

STATE OF WASHINGTON  
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION  
ADMISSIONS AND PROFESSIONAL CONDUCT ADVISORY COMMITTEE

IN THE MATTER OF THE EDUCATION	)	
CERTIFICATE OF	)	OPP No. D21-07-018
	)	
JOHN L. CERNA	)	FINAL ORDER
Certificate No. 470776F	)	OF REVOCATION
_____	)	BY DEFAULT

UNDER THE AUTHORITY granted by the laws of the State of Washington, and after reviewing the file in this matter; conducting an informal meeting of the Office of Superintendent of Public Instruction (OSPI) with the Admissions and Professional Conduct Advisory Committee (APCAC); considering the evidence, the written submissions, and oral arguments of the parties; and considering the discussion and input provided by the APCAC, the Superintendent of Public Instruction, through his designated Review Officer, Dr. Mark Anderson, enters this Default Order of Revocation based on the following Findings of Fact and Conclusions of Law.

**I. PROCEDURAL MATTERS**

1. On October 27, 2023, the Review Officer notified the parties by letter that Dr. Ismael Vivanco, Ed. D., a member of the APCAC, had informed him of a potential conflict of interest regarding this matter. Specifically, Dr. Vivanco, who is the superintendent of the Mount Vernon School District, disclosed that he has a longstanding working relationship with John M. Cerna, superintendent of the Toppenish School District and father of the Educator in this matter.
2. In his October 27 letter, the Review Officer informed the parties that Dr. Vivanco would notify the parties of his potential conflict at the beginning of the informal meeting in this

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matter scheduled for November 1, 2023, on the record, and that the parties would have an opportunity to briefly question Dr. Vivanco about his longstanding relationship with Superintendent Cerna and Dr. Vivanco's ability to be fair, impartial, and neutral in this matter. Afterwards, the parties would be given an opportunity to object to Dr. Vivanco's participation in this matter as an APCAC member.

3. On November 1, 2023, at the beginning of the informal meeting scheduled in this matter, Dr. Vivanco declared his potential conflict on the record. The Review Officer then asked Dr. Vivanco four questions:
  - a. If he, as a result of his prior relationship with the Educator's father, had any bias or prejudice for or against the Educator?
  - b. Did he, because of his longstanding working relationship with the Educator's father, stand to gain or lose anything depending on the outcome of this informal meeting?
  - c. Had he prejudged any of the issues to be discussed or addressed during this informal meeting?
  - d. Would he be fair and impartial in the performance of his duties as a member of the APCAC?
4. Dr. Vivanco responded that he did not have any bias or prejudice for or against the Educator, did not stand to gain or lose anything depending on the outcome of this informal meeting, had not prejudged any of the issues to be discussed or addressed during this informal meeting, and would be fair and impartial in the performance of his duties as a member of the APCAC.
5. The Educator was not present for and did not participate in this informal meeting, and did not submit questions or objections in writing before the informal meeting occurred.

6. The Representative from the Office of Professional Practices (OPP) had no questions for Dr. Vivanco and had no objections to his participation as a member of the APCAC in this matter.
7. On May 19, 2023, the OPP emailed a copy of its Proposed Order of Revocation in this matter to the Educator, and notified him that a copy would also be sent by regular mail on May 22, 2023. The Proposed Order included language informing the Educator that it would become a Final Order if OSPI did not receive his written appeal within “thirty (3) calendar days following the date of postmarked mailing or other notification, whichever is earlier.”
8. Later the same day, the Educator emailed his request to appeal the Proposed Order of Revocation to the OPP.
9. On or about September 11, 2023, the OPP sent the Educator a Notice and Schedule of Informal Appeal Review. The Notice included the deadlines for the parties to submit and exchange documents, the date of the informal meeting in this matter, and the date when the written decision in this matter would be issued. It also informed the Educator that if any party failed to attend or participate in any stage of the proceeding, that party may be held in default. The Notice also informed the Educator that the informal meeting would be conducted remotely and included the URL for attending.
10. The Educator did not appear or participate in the informal meeting held in this matter on November 1, 2023. The Review Officer, after calling the meeting to order, orally granted the request of the OPP’s representative to enter a default order and to hear the OPP’s case on the merits.

## II. FINDINGS OF FACT

11. The Educator had adequate notice of the informal meeting in this matter on or about September 11, 2023, and was informed that he may be held in default if he did not attend or participate in the informal meeting.
12. The Educator was issued Washington Education Certificate No. 470776F on April 23, 2010. The Educator's certificate will expire on June 30, 2024, and is and was valid at all times relevant to this matter.
13. The Toppenish School District (District) employed the Educator as an Assistant Principal during the 2019-20 school year (SY) and SY 2020-21. He also served as the high school wrestling coach. Before his promotion to the position of Assistant Principal, the Educator had been employed by the District as Dean of Students, a special education teacher, and a paraeducator.
14. The District placed the Educator on paid administrative leave, effective May 24, 2021, "pending the completion of an investigation into [his] behavior of allegedly having inappropriate sexual misconduct and communication with students."
15. On or about June 14, 2021, the Superintendent of Educational Service District No. 105 (ESD) notified OPP of two complaints the ESD had received from the Parents of Student A concerning the Educator and his wife, a teacher employed by the District. Upon reviewing the Parents' complaint, the ESD had "determined that it warrants further investigation by [OPP] as there may be sufficient cause to investigate" the Educator for unprofessional conduct involving (1) flagrant disregard or clear abandonment of generally recognized professional standards,

WAC 181-87-060; (2) the commission of any sexually exploitive act with or to a student, WAC 181-87-080; and (3) furnishing alcohol to any student, WAC 181-87-085.

16. The ESD also informed OPP that the Yakima County Sheriff's Department was investigating the allegations against the Educator.
17. In their complaint, dated May 26, 2021, concerning the Educator, the Parents of Student A alleged that the Educator had between October of 2020 and May of 2021 sent Student A messages via Snapchat, an instant messaging application, in which he wrote "I want to have sex with you;" asked if he had sent her a picture of his penis, that she would think it is "pretty," and that "girls from around the world love it;" and sent her a picture of a bag of cocaine.
18. The District retained an investigator to investigate claims that the Educator had "engaged in inappropriate contact and sexual grooming of a student, provided alcohol or drugs to students, distributed sexual photographs on the internet, and other acts which call in to [sic] question his fitness to serve as an educator and employee of the [District]."
19. The District's investigator interviewed the Educator, his wife, Student A, Student A's relatives, current and former students, and other District staff members, as well as reviewed Snapchat messages, interview notes of Student A taken by District personnel, and court files, along with other records.
20. The District's investigator issued her report on or about January 4, 2022, in which she made four findings. First, that the Educator sent Student A messages via Snapchat and text messaging between October of 2020 and May of 2021. Second, that the Educator did so "for the purposes of establishing a sexual or romantic relationship." Third, that the Educator

propositioned Student A for sex via Snapchat. Fourth, that the Educator supplied Student A with alcohol during the week of spring break in 2021.

21. The Educator and Student A began communicating via Snapchat, text, or phone on or about October 7, 2020. Student A said the Educator would send her messages via Snapchat about five times a day.
22. In November of 2020, while Student A and her family were in Mexico visiting family, the Educator made sexual advances towards Student A via written messages. Student A said he wrote to her “I want to do it with you,” “I want to stick it in you,” and “I want to have sex with you.” Soon after propositioning Student A, the Educator removed her from his Snapchat account, then added and removed her multiple times.
23. On November 19, 2020, the Educator told Student A that he was also travelling to Mexico. An administrator at Toppenish High School said the Educator was not accompanied by his wife on that trip.
24. On December 20, 2020, Student A asked why the Educator kept “unadding [her] off snap?” The Educator responded that “[he] deleted [his] snap.”
25. The Educator also complained to Student A that no one had checked on him while he was in Mexico and told Student A he was “making [his] circle a little smaller.” When Student A told him to “not keep me out of that circle,” the Educator responded “never!”, and then asked when she would “come see [him].”
26. On December 21, 2020, the Educator texted Student A to ask “Why don’t you look out for me?!”, then proposed that they “look out for each other!”
27. On December 22, 2020, the Educator complained that Student A had not responded to him and mentioned cutting her off. When Student A objected, the Educator apologized, wrote

that he loved her, was “[j]ust getting [her] attention” and “keeping [her] in [his] circle.” He then again asked when Student was “gonna come see [him]?”

28. On December 26, 2020, the Educator texted Student A to tell her he was going to Mexico. During this text message exchange, the Educator complained to Student A that his wife “lies” and “talks to hella guys!”
29. The Educator texted Student A between December 29 and 31, 2020. When Student A finally responded on December 31, the Educator invited her to visit him in Cancún and asked “[w]hen you gonna come visit me?!”
30. In January and March of 2021, the Educator texted Student A about attending her soccer games. He told her that “you aint just anybody to me” and offered to “take [her] for a ride” in his new car.
31. On or about March 11, 2021, the Educator’s wife informed Student A that she was aware Student A was communicating with the Educator. The Educator’s wife told Student A via text message to “[m]essage who you want” and to “[g]et it girl.” She also told Student A that the Educator “will be his own free person actual h[e’s] already free” and that she gave Student A “the green light.”
32. Student A told the investigator that the Educator had sent her a message via Snapchat in which he asked which picture he had sent her. She claimed the Educator thought he had sent her a picture of his genitalia. When Student A responded that he had not, the Educator proceeded to tell her if she had seen his penis, “she would think it was pretty” and “girls from around the world love it.”
33. Sometime between March 30 and April 3, 2021, Student A reported that she and her cousin went to the Educator’s home to visit his wife, and that during their visit, the Educator

“offered them a shot of chocolate flavored tequila [which] they accepted.” Student A and her cousin refused the Educator’s offer of more alcohol.

34. On March 31, 2021, the Educator commented on pictures Student A posted via Snapchat, writing that “she ‘need[ed] to put some meat on that little body” and was “[g]etting some abs!” The Educator also invited Student A to live with him.

35. The Educator made additional comments about Student A’s body on April 3 and 11, 2021.

36. On April 19, 2021, the Educator said he would purchase vape cartridges from Student A if she would take a ride with him. He also told her to “tell [him] how much [she] love [him]!”

37. Student A reported that on or about May 16, 2021, the Educator’s wife bought her alcohol, spoke with Student A about her relationship with the Educator, and then brought Student A to the Educator’s home. The Educator and his wife subsequently drove Student A home.

38. On May 27, 2021, Student A’s parents filed a Petition for an Order for Protection – Harassment in Yakima County District Court, case no. Y21-02262. The Petition identified the Educator as the Respondent and requested an Order restraining the Educator from making attempts to keep Student A and her parents under surveillance, from making attempts to contact Student A and her parents, and restrain the Educator from being within 500 feet of Student A.

39. In the Petition, Student A’s parents complained that the Educator had made sexual advances towards their daughter, provided her with alcohol, sent her pictures of drugs, text messaged her repeatedly, and would call her “at all hours of the night.”

40. A hearing was held on the Petition on June 15, 2021, in Yakima County District Court, Judge Donald W. Engel presiding. At the conclusion of the hearing, the court issued an Order for Protection from Unlawful Civil Harassment restraining the Educator from making



attempts to keep Student A under surveillance, from making attempts to contact Student A, and from being within 500 feet of Student A's residence.

41. On or about August 21, 2021, Former Student B, who had attended Toppenish High School, was interviewed by members of the Yakima County Sheriff's Office. During her interview, Former Student B claimed "that she had been served alcohol and used marijuana with both [the Educator and his wife] at their residence."
42. On or about August 21, 2021, Former Student C, who had attended Toppenish High School, was also interviewed by members of the Yakima County Sheriff's Office. During her interview, Former Student C claimed the Educator had "sent her inappropriate snapchats . . ."
43. On January 20, 2022, the District issued a Notice of Probable Cause for Discharge and Non-Renewal to the Educator. The Educator failed to file a timely appeal of the Discharge and Non-Renewal.
44. OPP investigators interviewed the Educator. He initially denied using Snapchat, then admitted that he might have used it. The Educator also denied sending text messages to Student A, and denied serving alcohol to students.
45. On April 20, 2023, OPP issued a Proposed Order of Revocation after having determined that the Educator engaged in acts of unprofessional conduct including WAC 181-87-060, 181-87-080, and 181-87-085.
46. The Educator filed a timely appeal on May 19, 2023.

## II. CONCLUSIONS OF LAW

1. The Educator was served on or about September 11, 2023, with a Notice and Schedule of Informal Appeal Review. The Notice informed the Educator of the date and time of this informal meeting, included instructions for participating remotely, and informed him that a party which failed to appear might be held in default. The Educator had notice of this informal meeting, but did not attend or participate. He is therefore held in default. RCW 34.05.440(2).
2. The Legislature delegated the authority to develop and enforce regulations determining initial and continuing eligibility for and certification of personnel employed in the common schools of the State of Washington to the Professional Educator Standards Board (PESB). RCW 28A.410.010(1)(a). An educator certificate issued by the PESB under ch. 28A.410 RCW, ch. 28A.405 RCW, or rules adopted pursuant to those statutes, may be revoked or suspended if a complaint has been filed alleging that the certificate holder either lacks good moral character or personal fitness, or has engaged in unprofessional conduct, or both. RCW 28A.410.090(1)(a).
3. OSPI acts as the administrator of RCW 28A.410 and regulations adopted pursuant to that chapter. RCW 28A.410.010(2). The PESB has adopted rules concerning acts of unprofessional conduct, ch. 181-87 WAC, pursuant to RCW 28A.410.010 and 28A.410.090.
4. As the Educator possesses an educator's certificate issued by the PESB, and is alleged to have engaged in unprofessional conduct pursuant to WAC 181-87-060(1), OSPI has jurisdiction over both the Educator and the subject matter of this action.

5. “In a suspension or revocation proceeding, the [S]uperintendent of [P]ublic [I]nstruction must prove by clear and convincing evidence that the education practitioner...has committed an act of unprofessional conduct.” WAC 181-86-170(2). “‘Clear and convincing evidence’ ‘is a quantum of proof that is more than a preponderance of the evidence, but less than what is needed to establish proof beyond a reasonable doubt.’” *State v. T.J.S.-M.*, 192 Wn.2d 450, 463-64, 411 P.3d 1181 (2019) (citation omitted). “Clear and convincing evidence exists ‘when the evidence shows the ultimate fact at issue to be highly probable.’” *Capital One Bank (USA), N.A. v. Koplitz*, No. 72764-8-I, 2015 WL 893221, at \*3 (Wash. Ct. App. March 2, 2015) (unpublished) (quoting *In re Dependency of K.S.C.*, 137 Wn.2d 918, 925, 976 P.2d 113 (1999)); see also, *In the Matter of the Dependency of A.N.C.*, 24 Wn. App. 2d 408, 414-15, 520 P.3d 500 (2022).
6. In determining whether a certificated educator’s conduct constitutes unprofessional conduct, the OSPI is guided, in part, by WAC 181-87-010, which identifies the three public policy goals of ch. 181-87 WAC. These goals include “protect[ing] the health, safety, and general welfare of students within the [S]tate of Washington,” and “assur[ing] the citizens of the [S]tate of Washington that education practitioners are accountable for acts of unprofessional conduct.”
- WAC 181-87-010(1), (2). Additionally, the “OSPI may establish generally recognized professional standards under WAC 181-87-060 using the testimony of educators, administrators, and others with specific knowledge of the standards observed by the professional education community.” *Len v. Off. of the Superintendent of Pub. Instruction*, No. 45534-0-II, 2015 WL 4094079, at \*6 (Wash. Ct. App. July 7, 2015) (unpublished).

7. That OPP has, by clear and convincing evidence, demonstrated that the Educator, while he was employed by the District as an Assistant Principal and wrestling coach, engaged in acts of unprofessional conduct to include WAC 181-87-060, 181-87-062, 187-87-080, and 181-87-085 by, among other conduct and behaviors, his clear abandonment of generally recognized professional standards concerning his treatment and supervision of Student A, Former Student B, and Former Student C; his excessive and inappropriate digital communications with Student A; his inappropriate digital communications with Former Student C; his sexual advances to Student A; his comments on Student A's body and physical appearance, communicating with her like a peer, telling her he loved her, and other efforts to lower her inhibitions for the purpose of entering into a sexual relationship with Student A; and inviting Student A and Former Student B into his home for the purpose of furnishing them with alcohol and then furnishing them with alcohol.

8. "Before issuing any disciplinary order under [WAC 181-86,] the [S]uperintendent of [P]ublic [I]nstruction or [their] designee shall consider, at a minimum" eleven factors when determining "the appropriate level and range of discipline." WAC 181-86-080. Those eleven factors are:

- (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 181-8-080.

9. Based on the foregoing findings of fact, the APCAC members were unanimous in both their assessment that the Educator had engaged in egregious acts of unprofessional conduct, and in their recommendation to the Review Officer that the Educator's certificate should be revoked.
10. After having considered the foregoing findings of fact and conclusions of law in light of the eleven disciplinary factors, as required by WAC 181-86-080, and having considered the unanimous recommendation of the APCAC, that the Educator's Washington Education Certificate, no. 470776F, should be revoked for having engaged in acts of unprofessional conduct to include WAC 181-87-060, 181-87-062, 187-87-080, and 181-87-085.

### **III. ORDER BY DEFAULT**

THEREFORE, it is hereby ordered that The Washington Education Certificate, No. 470776F, of JOHN L. CERNA is **REVOKED**.

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#### IV. RIGHT OF APPEAL

The Educator, having been held in default, has seven days after service of this order by default to “file a written motion requesting that the order be vacated, and stating the grounds relied upon.” RCW 34.05.440(2).

This order by default becomes final thirty calendar days following the date of its postmarked mailing from the section of the Office of Superintendent of Public Instruction responsible for certification of the decision or order unless OSPI actually receives the certificate holder’s written notice of appeal during office hours within that thirty calendar day period. WAC 181-86-150(1). A written notice of appeal may be addressed to:

Office of Superintendent of Public Instruction  
Legal Affairs Division  
PO Box 47200  
Olympia, WA 98504

DATED this 30th day of November, 2023.

CHRIS REYKDAL  
Superintendent of Public Instruction  
State of Washington



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Mark Anderson  
Review Officer