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STATE OF WASHINGTON

OFFICE OF ADMINISTRATIVE HEARINGS SEATTLE-OAH

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December 22, 2010

DEC 27 2010

SUPERINTENDENT OF PUBLIC INSTRUCTION  
ADMINISTRATIVE RESOURCE SERVICES

John Mele



Catherine Slagle, Director, OPP, OSPI  
PO Box 47200  
Olympia, WA 98504-7200

Harriet Strasberg, Attorney at Law  
3136 Maringo Rd. SE  
Olympia, WA 98501

Kristen M. (Byrd) Kelley, Assistant Attorney General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188

In re: John Mele, Teacher Certification Cause No. 2010-TCD-0002

Dear Parties:

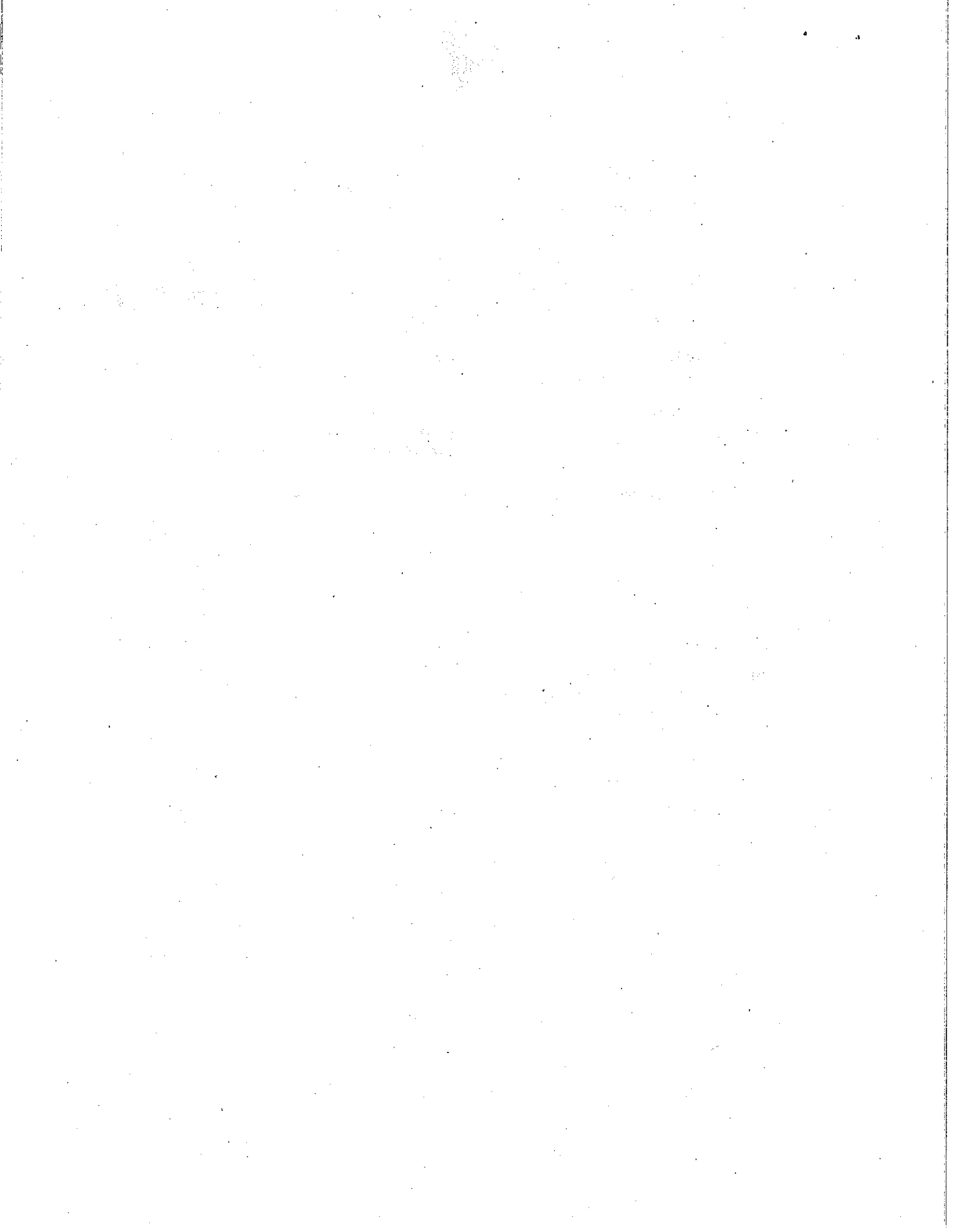
Enclosed please find the Findings of Fact, Conclusions of Law, and Order in the above-referenced matter. This is a final decision and may be appealed pursuant to the instructions at the conclusion of the decision.

This completes this matter. The file will be closed and returned to the Office of Superintendent of Public Instruction, Administrative Resource Services. If you have any questions, you may reach Administrative Resource Services at (360) 725-6133.

Sincerely:

Matthew D. Wacker  
Administrative Law Judge

cc: Administrative Resource Services, OSPI  
OAH/OSPI Education Caseload Coordinator



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

MAILED

DEC 22 2010

SEATTLE-OAH

IN THE MATTER OF:

JOHN MELE

CERT. NO.: None Assigned

TEACHER CERTIFICATION  
CAUSE NO. 2010-TCD-0002

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker on September 27-29, 2010, at the Office of Administrative Hearings (OAH), Seattle, Washington. The Appellant, John Mele, appeared and was represented by Harriet Strasberg, attorney at law. The Office of the Superintendent of Public Instruction (OSPI) appeared through Catherine Slagle, director of the Office of Professional Practices (OPP), and was represented by Kristen (Byrd) Kelley and Anne Shaw, assistant attorneys general.

**Evidence Relied Upon**

**Exhibits:** The following exhibits were admitted, subject to the limitations noted:

Appellant's Exhibit A1; with pp. 2 through 9 admitted for the limited purpose of establishing what documentation the Appellant submitted to the Admissions and Professional Conduct Advisory Committee (APCAC),  
Appellant's Exhibit A2,  
Appellant's Exhibit A3; for the limited purpose of impeachment of the Appellant's testimony at hearing,  
Appellant's Exhibits A4 through A7,  
Appellant's Exhibits A12 through A14,  
Appellant's Exhibit A15; with the exception of paragraphs 11 through 14 which were excluded,  
Appellant's Exhibit A16; with the exception of paragraph 8 which was excluded,  
Appellant's Exhibits A17 through A20.

OSPI's Exhibits S1 through S11a,  
OSPI's Exhibit S13,  
OSPI's Exhibits S15 through S20,  
OSPI's Exhibit S22.

**Witnesses:** Testimony under oath was taken from the following witnesses: the Appellant, Catherine Slagle (director of OPP) Robert J. Curren, Elizabeth Metcalf, Roger Myklebust, Charles Ratcliffe, Sylvia Harrison, Sandra Moraski, and Jean Luckowski.

The ALJ, having sworn the witnesses, heard testimony, and considered the admitted exhibits and arguments of the parties, hereby enters the following:

## STATEMENT OF THE CASE

The Appellant filed a formal appeal and request for administrative hearing with OSPI on January 19, 2010, to contest the denial of his application for a Washington education certificate. The matter was forwarded by OSPI to OAH and an ALJ was assigned to the case. On January 26, 2010, a Notice of Prehearing Conference and a Notice of Hearing were entered, scheduling a prehearing conference for February 2, 2010, and an administrative hearing for February 16, 2010. The prehearing conference was held February 2, 2010. A Prehearing Order was entered February 10, 2010, continuing the administrative hearing to April 5-7, 2010. A prehearing conference was held March 30, 2010. A Prehearing Order was entered April 1, 2010, continuing the administrative hearing to September 27-29, 2010. A readiness prehearing conference was held September 13, 2010, followed by another prehearing conference on September 22, 2010. The administrative hearing was held September 27-29, 2010. The parties agreed to filing of post-hearing briefs and closing arguments by November 4, 2010. The record in this matter closed November 4, 2010. The due date for a written decision is January 3, 2010.

## ISSUE

As set forth in the February 10, 2010, Prehearing Order, the issue in this matter is whether the Appellant has proven by clear and convincing evidence that he is of good moral character and personal fitness such that his application for a Washington State education certificate should be approved.

## FINDINGS OF FACT

### **Application Process and Appeal**

1. On June 4, 2008, OSPI received an Institutional Application For A Teacher's Certificate (Application) from the Appellant. Exhibit S5.
2. As part of the application process, the Appellant completed a Character and Fitness Supplement (Supplement). The Appellant responded "yes" to the following three questions on the Supplement:

Are you currently or have you ever been the subject of any certificate or licensing investigation or inquiry by any certification or licensing agency for allegations of misconduct? If "yes," on a separate sheet of paper, list the agency, including complete address and telephone number as well as the purpose of the investigation or inquiry.

Have you ever had any adverse action taken on any certificate or license? (Adverse action includes letters of warning, reprimands, suspensions [including stayed], revocations, voluntary surrenders, or voidance.)

In the last 10 years, have you ever been arrested for any crime or violation of the law... (Note: for "yes" responses...even if your case was dismissed or your record was sealed you must answer this question in the affirmative.)

Exhibit S6, pp. 1-2.

3. The Appellant signed and dated the affidavit included as part of the Supplement on May 22, 2008. The affidavit stated:

I, John Mele, certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing and all information included in the application is true and correct.

If the information provided or answer(s) to any questions on the application or character and fitness supplement changes prior to my being granted certification, I must immediately notify the Office of Professional Practices and my college/university if I am a college/university candidate.

I understand I must answer this application truthfully and completely. Any falsification or deliberate misrepresentation, including omission of a material fact, in completion of this application can be grounds for denial of certification, or in the case of a certificate holder, reprimand, suspension, or revocation of the educational certificate, credential, or license.

Exhibit S6, p. 4.

4. The Appellant submitted two written statements with his application. Exhibits S7, S8.
5. The first statement set out the Appellant's explanation of the adverse action taken against his license to practice law which lead to his disbarment. Exhibit S7. The first statement included as attachments a copy of the Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation, and a copy of the Appellant's Revised Respondent's Proposed Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation. Exhibits S7a and S7b.
6. The Appellant's first statement, in relevant part, stated:

...The Hearing Officer's findings and conclusions, however, were not the only ones that could have been drawn from the evidence submitted at my grievance hearing. By way of contrast, I have also attached to this Statement a copy of the Revised Respondent's Proposed Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation filed by my counsel in the case.

...After receiving the Hearing Officer's determinations, I spoke with my counsel and told him that while I wholeheartedly disagreed with her decision, I was no longer interested in practicing law. I therefore instructed him not to file an opposition or appeal.

Exhibit S7, pp. 3-4.

7. The Appellant's second statement set out his explanation of an incident involving him and his wife. The second statement, in relevant part, stated:

...I also recall that in an attempt to calm her down, I briefly blocked her path while we were on a staircase landing. I remember learning that my wife claimed I held onto her wrists at some point during our argument, but I don't recall doing so.

I have not been able to locate a copy of the arresting officer's report. I do not have a copy in my own records. I contacted the Bellevue Division of the King County District Court and was told that they do not have any documents from my case, and can only provide the computer generated court docket attached to this Statement. I contacted the Bellevue City Police, and the officer I spoke with told me they do not have the arresting officer's report or any other documents from my arrest. I contacted my former attorney, who similarly indicated that his firm did not retain any file materials from my case.

Exhibit S8, pp. 1-2.

8. On June 3, 2009, the Superintendent of Public Instruction entered a Denial Order for Certification, denying the Appellant's application for a education certificate because he had failed to provide clear and convincing evidence of good moral character or personal fitness to receive a Washington education certificate. Exhibit S1.

9. On July 17, 2009, the Appellant filed an appeal of the denial of his application for a Washington education certificate.<sup>1</sup> Exhibit S2.

10. The appeal again set out arguments supporting the Appellant's belief that the hearing officer's findings and conclusions leading to his disbarment were incorrectly decided. Exhibit S2, pp. 3-4.

11. The appeal included a statement from the Appellant regarding his experience and tenure as a volunteer soccer and baseball coach. In relevant part, the Appellant stated:

In total, I have coached more than 400 youth soccer and baseball games and more than 850 practices, and during that entire time, there has never been a single complaint about my conduct, character or fitness from a child, parent, colleague or opposing coach.

Exhibit S2, p. 4.

12. An informal hearing was held before an OPP review officer and APCAC on November 30, 2009. On December 23, 2009, a Final Order of Denial of Certificate was entered by the review officer, concluding the Appellant had failed to provide clear and convincing evidence of good moral character or personal fitness to receive a Washington education certificate. Exhibit S3.

13. On January 19, 2010, OSPI received the Appellant's notice he was appealing the Final Order of Denial of Certificate. Exhibit S4.

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<sup>1</sup>The order denying the Appellant's application informed him that he had thirty calendar days from the date of receipt of the order to appeal the denial. The Appellant did not file his appeal until more than thirty calendar days after the denial order was signed. However, OSPI produced no evidence of when the Appellant received the denial order, nor was the issue of whether the Appellant timely appealed the denial raised by OSPI herein. The only evidence of record going to receipt of the denial order appears in the first sentence of the Appellant's appeal, where he states, "I am writing to appeal the Denial Order for Certification received by me from your office on June 17, 2009.

## **Appellant's Disbarment**

14. In 2003, the Appellant was representing a client in a case before superior court. In March 2003, the Appellant was removed as attorney, and the Appellant's law firm, Ryan Swanson & Cleveland, was sanctioned by the presiding judge for actions the Appellant took in representing his client before the judge.
15. On December 16, 2005, the Washington State Bar Association (WSBA) filed a formal complaint against the Appellant for his conduct while representing his client prior to his removal by the presiding judge in 2003.
16. A disciplinary hearing was held May 7 -11, 2007, before a hearing officer. The Appellant and the WSBA were both represented by counsel during the disciplinary hearing.
17. On or about November 22, 2007, the hearing officer entered her Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation. Exhibit S7a.
18. The hearing officer's Findings of Fact 1 through 38, Conclusions of Law on Counts 1 through 5 of the Complaint and Presumptive Sanction Facts 1 through 35 are incorporated by reference herein as this Tribunal's own Findings of Fact for the purpose of determining whether the Appellant possesses the good moral character and personal fitness such that his application for a Washington State education certificate should be approved. Exhibit S7a.
19. The hearing officer recommended the Appellant be disbarred. On April 2, 2008, the WSBA Disciplinary Board adopted the hearing officer's recommendation. Exhibit S10.
20. The Appellant elected not to appeal the recommendation he be disbarred.
21. After review of the Disciplinary Board's Recommendation and the hearing officer's Findings of Fact, Conclusions of Law and Recommendation, on May 14, 2008, the Supreme Court of Washington unanimously determined the Recommendation should be approved, and ordered the Appellant be disbarred from the practice of law. Exhibit S11a.

## **Domestic Violence Incident**

22. On April 11, 2001, the Appellant was arrested by Bellevue police officers for assaulting his wife during an incident in their family residence. The Appellant was charged with fourth degree assault-domestic violence. Exhibit A6. The arresting officer completed a supplementary report as part of his investigation.
23. On July 12, 2001, a Stipulated Order of Continuance was entered in King County District Court. The Stipulated Order set out the conditions which, if complied with, would result in the assault-domestic violence charge against the Appellant being dismissed. Exhibits S8c, S8d.
24. The Appellant complied with the conditions of the Stipulated Order, and the assault-domestic violence charge was subsequently dismissed.

25. On July 11, 2008, the Appellant filed a copy of the arresting officer's supplemental report and a copy of a witness statement from his wife made on April 11, 2001, as Exhibit A to his Declaration of John Peter Mele in Response to Petitioner's Motion for Temporary Orders. Exhibit S17, pp. 14-17. The Appellant's declaration was filed during the dissolution of the Appellant's marriage.

26. Some time after May 22, 2008, when he signed the Character and Fitness Supplement, but before July 11, 2008, when he filed a copy with his declaration in the dissolution action, the Appellant found a copy of the arresting officer's supplemental report when he was going through documents related to the dissolution.

27. The Appellant reviewed the officer's supplemental report, and determined that nothing in the report materially changed what he had reported to OPP in his second statement describing the circumstances of the incident on April 11, 2001.

28. Assuming that if OPP wanted additional information regarding the domestic violence incident OPP would have requested additional information, the Appellant never provided a copy of the police officer's supplementary report to OPP.

### **Appellant's Soccer Suspension**

29. The Appellant has volunteered as a soccer and/or baseball coach in his community since 1999, and continues to coach soccer through the present time.

30. In November 2008, the Appellant was suspended from coaching his son's U-10 soccer team for three games after a disciplinary hearing before the Issaquah Soccer Club (ISC). The suspension was intended as discipline after an incident between the Appellant and a young referee at the end of a soccer game.

31. The Appellant did not disclose this suspension when he filed his appeal to the denial of his application for a Washington education certificate on July 17, 2009. The Appellant did not disclose the suspension because he determined it was not relevant to what he was trying to say. In retrospect, the Appellant believes he should have disclosed the suspension when he prepared his appeal. However, the Appellant continues to believe he told OPP the truth because he never told OPP there had never been a complaint from a referee. The Appellant characterized the phrasing of his statement in the appeal as a "lawyerly thing."

### **Testimony of Appellant's Character Witnesses**

32. Robert J. Curren is an attorney and member of Ryan Swanson & Cleveland, and worked with the Appellant as another attorney in their firm. Mr. Curren characterized his relationship with the Appellant as one of "professional" friends. Apart from a few e-mails, Mr. Curren has had no contact with the Appellant since the Appellant left their firm in 2005. Mr. Curren does not know why the Appellant left their firm. Mr. Curren did not attend the WSBA disciplinary hearing leading to the Appellant's disbarment, nor has he read the hearing officer's decision. Mr. Curren was not aware the Appellant had been arrested for assault-domestic violence, nor suspended by ISC over an incident with a young soccer referee.



33. In both his declaration (Exhibit A15) and his testimony, Mr. Curren stated his opinion the Appellant would make an exemplary teacher based upon the Appellant's intelligence, creativity and commitment. It is found that Mr. Curren's opinion does not warrant significant weight in determining whether the Appellant possesses the good moral character and personal fitness to hold an education certificate. It is clear Mr. Curren's opinion is based upon very limited information about the Appellant, and the attempt in Mr. Curren's declaration to dispute or second-guess the hearing officer's findings is not compelling.

34. Elizabeth Metcalf is a certificated teacher in the Issaquah School District. Ms. Metcalf also practiced law in California during the early 1990s, and remains licensed to practice law in California through the present time. Ms. Metcalf met the Appellant during the 2007-2008 school year when one of the Appellant's daughters was a student in her class. During Spring 2008, the Appellant was an observer in Ms. Metcalf's classroom to accumulate sufficient "observation hours" for his education program at the University of Washington. Ms. Metcalf subsequently wrote a letter of recommendation for the Appellant in support of his application to the University of Washington School of Education. Exhibit A17, exhibit 1 thereto.

35. While Ms. Metcalf believes the Appellant has the integrity required to be a teacher, she also acknowledged in her recommendation to the University of Washington she did not know the Appellant well enough to assess his weaknesses. Ms. Metcalf only very recently became aware through the Appellant's attorney in this matter that he had been disbarred over some "misrepresentation." Ms. Metcalf believes that violations of the rules of professional conduct for lawyers would affect a person's integrity, but that teachers have a different job than attorneys. After consideration of Ms. Metcalf's testimony, it is found not to warrant significant weight on the issue of whether the Appellant possesses the good moral character and personal fitness to hold an education certificate. Ms. Metcalf's opinion of the Appellant's character is based upon a quite brief period of observation, and she acknowledges she does not know him well enough to evaluate any weaknesses he may have.

36. Roger A. Myklebust is an attorney and member of Ryan Swanson & Cleveland. He has known the Appellant since 1992, has worked on a number of cases with the Appellant, but did not socialize with the Appellant outside the firm. Mr. Myklebust's only contact with the Appellant since he left the firm has been one telephone call. Mr. Myklebust was the firm's managing partner in 2003 when the events arose which eventually led to the Appellant's disbarment, but is unaware why he left the firm in 2005. Although he attended the Appellant's disciplinary hearing with WSBA, Mr. Myklebust has not read the hearing officer's decision and his only knowledge of the reasons for the Appellant's disbarment comes from the Appellant's attorney in this matter. Based upon his knowledge of the Appellant's presentation skills and intelligence, Mr. Myklebust believes the Appellant would be a wonderful teacher. Mr. Myklebust was not aware the Appellant was suspended by ISC, but this would not change his opinion. The record does reflect whether Mr. Myklebust was aware the Appellant was charged with domestic violence. After consideration, it is found that Mr. Myklebust's opinion regarding the Appellant's fitness as a teacher does not warrant substantial weight. Mr. Myklebust has had virtually no contact with the Appellant since 2005, is not familiar with the hearing officer's decision which goes to the Appellant's integrity and candor, and it is troubling that Mr. Myklebust seemed ready to summarily dismiss with little or no consideration the circumstances of the Appellant's soccer suspension.

37. Charles Ratcliffe first met the Appellant in 2006 through ISC. Mr. Ratcliffe was a head soccer coach and the Appellant was his assistant coach at the time. Mr. Ratcliffe participated at the ISC disciplinary hearing where the Appellant was suspended for three games, but he was not present during the incident between the Appellant and the youth referee. The youth referee was not present at the disciplinary hearing. Mr. Ratcliffe believes soccer clubs always side with referees, and he believed the Appellant was going to be suspended regardless of what happened at the ISC disciplinary hearing. Despite the three-game suspension, Mr. Ratcliffe believes the Appellant's integrity as a soccer coach is beyond reproach.

38. Mr. Ratcliffe has been a soccer coach for over twenty years, and has never been disciplined or suspended by a soccer club. While aware the Appellant has been disbarred, Mr. Ratcliffe is unaware of the reasons for the disbarment. Mr. Ratcliffe was not aware the Appellant had been charged with assault-domestic violence, but that knowledge would not change his opinion of the Appellant's integrity. It is found that Mr. Ratcliffe's opinion of the Appellant does not warrant substantial weight on the issue to be decided in this matter given the limited basis for his opinion.

39. Sylvia Harrison met the Appellant approximately four years ago when he became her son's soccer coach. Based upon her observations of the Appellant as her son's soccer coach, Ms. Harrison wrote a letter in support of the Appellant's application to the University of Washington. Exhibit A19, exhibit 1 thereto.

40. Ms. Harrison became aware some time ago the Appellant has been disbarred, but is unaware of the circumstances or reasons for his disbarment. Ms. Harrison was not aware the Appellant had been suspended for three games by ISC, or that he had been charged with assault-domestic violence. Such knowledge, however, would not change Ms. Harrison's recommendation for the Appellant to become a teacher. Ms. Harrison believes integrity is an important quality for a teacher.

41. Sandra Moraski is the Appellant's former mother-in-law. She has known the Appellant for approximately 21 years. Ms. Moraski's daughter was married to the Appellant. She has been estranged from her daughter since the death of her husband four years ago. Ms. Moraski was a sixth grade teacher in the 1970s and also taught U.S. Army soldiers who had not finished high school. Based upon her observations of the Appellant and her grandchildren over many years, his volunteer coaching, her relationship with the Appellant and her experience as a teacher, Ms. Moraski believes the Appellant has the intelligence, patience, honesty and integrity to be a teacher.

42. Ms. Moraski is aware the Appellant has been disbarred, that he was accused of intentionally lying to a judge and that his honesty was at issue. Based upon her conversations with the Appellant, however, Ms. Moraski does not believe the Appellant intentionally lied to the judge.

43. Ms. Moraski was not aware of the Appellant's arrest for assault-domestic violence or the incident between her daughter and the Appellant in April 2001 until the Appellant first informed her during the course of his application for an education certificate. The Appellant first informed Ms. Moraski about his three-game soccer suspension approximately one year ago. Ms. Moraski was not present to observe the incident between the Appellant and the youth referee. The Appellant told Ms. Moraski that his wife was seen speaking with the referee after the incident, and Ms. Moraski believes her daughter was instrumental in getting the Appellant suspended.

44. After careful consideration, it is found that Ms. Moraski's opinion of the Appellant's honesty and integrity to be a teacher does not warrant substantial weight on the issue to be decided in this matter. Ms. Moraski's belief regarding the findings of the hearing officer are based upon the Appellant's representations to her, and therefore suspect. The Appellant's success pursuing a career as a teacher is clearly paramount to Ms. Moraski, and she is likely not an objective observer or reporter regarding the Appellant. It is also troubling that the Appellant never informed Ms. Moraski of his arrest in 2001 until the Appellant was in the process of applying for an education certificate.

45. Jean Luckowski, Ed.D., is a professor in the College of Education and Human Sciences, Department of Curriculum and Instruction, at the University of Montana. Dr. Luckowski's training, education and experience appear at Exhibit A4. Dr. Luckowski appeared as an expert witness for the Appellant. Dr. Luckowski was provided with and reviewed materials relating to the Appellant's assault-domestic violence charge, disbarment, testimonials by parents and a statement by the Appellant. Dr. Luckowski acknowledged, however, that she does not possess the education, training, or experience to understand or evaluate the circumstances or events which caused the Appellant to be disbarred, nor did she compare the police officer's supplementary report of the domestic violence incident with the Appellant's statement to APCAC describing the same event, nor did she consider the implications of the Appellant's failure to disclose his soccer suspension in light of his statement to APCAC regarding his coaching history. Dr. Luckowski confirmed it would concern her if an applicant for admission to the program in which she teaches was untruthful about their qualifications or credentials. Dr. Luckowski has never met or spoken with the Appellant.

46. Based upon her review of the materials provided to her, Dr. Luckowski opined that she:

"found no evidence whatsoever of a lack of good moral character or personal fitness to teach. Once he has successfully completed a licensure program, including an internship or student teaching position, I see no valid reason to deny John Mele a teaching license.

Exhibit A4. Dr. Luckowski also opined it is important that teachers are honest and follow rules.

47. It is found that Dr. Luckowski's opinion regarding the Appellant's good moral character and personal fitness warrants only some weight. The document review which was the sole basis for her opinion was limited in scope, Dr. Luckowski acknowledged she does not possess the qualifications to evaluate and consider the findings of the hearing officer and it is clear she was unaware of other information, including the Appellant's failure to provide a copy of the police officer's report to OPP and the Appellant's failure to disclose his soccer suspension.

## **CONCLUSIONS OF LAW**

### **Jurisdiction and Burden of Proof**

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

2. The Washington state legislature has granted the Washington Professional Educator Standards Board (PESB) authority to establish standards for certification of instructional personnel in the common schools:

The Washington Professional Educator Standards Board shall establish, publish, and enforce rules and regulations determining eligibility for and certification of personnel employed in the common schools of this state, including certification for emergency or temporary, substitute or provisional duty and under such certificates or permits as the board shall deem proper or as otherwise prescribed by law.

RCW 28A.410.010.

3. The Washington state legislature has granted OSPI the authority to act as the administrator of any rules promulgated by PESB, and to issue and revoke any teaching certificate or permit.  
RCW 28A.410.010.

4. The Appellant has the burden of proof to establish by clear and convincing evidence he is of good moral character and personal fitness to hold a Washington education certificate. WAC 187-86-170.

5. Clear and convincing evidence requires more than a mere preponderance of the evidence. *Nguyen v. Dept. of Health, Medical Quality Assurance Comm'n*, 144 Wn.2d 516, 534, 29 P.3d 689 (2001), cert. denied, 535 U.S. 904, 122 S.Ct. 1203 (2002).

6. Good moral character and personal fitness are defined, in relevant part, as the:

[C]haracter 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... (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.

7. The term "behavioral problem" in WAC 181-86-013 is not further defined in rule or statute. OSPI argued the Appellant has demonstrated a *pattern* of behavior over time which establishes a behavioral problem with misrepresenting and omitting material facts, refusing to admit wrongdoing, and lack of candor or truthfulness. The Appellant argued OSPI was attempting to connect dissimilar and anomalous events to invent a pattern of behavior where none exists. It is not at all clear, however, that any pattern need be established to find an applicant for an education certificate has a behavioral problem which endangers the educational welfare or personal safety of students, teachers, or other colleagues within an educational setting. Depending upon the severity, temporal proximity, and/or other factors, a single event or act by an applicant could conceivably be sufficient to find an applicant has such a behavioral problem, thereby disqualifying the applicant from receiving an education certificate.

8. The proper analysis of the issue presented begins with recognition of the heavy burden the applicable rules place on the Appellant in this case. It is the Appellant's burden to prove by clear and convincing evidence that he possesses the good moral character and personal fitness to hold an education certificate. This requires the Appellant to produce more than a mere preponderance of evidence establishing such character and fitness. Critically, it is concluded this burden requires the Appellant to address and refute evidence presented by OSPI calling into question his character and fitness as well.

9. The Appellant was arrested for assault-domestic violence after an incident with his wife in April 2001. OSPI argued the Appellant presented a "sanitized" version of the circumstances of that incident when he applied for an education certificate. The arresting officer's report was not admitted, but such a comparison is not necessary. The critical factor is not whether the Appellant presented a sanitized version of the events to OPP. The critical factor is the Appellant's failure to disclose or produce the arresting officer's report to OPP once he discovered it.

10. The Appellant told OPP he was unable to locate a copy of the police officer's report when he filed his application for an education certificate on June 4, 2008. In making that application, the Appellant signed an affidavit, affirming that if the answers to any questions on the application changed prior to his being granted certification he would immediately notify OPP. By at least July 11, 2008, barely a month later, the Appellant had located a copy of the police officer's supplementary report, but never informed OPP he had discovered it and never provided a copy to OPP. The Appellant testified he reviewed the report and did not believe anything in the report materially changed the information he had provided in his application, and assumed OPP would request additional information from him if or when OPP determined more information was needed.

11. The Appellant's rationale for failing to inform OPP he had located the police officer's report is not persuasive or logically compelling. His failure to provide a copy of the report to OPP constituted a clear and express disregard for his obligations under the affidavit he signed as part of his application for an education certificate. The Appellant's failure to inform OPP he had located the police officer's report and failure to provide a copy to OPP is likely sufficient in and of itself to find the Appellant lacks the good moral character and personal fitness for an education certificate. It is clear evidence of a lack of judgement and candor, and a disregard for following rules which OPP depends upon to evaluate candidates for certification.

12. The Appellant was disbarred after a lengthy hearing before the WSBA disciplinary hearing officer. The findings and conclusions of the hearing officer were incorporated herein as this Tribunal's own Findings of Fact and Conclusions of Law. The hearing officer found or concluded the Appellant had knowingly misrepresented multiple material facts in his declaration to the court in 2003. The hearing officer found that portions of the Appellant's testimony before her were not credible, characterizing it as suspiciously self-serving and stretching credibility. The hearing officer found the Appellant knowingly misrepresented information to opposing counsel. The hearing officer found the Appellant knowingly misrepresented information before the judge in 2003. The hearing officer found the Appellant knowingly violated the law by swearing out a declaration he knew to be false, and that he intended to deceive the court in 2003.

13. While his actions leading to his disbarment in 2003 are now relatively remote in time, the seriousness of the Appellant's actions is not ameliorated by the passage of time. It is difficult to

imagine more egregious disregard for an attorney's obligations and duties with respect to honesty and truthfulness. The Appellant's lack of honesty and truthfulness leading to his disbarment is an example of circumstances so severe as to constitute a behavioral problem without any need for further similar events to establish a *pattern* of behavior. It is equally clear that, despite his statements to OPP and testimony to the contrary, the Appellant does not accept responsibility for his actions leading to his disbarment. The Appellant's application for an education certificate included a copy of his Revised Respondent's Proposed Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation. Providing this document to OPP could have but one purpose: to convince OPP that the hearing officer was wrong and the Appellant's actions in 2003 did not warrant disciplinary action. This is clearly incompatible with the Appellant's assertion in this matter that he has accepted responsibility for his prior actions.

14. The Appellant's appeal of the initial denial of his application for an education certificate included a statement that there had never been a single complaint about his conduct, character or fitness as a volunteer coach from a child, parent, colleague or opposing coach. The intent of this statement is clear; the Appellant was attempting to use his long and unblemished tenure as a volunteer youth coach in his community to bolster his claim that he possesses the good moral character and personal fitness to hold an education certificate. What the Appellant failed to disclose was that he had been suspended for three soccer games for an incident with a young referee just over a year prior to appealing the denial of his application for a certificate. The Appellant first attempted to justify this omission by pointing out that his statement did not make any claims about complaints by referees. The Appellant finally conceded he should have disclosed his suspension as part of his appeal.

15. It is concluded the Appellant intentionally omitted any disclosure of his suspension in his appeal letter because he knew such a disclosure would damage his claim of an unblemished coaching career, and thereby undercut his claims regarding his good moral character and personal fitness. This intentional omission of information clearly relevant to any determination of the Appellant's good moral character and personal fitness by OPP is very troubling. It is another example of the Appellant's willingness to conceal or distort information in an attempt to persuade OPP he should be permitted to teach in Washington State.

16. It is concluded the Appellant has a behavioral problem. It is clear he has a propensity to omit or distort information which does not favor his goals or objectives. This behavioral problem goes directly to his capacity for truthfulness and candor. From 2003 through his application for an education certificate and appeal, the Appellant continues to exhibit a pattern of behavior where he omits or disregards unfavorable information and makes self-serving presumptions. It is concluded such a behavioral problem would endanger the welfare of students in an educational setting. In reaching this conclusion, the testimony of the Appellant's many character witnesses was carefully considered and has already been discussed. Most of the witnesses had no idea why the Appellant was disbarred, what the circumstances were of his arrest for assault-domestic violence, or that he had been suspended for an incident with a youth soccer referee. Despite all this, the witnesses were apparently quite willing to conclude the Appellant would be a wonderful teacher. Such uninformed opinions are not compelling evidence. The testimony of Dr. Luckowski was also not compelling, and did not outweigh other evidence of the Appellant's behavioral problem. It was particularly unsettling, and detracted substantially from the weight of her testimony, that Dr. Luckowski not only did not understand the reasons for the Appellant's disbarment, but appeared

quite willing to conclude whatever "technical" reasons caused the Appellant to be disbarred could not be relevant to what teachers do.

17. Both OSPI and the Appellant argued that a conclusion the Appellant has a behavioral problem which endangers students, and therefore does not possess the good moral character and personal fitness to hold an education certificate, is not sufficient. Both parties' closing briefs go on to analyze the facts in light of the eleven factors in WAC 181-86-080. That WAC provides;

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.

18. The eleven factors must be considered before any *disciplinary* order is entered. Clearly an order reprimanding, suspending or revoking an education certificate would constitute an order imposing a disciplinary action on a certificated teacher. It is less clear, however, whether an order *denying an application* for an education certificate is a disciplinary order under WAC 181-86-080. Arguably an individual must hold an education certificate before any disciplinary action could be taken against the certificate. This view is bolstered by the requirement that good moral character and personal fitness is required for an individual to be granted and continue to hold an education certificate. WAC 181-86-013, -014. It is difficult to imagine a scenario where a determination could be made that an individual does not possess the requisite good moral character and personal fitness under WAC 181-86-013, but consideration of the eleven factors in WAC 181-86-080 would result in any different determination. Nevertheless, and for the purposes of this decision and order, the eleven factors will be considered.

19. The seriousness of the Appellant's acts and the potential harm to persons is manifest. From 2003 through essentially the present time, the Appellant has engaged in a series of acts that constitute a pattern of disregard for truthfulness and candor. From engaging in the acts leading to his disbarment, to intentionally failing to provide OPP with a copy of the arresting officer's report, to intentionally omitting any reference to his soccer suspension, the Appellant has exhibited a behavioral problem. The potential for harm to persons, in this case young and impressionable students should he obtain an education certificate, is clear. Teachers are justifiably expected to set an example of respect for the truth for students. This in no manner implies teachers cannot make mistakes or that teachers must be perfect citizens. Consideration of this factor supports a conclusion the Appellant does not possess the good moral character and personal fitness to hold an education certificate.

20. The Appellant has no criminal history. His arrest for assault-domestic violence does not constitute a criminal history. Consideration of this factor supports a conclusion the Appellant possess the good moral character and personal fitness to hold an education certificate.

21. The Appellant is an adult, with many years of education and life-experience. Despite this, he continues to exhibit a behavioral problem with truthfulness and candor. Consideration of this factor supports a conclusion the Appellant does not possess the good moral character and personal fitness to hold an education certificate.

22. The Appellant's behavioral problem with truthfulness and candor persists through the present time. Consideration of this factor supports a conclusion the Appellant does not possess the good moral character and personal fitness to hold an education certificate.

23. The Appellant's behavioral problem with truthfulness and candor clearly demonstrates a disregard for the welfare of students, as discussed above. Consideration of this factor supports a conclusion the Appellant does not possess the good moral character and personal fitness to hold an education certificate.

24. It has already been discussed, analyzed and concluded that the Appellant has a behavioral problem with truthfulness and candor. Consideration of this factor supports a conclusion the Appellant does not possess the good moral character and personal fitness to hold an education certificate.

25. It has already been discussed, analyzed and concluded that the Appellant does not have the personal fitness to hold an education certificate. Consideration of this factor supports a conclusion the Appellant does not possess the good moral character and personal fitness to hold an education certificate.

26. The Appellant has been disbarred from the practice of law by the Supreme Court of Washington State as a result of his acts and omissions. The specific circumstances have been discussed and analyzed above. Consideration of this factor supports a conclusion the Appellant does not possess the good moral character and personal fitness to hold an education certificate.

27. Aggravating circumstances include the Appellant's continuing behavioral problem with truthfulness and candor. Despite his testimony and assertions to the contrary, the Appellant



continues to deny responsibility for his actions leading to his disbarment. The Appellant continues to construe events and circumstances so as to forward his goals and ambitions. Mitigating circumstances include the Appellant's not unblemished but still lengthy history of community service.

28. The other evidence of the Appellant's character and fitness includes the testimony of his character witnesses, which was considered and weighed as discussed above.

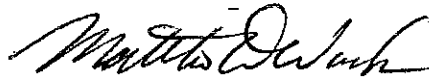
29. All relevant information has been considered.

30. After careful consideration of the eleven factors identified in WAC1281-86-080, it is concluded the Appellant has failed to establish by clear and convincing evidence that he possesses the good moral character and personal fitness to hold a Washington education certificate. Accordingly, the Appellant's application for a Washington education certificate should be denied.

### ORDER

The Appellant has failed to prove by clear and convincing evidence that he is of good moral character and personal fitness such that his application for a Washington education certificate should be approved. The Appellant's application is **DENIED**.

Dated at Seattle, Washington on December 22, 2010.



Matthew D. Wacker  
Administrative Law Judge  
Office of Administrative Hearings

### APPEAL RIGHTS

This is a final agency decision subject to a petition for reconsideration filed within ten (10) days of service pursuant to RCW 34.05.470. Such a petition must be filed with the ALJ at the address at OAH. The petition will be considered and disposed of by the ALJ. A copy of the petition must be served on each party to the proceeding and OSPI. The filing of a petition for reconsideration is not required before seeking judicial review.

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 (30) days after service of the final order. If a petition for reconsideration is filed, this 30-day period will begin to run upon the disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). Otherwise, the 30-day time limit for filing a petition for judicial review commences with the date of the mailing of this decision.

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.           PFS          

John Mele  


Catherine Slagle, Director, OPP, OSPI  
PO Box 47200  
Olympia, WA 98504-7200

Harriet Strasberg, Attorney at Law  
3136 Maringo Rd. SE  
Olympia, WA 98501

Kristen M. (Byrd) Kelley, Assistant Attorney  
General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188

cc: Administrative Resource Services, OSPI  
OAH/OSPI Education Caseload Coordinator