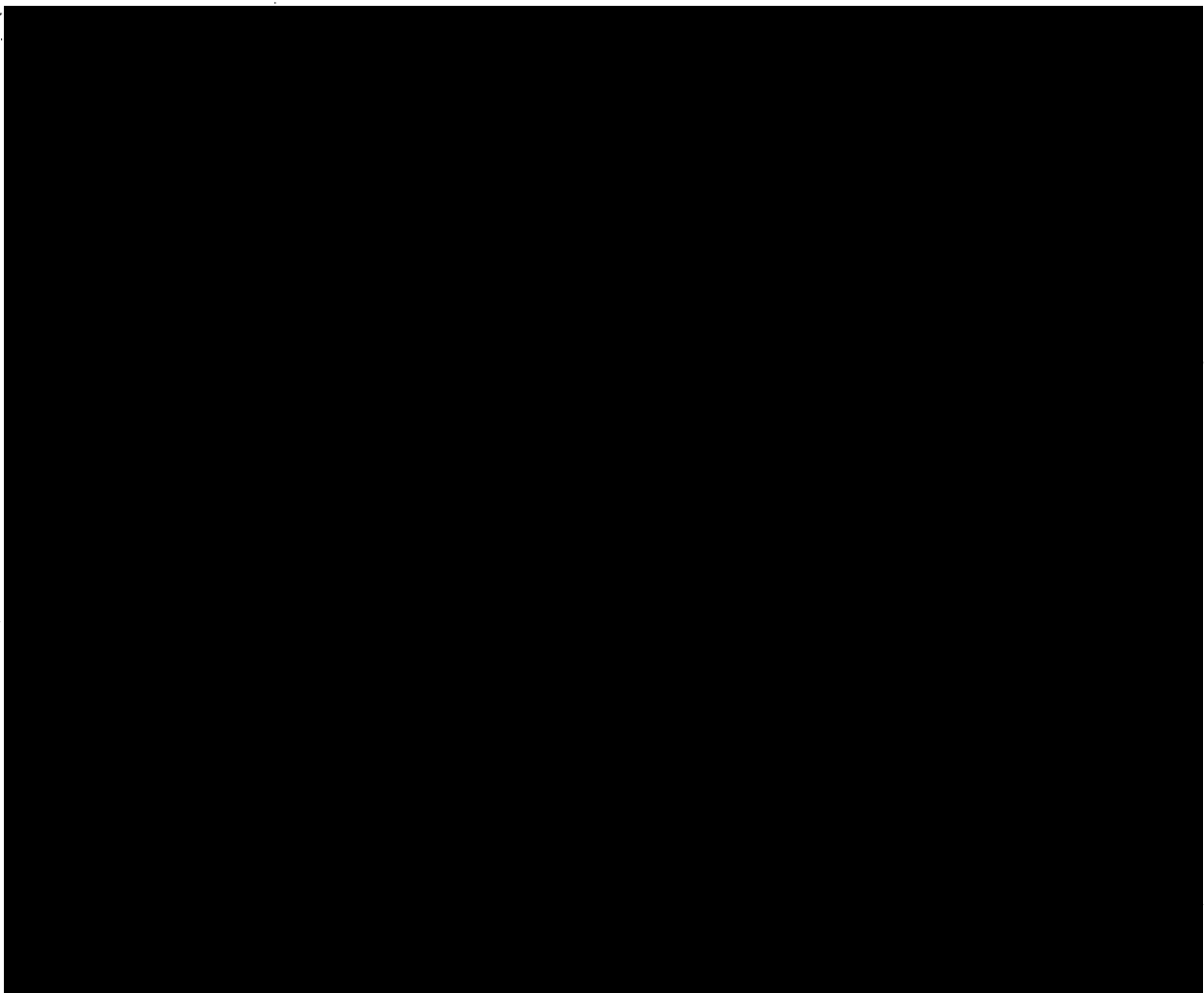


Exhibit No. 55.







CONCLUSIONS OF LAW

Jurisdiction

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

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

Burden of Proof

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

4. Clear and convincing evidence requires more than a mere preponderance of the evidence. *Nguyen v. State Dep't of Health Med. Qyal. Assurance Comm'n*, 144 Wn.2d 516, 534, 29 P.3d 689 (2001).

Unprofessional Conduct

5. The falsification or deliberate misrepresentation of a material fact by a teacher may be an act of unprofessional conduct. WAC 181-87-050 provides in part:

Any falsification or deliberate misrepresentation, including omission, of a material fact by an education practitioner concerning any of the following is an act of unprofessional conduct:

- (1) Statement of professional qualifications.
- (2) Application or recommendation for professional employment, promotion, certification, or an endorsement.

6. A statement that a judge found one innocent demonstrates a lack of understanding of the criminal justice system. If the State fails to prove the crime beyond a reasonable doubt, the individual charged with the crime is found not guilty. A verdict of not guilty is not equivalent to being found innocent. To determine what Appellant meant when he wrote that a judge found him innocent, it is appropriate to consider whether Appellant's own description is consistent with the ordinary meaning of the term. The term "innocent" is defined in *Webster's Seventh New Collegiate Dictionary* (1972) as "free from guilt or sin, especially through lack of knowledge of evil; blameless; harmless in effect or intention; candid; free from legal guilt or fault." *Bartlett's Roget's Thesaurus* (1996) lists words of similar meaning. Under "declare innocent", *Bartlett's* lists to find not guilty, clear, acquit, exonerate. "Acquit" lists innocent, cleared, in the clear, unpunished, let off, let off the hook, released.

7. It is also appropriate to consider the entire selection of words used by the Appellant when he completed the Employment History section of the employment application. It is reasonable to expect that any combination of words on an employment application which references lawyers, judges, resignation, and a case being dismissed, would be the proverbial red flag to a potential employer.

8. The dismissal of the criminal charges did mean Appellant was free from legal guilt or fault. His understanding that he won is consistent with being in the clear, unpunished, let off the hook. Therefore, it is concluded that OPP has not met its burden. It has not proved by clear and convincing evidence that the Appellant falsified or deliberately misrepresented a material fact on his application for professional employment with the Wapato School District.

9. Pursuant to WAC 181-87-060:

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

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

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

11. Flagrant is defined by *Webster's* as "extremely or purposefully conspicuous; glaring; notorious; shocking. "Disregard" is defined in the same dictionary as "to pay no attention to; to treat as unworthy of regard or notice." "Abandon" means "to forsake, desert."

12. OSPI did not prove its allegation that Appellant had a history (pre-January 2006) of display of temper and physical aggression toward both students and staff. OSPI did not prove that Appellant's behavior during November 18, 2005 incident with Principal Koulentes, while highly improper, met the "flagrant disregard" or "clear abandonment" standards of the regulations. The allegation of punishment or physical aggression toward Ms. Capetillo's son during a 2005 P.E. class were not proved by OSPI.

13. OSPI did prove by clear and convincing evidence that in the course of instruction or supervision by Appellant, a kindergarten student, ■■■, suffered injury at the hands of Appellant in January 2006, within sight and hearing of other elementary students, teachers or other colleagues. Appellant knowingly maintained his hands in a grip around ■■■'s neck and shook I.M. for several seconds, and knowingly released his grip and allowed ■■■'s body to fall to the ground, causing injury to ■■■, in flagrant disregard and clear abandonment of generally recognized professional standards.

Good Moral Character and Personal Fitness

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

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

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

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

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

16. The Appellant argued pre- and post-hearing that he has not been diagnosed with a personality disorder or behavioral disorder. To the extent he argues that WAC 181-86-014 requires proof of a medically diagnosed personality disorder or behavioral disorder in order to find a behavioral problem under the rule, Appellant provided no legal authority to support his position. It is concluded the regulation does not require that an educator have a medical diagnosis of a personality disorder or of a behavioral disorder in order to find the educator has a behavioral problem which within the meaning of the rule.

17. The term "behavioral problem" is not defined by the regulations. The *Webster's* definition of "behavior" is "the manner of conducting oneself, to behave with manners." "Problem" is defined as "a doubtful or difficult matter requiring a solution, or raising inquiry or doubt dealing with human conduct or social relationships, difficult to deal with."

18. The January 2006 incident involving [REDACTED] is clear and convincing evidence that Appellant has a behavioral problem which endangers the educational welfare or personal safety of students, teachers, or other colleagues within the educational setting. In reaching this conclusion, weight was given to the evidence of Appellant's repeated pattern of changing his

explanations over time to rationalize his actions or avoid responsibility. His conduct toward [REDACTED] and his changing explanations are indeed behaviors which are hard to understand.

19. The evidence of the November 18, 2005 incident between Appellant and Principal Koulentes alone does not meet the clear and convincing standard and is not evidence of a behavioral problem within the meaning of the regulation. However, when Appellant's reactions to that situation are considered together with the [REDACTED] incident, there is clear and convincing evidence that Appellant demonstrated a behavioral problem of overreacting defensively and aggressively to perceived challenges from others.

20. The evidence that Appellant tended to blame others and changed his explanations over time, are together evidence of lack of good moral character and lack of personal fitness to teach. They demonstrate a behavioral problem which endangers student educational welfare. Being untruthful and engaging in deceptiveness are not behaviors left at the classroom door. These same qualities also endanger others' physical safety, as shown in Appellant's aggressive actions in the situations involving Principal Koulentes and [REDACTED]

Grounds for Suspension or Revocation

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

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

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

22. The grounds for issuance of a revocation order by OSPI relevant to these facts are set forth in WAC 181-86-075(2):

The certificate holder has not committed a felony crime under WAC 181-86-013(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.

23. The imposition of a sanction/disciplinary order requires consideration of eleven factors, in order to determine the appropriate level and range of discipline prior to issuance of the discipline:

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

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

WAC 181-86-080.

Factors Considered in Determining Disciplinary Sanction of Appellant

24. The evidence supports consideration of these factors:

Factor 1. The incident involving ■■■ was very serious with actual physical harm to ■■■ potential for emotional and mental harm to ■■■ and potential for physical, emotional, and mental harm to other students and colleagues. However, the duration of any bruising or other harm suffered by ■■■ is unknown. There is only slight evidence of

emotional reaction to the incident with [REDACTED] by the fifth grade class present in the gym, and no evidence of actual harm.

Factor 2. Appellant's criminal history contains no convictions. The charge of Second Degree Assault of a Child ([REDACTED]) was dismissed because the witness was unavailable.

Factor 3. Appellant and the adult colleagues each have substantial experience as educators, and each were mature adults. In comparison, [REDACTED] was small in size and 5 or 6 years of age, and the fifth grade students present were probably not more than 12 years in age.

Factor 4. The November 2005 and January 2006 events were close in proximity in time to the filing of the complaint by the District in February 2006 against Appellant, but nearly three years before OPP's issuance of the Final Order of Revocation, and four years before the writing of this order.

Factor 5. The incident with [REDACTED] demonstrated Appellant's disregard for the health, safety, and welfare of [REDACTED] and of the fifth grade students, as well as of the adults present.


Factor 6. Appellant's actions with [REDACTED] and Principal Koulentes demonstrated a behavioral problem. That Appellant tended to blame others, and changed his explanations over time, together also demonstrate a behavioral problem.

Factor 7. Appellant's actions also demonstrated a lack of fitness, but the same actions were already considered in Factor 6 above.

Factor 8. The District disciplined Appellant regarding the November 18, 2005, interaction with Principal Koulentes, which Appellant initially grieved. The District denied the grievance and Appellant did not further appeal.

Factor 9. The aggravating factors include: the touching of a student here involved the child's neck and the shaking of the child; the failure to lower the student's body down to the gym floor; the act of releasing the student in a manner which let the boy's body fall hard on the gym floor; Appellant's repeated pattern of changing his story or explanation of events. The mitigating factors include: the many years Appellant was a successful teacher; the good opinion of his character witnesses; that an assistant superintendent with OPP favored a lower sanction than license revocation; that another school district (Union Gap) has seen fit to hire Appellant as a substitute teacher.

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



25. When a teacher like Appellant has committed acts of unprofessional conduct and lacks good moral character, there are two determinations which must be made in deciding whether suspension of certification is the proper sanction. First, it must be determined that suspension will probably deter subsequent unprofessional or other conduct by Appellant which evidences lack of good moral character or personal fitness. Second, it must be determined that the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a suspension. WAC 181-86-070(2).

26. OSPI recommended revocation as the proper sanction, but it has not proved all the factual allegations listed in its Final Order. The allegations not proved were the less egregious of its allegations. If its recommendation is rejected, OSPI urged that Appellant's certification be suspended for three years. If a suspension is ordered, Appellant asks that the sanction be applied retroactively. The Appellant offers no legal authority for this position and it is concluded that if the appropriate level of sanction is determined to be suspension, the sanction will be effective with entry of the order.

27. In *Patterson v. Public Instruction*, 76 Wn.App. 666, 887 P.2d 411, 416 (1994), the appellate court considered the appeal of an 18-month suspension, based on findings that a teacher failed to list prior employment on an application for professional employment, and removed his own job application file without authorization. *Patterson* held that falsification of an application for professional employment constituted unprofessional conduct. The falsification of the application, as well as the removal of the job application file without authorization, were both evidence of lack of personal fitness for teaching and the 18-month suspension was affirmed. The Appellant's conduct in this case was of a significantly more serious nature and therefore warrants greater sanction than in *Patterson*. Appellant's conduct involved serious physical aggression in one instance, and was done in the presence of students in two instances. Neither of these factors was present in *Patterson*.

Suspension as deterrent

28. The Appellant's actions in November 2005 and January 2006 were seemingly out of character and not consistent with his prior behavior as a teacher. Appellant's actions were certainly inconsistent with his appearance, manner, and behavior at hearing. Educators, medical professionals, OSPI, and the undersigned have attempted to explain the inconceivable: how an experienced, seemingly mild mannered, kind, soft-spoken teacher

could wrap his fingers around the neck of a kindergarten student, lift and hold the student's body in mid-air while shaking the student, then release his grip and let the student fall to the floor, causing injury to the student. Appellant's behavior was not explained by the fact he has

[REDACTED]

[REDACTED]

29. To Appellant, the incident with [REDACTED] was described as an accident, and he continued to blame others whom he believed should have been responsible to supervise [REDACTED]. His statements about both the incident with Principal Koulentes and the incident with [REDACTED] have changed over time. [REDACTED]

[REDACTED]

30. The evidence does not explain how an experienced teacher behaved as Appellant behaved in November 2005 and January 2006. It is not necessary or proper to speculate about the reasons why Appellant behaved as he did. It is sufficient to consider the behaviors and then determine whether a suspension would serve to probably deter repetition if Appellant returned to teaching in the future. The evidence does not support a conclusion that Appellant would be deterred from repeating unprofessional conduct through anger management therapy. The evidence does not support a conclusion that a suspension would probably deter Appellant from subsequent acts of unprofessional or other conduct which evidences lack of good moral character or personal fitness.

State interests adequately served by suspension

[REDACTED]

32. The evidence did not establish that Appellant was willing to participate in anger management therapy. The evidence did not establish that Appellant has adequate insight into the behaviors at issue here.

33. The Appellant's long history of successful teaching is not discounted. However, the weight one would ordinarily give to that factor is significantly diminished by the very serious and shocking nature of the incident with [REDACTED] and the potentially serious nature of the incident with Principal Koulentes.

34. The evidence does not support a determination that the interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons is adequately served by a suspension. WAC 181-86-070(2).

Revocation

35. The Appellant has committed acts of unprofessional conduct and lacks good moral character or personal fitness. It has not been determined that a suspension as applied to Appellant will probably deter subsequent unprofessional or other conduct which evidences lack of good moral character or personal fitness by him. The interest of the state in protecting the health, safety, and general welfare of students, colleagues, and other affected persons are not believed to be adequately served by a suspension. Revocation is appropriate. WAC 181-86-075(2).

Order

Larry Richardson's Certification No. 228137F is revoked.

Dated at Yakima, Washington on January 26, 2010.



Jannette Sullivan
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 her address at OAH. The petition will be considered and disposed of by the ALJ. A copy of the petition must be served on each party to the proceeding. The filing of a petition for reconsideration is not required before seeking judicial review.

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

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

CERTIFICATE OF SERVICE

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

Via Certified Mail

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