SUPERINTENDENT OF PUBLIC INSTRUCTION

Chris Reykdal Old Capitol Building · PO BOX 47200 · Olympia, WA 98504-7200 · http://www.k12.wa.us

RE: Ronald Shaw
OSPI Case Number: D14-04-046
Document: Suspension

Regarding your request for information about the above-named educator; attached is a true and correct copy of the document on file with the State of Washington, Office of Superintendent of Public Instruction, Office of Professional Practices. These records are considered certified by the Office of Superintendent of Public Instruction.

Certain information may have been redacted pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld:

> **Public employees – Address; Phone; Email; SSN; Driver's License - The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, driver's license numbers, identicard numbers, and emergency contact information of employees or volunteers of a public agency. – RCW 42.56.250(3).**

If you have any questions or need additional information regarding the information that was redacted, if any, please contact:

OSPI Public Records Office
P.O. Box 47200
Olympia, WA 98504-7200
Phone: (360) 725-6372
Email: PublicRecordsRequest@k12.wa.us

You may appeal the decision to withhold or redact any information by writing to the Superintendent of Public Instruction, OSPI P.O. Box 47200, Olympia, WA 98504-7200.

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June 15, 2017

Ronald Shaw, Address Redacted to Protect Privacy, Tacoma, WA 98407 via us mail and certified mail.

Catherine Slagle, Director, OPP, OSPI, P.O. Box 47200, Olympia, WA 98504-7200 via us mail.

Drew Davis, Attorney at Law, DC Law Group NW, 221 1st Ave W, suite 320, Seattle, WA 98119 via us mail.

Justin Kjolseth, Assistant Attorney General, P.O. Box 40100, Olympia, WA 98504-0100, via us mail.

In re: Ronald Shaw
OSPI Cause No. 2017-TCD-0003
OAH Docket No. 01-2017-OSPI-00222

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,

Signed, Michelle C. Mentzer

Administrative Law Judge

cc: Administrative Resource Services, OSPI
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator

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

IN THE MATTER OF RONALD SHAW CERTIFICATION NUMBER 391697J

OSPI CAUSE NUMBER 2017-TCD-0003
OAH DOCKET NUMBER 01-2017-OSPI-00222

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Michelle C. Mentzer on April 13 and 14, 2017 in Tacoma, Washington. The Appellant, Ronald E. Shaw, appeared and was represented by Drew Davis, attorney at law. The Office of Superintendent of Public Instruction (OSPI) was represented by Justin Kjolseth, assistant attorney general. The following is hereby entered.

STATEMENT OF THE CASE

On December 6, 2016, OSPI issued a Final Order of Suspension concerning the Appellant's Washington State teaching certificate. On January 10, 2017, the Appellant filed an appeal of that order pursuant to Washington Administrative Code (WAC) 180-86-150. On January 13, 2017, OSPI issued an Amended Final Order of Suspension. On February 6, 2017, the Appellant filed an amended appeal to challenge the Amended Final Order.

A prehearing conference was held on February 14, 2017. Prehearing orders were entered on February 15 and 24, 2017.

Following the administrative hearing, the parties filed post-hearing briefs on April 28, 2017. The hearing record closed on that date. Pursuant to the Administrative Procedure Act, Revised Code of Washington (RCW) 34.05.461(8)(a), the due date for the written decision is 90 days after the close of the hearing record, which is July 26, 2017.

EVIDENCE RELIED UPON

Testimony was taken under oath from the following witnesses, in order of appearance:

The Appellant;
Clarence Wright, security officer, Tacoma Public Schools;
Jasmyne Walton, wife of Appellant;
Cindy Davis, principal, Bellarmine Preparatory School;
Michael Robinson, assistant principal, Kent School District;
Catherine Slagle, director, OSPI's Office of Professional Practices (OPP);

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Shannon Casey, teacher, Bellarmine Preparatory School;
Barbara Henderson, teacher, Bellarmine Preparatory School;
Lindley Schmitt, teacher, Bellarmine Preparatory School; and
John Welch, superintendent, Puget Sound Educational Service District.

The following exhibits were admitted into evidence:

Joint Exhibits: J-1 through J-36;
Appellant Exhibit: A-1; and
OSPI Exhibits: S-1 through S-4.

ISSUES

The issues for hearing are:

1. Whether the Appellant's teaching certification should be suspended for three years, as ordered by OSPI;

2. And, if a suspension is found warranted, whether the conditions imposed by OSPI on reinstatement of the Appellant's teaching certification are appropriate.

See Prehearing Order, February 15, 2017.

FINDINGS OF FACT

Background

1. The Appellant earned a bachelor's degree in elementary education in 2001 and a master's degree in technology, curriculum and instruction in 2006. J-4, J-6:1, J-10, J-12.[1] He first received a teaching certificate from OSPI in 2001. J-1.

2. The Appellant taught in the Tacoma Public Schools from 2001 through 2008. From 2008 through 2014, he taught at Bellarmine Preparatory School (Bellarmine), a Catholic school in Tacoma. J-32:7, Testimony of Appellant.

3. Sometime in 2003, the Appellant married Keshia (Terne) Shaw. Testimony of Appellant; A-1. They had two children during the marriage. J-18:7. Keshia Shaw was also a teacher in the Tacoma Public Schools. The Shaws began having problems with communication in their marriage in 2007 or 2008. Prior to that time the marriage was generally fine. Testimony of Appellant. They separated in July 2010, when the Appellant moved out of the family home. J-7:4; Testimony of Appellant. A petition for dissolution of the marriage was filed in February 2012. J-30:41.

[1] Citations to the exhibits are in the following format. "J-6:1" refers to Joint Exhibit 6, at page 1.

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4. In June 2012, Keshia Shaw was arrested for the rape of one of her sixth grade Tacoma Public School students. J-18:3. In October 2013, she pled guilty and was convicted of child rape. She was sentenced in February 2014. A-1. The Shaws' divorce was finalized sometime in 2014. J-30:41; Testimony of Appellant.

5. In April 2012, while separated from Keshia Shaw, the Appellant ran into Jasmyn Walton in a public park in Tacoma. Ms. Walton had been a student at Truman Middle School in Tacoma when the Appellant taught there. The Appellant was her coach on the eighth grade girls' basketball team. When she graduated from high school (in approximately 2006), Ms. Walton invited the Appellant, along with other former teachers, to her graduation ceremony. She and the Appellant did not maintain contact after her graduation. When they ran into each other in 2012, Ms. Walton was 23 years old and the Appellant was 32 years old. They began dating at that time. They married in 2014. Testimony of Appellant and Walton.

Conduct Leading to Suspension of Appellant's Teaching Certificate

6. The conduct that led to the suspension of the Appellant's teaching certificate occurred in 2003, but did not become known to OSPI until 2014.

7. In the 2002-2003 school year, the Appellant taught sixth grade at Truman Middle School (Truman) in the Tacoma Public Schools. It was his second year of teaching and he was 23 years old at the time. The Appellant also coached Truman's eighth grade girls' basketball team, as mentioned above. J-6:1; Testimony of Appellant.

8. In 2003, the Appellant filmed a collection of videotapes that were at some point copied onto a single digital video disk (DVD). He did all of the filming himself, except for scenes of the Truman girls' basketball team playing a game. Those were filmed by his then-wife, Keshia Shaw. J-7:4, 6. There are three segments on the DVD, labeled Exhibits S-2, S-3 and S-4. They depict the following:

Exhibit S-2

Undated - People walking into and out of the Tacoma Mall, filmed from the Appellant's car in the mall parking lot. The Appellant focuses on women, then zooms in on the mid-section of their bodies. The Appellant is heard whispering "Oh God" and "girl".

Undated – Truman girls' basketball team, very brief.

May 16, 2003 – The Appellant sets up a video camera under his desk at school. He is seen covering it with a dark cloth, leaving an opening for the lens. The Appellant adjusts the camera several times, looking at something on the top of his desk and then reaching under the desk to readjust the camera angle. The final angle shows only the waist-to-thigh area of the person seated at the desk, so that the crotch is visible. It also shows the bottom side of the desk drawer.

Undated – Truman basketball team, very brief.

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May 20, 2003 – The video opens with the Appellant seated at his classroom desk, with only his waist-to-thigh area visible. He then reaches his hand under the desk, touches the camera briefly, leaves it running, and walks away. The room is silent, then student voices are heard at a distance, then the voices grow louder. A female in tight jeans and a loose, light-colored shirt sits down at the desk for a long time, reading a book. Only her waist-to-thigh area is visible. The video ends with her still seated there.

May 21, 2003 – As on the previous day, the video opens with the Appellant seated at his desk, with only his waist-to-thigh area visible. He then reaches his hand under the desk, touches the camera briefly, leaves it running, and walks away. The room is silent, then student voices are heard at a distance, then the voices grow louder. The Appellant moves some unseen items under his desk, but not the camera – it remains steady and filming. The video ends with the chair empty. The continuation of this videotape appears to be in Exhibit S-4, as described below.

Exhibit S-3

Undated – The Appellant engages in sexual activities alone.

Undated – The Appellant engages in sexual activities alone.

Undated – Truman girls' basketball team, very brief.

Undated – Pornography on a television screen filmed by the Appellant.

Undated – The Appellant engages in sexual activities alone.

April 29, 2003 – People walking into and out of the Tacoma Mall, filmed from the Appellant's car in the mall parking lot. He again focuses on women, then zooms in on the mid-section of their bodies. The Appellant is heard saying "I really love you" and "I love you, I really love you." The Appellant films three girls who appear to be pre-teens or early adolescents, walking with an adult man. He films them in a similar manner to how he filmed other females at the mall. One of the girls is wearing a sweatshirt that says "Mason" in large print on the front.

Undated – The screen is black with a patch of small lights. A woman's voice is heard talking, and a man's voice is heard less distinctly, as if they are having a conversation. The words are not sufficiently loud to be clearly heard on the laptop computer used by the ALJ to view the videotape.

Exhibit S-4

May 21, 2003 – This appears to be a continuation of the Appellant's under-desk filming that began in Exhibit S-2 on this date. Appellant's waist-to-thigh area is filmed while he sits at his desk. His voice is heard teaching a math lesson. No one else sits at his desk on this date.

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Undated – Truman girls' basketball team, longer video than prior clips.

April 27, 2003 – Appellant engages in sexual activities alone.

End of DVD. The DVD indicates that the various segments on it were last modified on December 31, 2006. J-13.

9. The activities seen on the DVD were originally recorded on physically separate videotapes. Someone later compiled them onto a single DVD. Testimony of Appellant. The Appellant denies that he compiled them, and accuses his ex-wife of doing so. He has no personal knowledge of her doing this, but the videotapes were in their home and she could have accessed them. *Id.*

10. In October 2012, nine years after the videotapes were made, the Appellant's deposition was taken as part of his divorce proceedings. J-5. The deposition occurred after Keshia Shaw's arrest but before her conviction. During the deposition, the Appellant denied ever having videotaped students without their knowledge. He denied having videotaped people at the Tacoma Mall. He denied having created pornographic videotapes. After obtaining these answers, the deposing attorney revealed that he had in his possession a DVD containing such videotapes.

11. The DVD was shown to the Appellant during his deposition. The Appellant then changed his testimony and admitted he had created all of the videotapes on it, except the footage of his Truman girls' basketball team, which was filmed by Keshia. J-5.

12. The Appellant alleged during the deposition, and continues to allege in this proceeding, that the reason he placed a video camera under his desk was to catch a thief. He testified he had discovered a $20 bill missing from his desk drawer one morning when he arrived at school, and a few days later set up the camera to try to catch the thief. The Appellant's testimony as to the purpose for his under-desk videotaping is not credible for the following reasons.

13. First, the Appellant took none of the normal steps that other educators testified a teacher would take if he actually suspected a theft from his desk. The Appellant did not question anyone about the alleged theft, nor ask if anyone had witnessed suspicious activity around his desk. He did not notify the school security officer. J-5:6; Testimony of Appellant. Nor is there any evidence he discussed the matter with any other teacher or administrator. He did not ask that school security videotape be reviewed. He knew there were security video cameras stationed in the hallways at Truman. Testimony of Appellant; Testimony of Wright. These cameras would have captured someone entering or leaving his classroom after school hours. Testimony of Wright. The Appellant testified he noticed the money missing when he returned to school one morning. It would have been logical to think the money was taken after hours, when the classroom was empty, rather than when it was full of students. Regardless of what time he noticed the money missing, this is a more logical starting point for an investigation, since a theft is more likely to occur when there are no potential witnesses present than when there is a classroom full of potential witnesses. Despite this, the Appellant never ran the camera after school hours. He only ran it during class.

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14. Second, the Appellant put nothing of value in the desk as bait. This would be a logical step if he actually believed someone had stolen money from the desk and he wanted to catch them doing it again, as he alleged was his purpose.

15. Third, the videotape shows the Appellant adjusting and readjusting the camera angle. He admitted during his testimony that this is what he was doing. The camera angle he settled on shows the bottom side of the desk drawer. It could show whether the drawer was opened, but not whether anything was removed from it, let alone whether the item was a pencil versus something of value. It would not help him determine if a second theft occurred.

16. Fourth, the Appellant denies the video camera was connected to a computer monitor. This denial is not credible for the following reasons. (1) The Appellant performed the readjustments by recording himself sitting in his desk chair, *then shifting his eyes to look at something on top of his desk*, then reaching under the desk to adjust the camera angle. (2) The Appellant testified that when he operated the camera in his classroom, he does not believe he crawled under the desk to turn it on and off. He therefore had to have turned it on and off by a remote device. Yet he does not allege the existence of any remote device capable of doing this if it was not a computer. (3) If the camera was not connected to a computer monitor, how could he have viewed the test recordings to check the camera angle in order to adjust it? The test recordings do *not* show him reaching under to turn off the camera, which would have been necessary if he was to pick up the camera, rewind it, and view from inside the camera what he had just recorded, in order to check and readjust the camera angle. Thus, he must have viewed the test recordings from outside the camera. (4) The Appellant changed his testimony about the level of his computer knowledge: He told OPP, and testified at the hearing, that at the time in question he did not know how to connect a video camera to a computer. J-6:6; Testimony of Appellant. Later, he testified he did not recall whether he ever connected a camera to his computer at Truman. Testimony of Appellant.

17. Fifth, the Appellant testified he never viewed any of the under-desk footage after it was created. He states he never viewed it because nothing was taken from his desk. J-6:9; Testimony of Appellant. But how could the videotape have possibly helped him catch a thief if he never looked at it to see whether someone even opened the drawer? The only possible purpose the videotape could serve, under the Appellant's allegations, was to show whether the drawer was opened while a student was sitting at his desk. If he never viewed the videotape, he would not know whether the drawer was opened. And if there was no bait in the drawer, he would not know whether something of value was taken. Moreover, the rationale he gave for stopping the under-desk videotaping after a few days was that nothing had been taken from his desk. J-6:7. But how could he know this, given that he put no bait in the drawer and never viewed any of the videotape to see if someone ever opened the drawer?

18. Sixth, the Appellant claims not to recollect whether he or his ex-wife ever owned a video camera. This lack of memory is not credible in light of the extensive and highly memorable videotaping the Appellant did. Setting up an under-desk camera at school was a salient and memorable event. So is videotaping oneself engaging in graphic sexual activities. It is not credible that he would have no recollection whether he owned the video camera he used for these highly memorable events, or whether he had to borrow it from elsewhere.

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19. Seventh, during the same year the Appellant made the under-desk videos, he also made the Tacoma Mall videos. The motivation for making the Tacoma mall videos was clearly for sexual gratification: The Appellant did not randomly people-watch. He selectively focused on females, zoomed in on the mid-section of their bodies, and is heard on the videotape saying "Oh God," "girl," and "I love you, I really love you." The Appellant offers no other explanation for why he made the mall videotapes. He only says he did it because he was bored while waiting for his ex-wife to get off work. J-7:7; Testimony of Appellant. Engaging in a sexually gratifying activity is one way to relieve boredom. Thus, the two explanations for the videotaping are in no way contradictory. Nor does the Appellant claim he made the mall videos at his wife's request. It is only the pornographic videos that he claims were made at her request. The mall videos were made for himself.

20. The mall videotaping was private activity, off school grounds, and unconnected with the Appellant's role as a teacher. As discussed in the Conclusions of Law below, it does not rise to the level of unprofessional conduct. However, it does affect the *credibility* of the Appellant's assertion that his under-desk videotaping at school – which occurred within a few weeks of the Tacoma Mall videotaping – was not motivated by sexual gratification. The Appellant admits he made the under-desk videos. The only issue is whether his motive was sexual. In the mall videos, the Appellant secretly videotaped females, focusing on the mid-section of their fully-clothed bodies, while they engaged in an ordinary public activity, with the intent of receiving sexual gratification. This renders less credible the Appellant's assertion that the under-desk videos, in which he secretly filmed the mid-section of the body of a fully-clothed female engaged in an ordinary public activity (attending school), was not likewise motivated by sexual gratification.[2]

21. Moreover, the mall videotapes also tend to corroborate a sexual interest in minor girls. During the Appellant's videotaping at the mall, a group of three pre-teen or early adolescent girls came into view accompanied by an older man. The Appellant did not move his camera elsewhere to search for grown women. Rather, he lingered on the girls in the same manner as he lingered on women elsewhere in the mall videotapes. One of the girls was wearing a "Mason" sweatshirt, which would have indicated to him that she was likely a middle school student (she certainly looked the age of a middle school student). The Appellant was teaching at Truman Middle School. Mason is another middle school in Tacoma Public Schools. The Appellant acknowledges he knew this. As discussed in the Conclusions of Law below, the videotaping of these minor girls in a public place is not sufficient, in and of itself, to constitute an act of unprofessional conduct. The verbal expressions of sexual interest he made while videotaping did not occur while the young girls were on the screen. However, the Appellant's focusing on the young girls in the same manner as he focused on grown women during the mall videotaping undermines the Appellant's denial of a sexual motivation for the under-desk videotaping of another minor girl a few weeks later. It is relevant to determining whether sexual gratification was his motive in making the under-desk videos of that young girl.

22. Eighth and finally, the Appellant's false and self-contradictory answers on other matters undermine his credibility generally. The willingness to engage in falsehood on other matters

[2] Under Washington Evidence Rule (ER) ER 404(b), evidence or other acts is not admissible to prove the character of a person in order to show action in conformity with that character. It may, however, be admissible for other purposes, such as to prove *motive or intent*.

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diminishes the Appellant's credibility here, especially where his testimony about the motive for the under-desk videotaping is so lacking in credibility standing alone, for the seven reasons discussed above. The Appellant's deposition testimony, his OPP interview, and his testimony in this proceeding were all given under oath. They all contain false statements, as set forth below.

23. The Appellant testified falsely about how he first met Ms. Walton, his second wife. He met her when she was a student on the Truman girls' basketball team that he coached. During his deposition, the Appellant falsely testified that Ms. Walton was not a former student, and that he met her through a family acquaintance. He then falsely testified he met her through his parents, who knew her from the past. J-5:2. Ms. Walton, by contrast, testified that she did not know his parents until after she and the Appellant became romantically involved. Her testimony is found more credible than his because it is consistent with the facts: They met because he coached her at Truman Middle School, not because his parents knew her.

24. The Appellant created several types of pornographic videotapes that are in evidence in this proceeding. They were created prior to his deposition. Yet during his deposition he falsely denied ever having made any pornography or adult videos.

25. The Appellant videotaped a female student in his class from under his desk without her knowledge or permission, and that videotape is in evidence in this proceeding. It was created prior to his deposition. Yet in his deposition the Appellant falsely testified he had never videotaped any students without their knowledge or permission.

26. The Appellant videotaped people in public at the Tacoma Mall on two separate occasions, and those videotapes are in evidence in this proceeding. The videotapes were created prior to his deposition. Yet in his deposition the Appellant testified he did not recall videotaping anyone in public other than himself or his ex-wife.

27. The Appellant videotaped a girl at the Tacoma mall who was wearing a Mason Middle School sweatshirt and who appeared to be the age of a middle school student. Yet in his deposition the Appellant denied videotaping any children or students at the Tacoma Mall.

28. Subsequent to giving the deposition responses above, the deposing attorney revealed that he had the DVD that is in evidence in this proceeding. The Appellant then changed his testimony: He admitted videotaping at the Tacoma Mall, and admitted that during that videotaping he tried to zoom in on girls' buttocks. (He later contradicted himself, denying during testimony in this case that he tried to zoom in on their buttocks.) Moreover, the Appellant also testified that he did not recall if his Tacoma Mall videotaping was a school project. It is not credible that the Appellant had any doubt in his mind that the videotaping in question was not for a school project.

29. In his sworn statement to the OPP investigator the Appellant made further false statements. He falsely stated that at the Tacoma Mall he was filming "random" people. The videotape shows that his subjects were not chosen at random. He focused on females, and he admits that he tried to zoom in on their buttocks. (Although he tried to do this, the zoom function was apparently not powerful enough to get any closer than the mid-section of their bodies from the distance he was filming.)

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30. When confronted with the under-desk videos at his deposition, the Appellant testified that his teaching assistant (TA) would sometimes sit at his desk. The TA was a sixth grade student, not an adult. He further testified that no students other than TAs were allowed to sit at his desk. J-5:5. The Appellant testified that his TA was female, though he did not recall her name, and acknowledged that she may be the girl depicted in the under-desk videos. He further stated that he did not believe he had any male TAs. J-5:5-6. Subsequently, in his OPP statement and his testimony in this case, the Appellant tried to obscure the matter: he claimed not to recall if he had any male TAs at Truman. J-6:2; Testimony of Appellant.

31. In his testimony for this proceeding, the Appellant stated he did not recall who videotaped the Truman girls' basketball game that is seen on the DVD. However, in his declaration for the divorce proceedings he clearly stated that his ex-wife Keshia did that videotaping. J-7:4, 6.

32. In his testimony for this proceeding, the Appellant stated he did not recall if he or his ex-wife ever owned a video camera. As discussed above, this claimed lack of memory is not credible in light of the extensive and highly memorable videotaping the Appellant did. In his OPP statement, he was asked if it was possible he used a school camera. The Appellant responded: "I don't [sic] I'm not positive." Again, it is not credible that he would not remember whether it was a school camera he used for the highly memorable event of making the secret under-desk videos.

33. In his testimony for this proceeding, the Appellant falsely stated that he is not aware of ever having videotaped students without their consent. He also falsely testified that the video camera was "in plain sight." He testified he was not trying to hide it. The videotape itself shows him draping a dark cloth over the camera, with an opening left for the lens. It was not out "in plain sight," but quite well hidden.

34. In his testimony for this proceeding, the Appellant stated it was not he who put the separate videotapes together into a DVD. He blamed his ex-wife for doing that. At first he testified that he "provided" the under-desk videotapes to her. When asked further about this statement, he admitted he had not "provided" them to her, but rather that the tapes were in their home and she could have accessed them.

35. The Appellant's character was vouched for in testimony and letters of support from former colleagues, as discussed in more detail below. It could be argued that character references, by inference, support the Appellant's credibility because the former colleagues demonstrate trust in the Appellant. However, what the Appellant is accused of is highly secretive behavior of which the colleagues in question made clear they were unaware. They were also unaware of the false statements the Appellant made in an effort to hide and justify his conduct. Testimony supporting the Appellant's character would be relevant if the conduct he was accused of were something that former colleagues would likely have observed if it had occurred. For instance, if the Appellant was accused of repeated abusive or discriminatory treatment of students, a colleague of many years might have witnessed such conduct if it had occurred. Here, however, the Appellant's conduct was done in secret. His colleagues had no way to know that the Appellant harbored a prurient interest in middle school children. He nurtured that interest in secret, and intended for it to remain secret, as it did for almost a decade. For these reasons, the Appellant's credibility concerning the purpose for his under-desk videotaping is not made any stronger by the character evidence from former colleagues.

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36. For all of the reasons set forth above, it is found by clear and convincing evidence that the Appellant's purpose in creating the under-desk videotape of his sixth grade TA was for sexual gratification, not to catch a thief. The Appellant has never pursued treatment for a sexual interest in minors because he does not acknowledge having such an interest.

37. It is not found by clear and convincing evidence that it was the Appellant who compiled the separate videotapes onto a DVD. The Appellant denies he created the compilation and accuses his ex-wife of doing it. Because the ex-wife had access to the videotapes in their shared home, and given the lack of other evidence on this matter, no finding is made as to who compiled the DVD.

Suspension of Appellant's Teaching Certificate and Conditions of Reinstatement

38. In May 2014, copies of the DVD, together with excerpts from the Appellant's deposition transcript and information about him being a teacher, were sent by Keshia Shaw and/or her attorney to Tacoma Public Schools, PSESD, and OSPI. J-28; J-36. Tacoma Public Schools and PSESD referred the matter to OPP for investigation. J-2; J-3. The school at which the Appellant was then teaching, Bellarmine, was notified. Bellarmine investigated the matter and terminated the Appellant's employment. J-8; J-30; Testimony of Davis.

39. On December 6, 2016, OSPI issued a Final Order of Suspension concerning the Appellant's teaching certificate. An Amended Final Order was issued on January 13, 2017.[3] Both orders suspended the Appellant's teaching certificate for three years and imposed the following conditions on its reinstatement:

> Successful completion of a psychosexual evaluation by a psychologist mutually agreed upon by OPP and the Appellant, which validates the Appellant's ability to have unsupervised access to children and comport himself in accordance with generally recognized professional standards;
>
> Successful completion of any and all treatment recommended as a result of that psychological evaluation;
>
> Providing to OPP evidence of the Appellant's successful completion of, or continued compliance in, his treatment program;
>
> If requested, providing a signed consent authorizing OPP to have access to all records pertaining to the Appellant's treatment, and to discuss any and all treatment undertaken with the providers;
>
> The Appellant must bear financial responsibility for the cost of conforming with all reinstatement requirements; and

[3] The difference between the two orders is that in the first order, the three-year suspension would begin to run *after* the Appellant completed all steps for reinstatement and had received a new teaching certificate. In the Amended Final Order, the start date of the suspension is not delayed to a future date. *See* J-17:1.

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> The Appellant must submit a new application, including Character and Fitness Supplement, provided by OPP, and have his fingerprints checked by the Federal Bureau of Investigation and the Washington State Patrol. Reinstatement is contingent upon the Appellant's fingerprint background check returning with no criminal convictions listed in WAC 181-86-013, RCW 28A.410.090, and/or any felony convictions, as well as a finding that he can demonstrate good moral character and personal fitness.

See J-17:6.

Testimony about Generally Recognized Professional Standards

40. John Welch, Superintendent of PSESD, provided his opinion as follows regarding generally recognized professional standards for the filming of students. First, educators must ensure that students and parents have provided permission for the filming and for its purpose. Second, the purpose must have educational value. Third, the method of filming must be known to those being filmed, so that nothing in the process is secretive. These three core principles have not changed from the time the Appellant made his under-desk videotapes to the present, despite intervening changes in technology. The Appellant's under-desk videotaping violated all three of these standards, Superintendent Welch explained. In addition, it created a potential for psychological harm to the student who was filmed if she learned she had been filmed, or if the tapes got into the wrong hands. Superintendent Welch thinks it important in evaluating this case that the Appellant has taken no steps to cure himself of his sexual interest in minor children, and in fact continues to be untruthful about it. Finally, Superintendent Welch explained the importance of honesty from a teacher about a relationship with a former student. When a teacher has a romantic relationship with a former student, questions may arise, and need to be properly answered, about whether any earlier inappropriate conduct occurred. Testimony of Welch. Those questions may now have been properly answered in this case, but that is despite the Appellant's dishonesty about when and how he met Ms. Walton.

41. Cindy Davis has been an educator for over two decades. She is presently principal of Bellarmine Preparatory School. Ms. Davis agrees with Superintendent Welch that the generally recognized standards for when it is appropriate to videotape students have not changed from the time the Appellant did his videotaping to the present time. She also agrees that the Appellant's videotaping created the risk of psychological harm to the girl who was filmed. Testimony of Davis.

42. Michael Robinson has been a public school principal and assistant principal for 12 years, and was a teacher before that. He was called to testify as a character witness for the Appellant. He was also asked about generally recognized professional standards. Mr. Robinson agrees that for anything other than filming sports teams, permission from parents and notification of school administrators is needed before a teacher may film students. He also agrees that filming students must have an educational purpose. Regarding filming students to catch a suspected thief, he would have said "no" to any teacher who proposed doing this, and the proposal would have raised a flag for him. The appropriate steps to take in that situation would be to question potential witnesses and to check school security videotapes. Testimony of Robinson.

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43. Catherine Slagle, director of OPP, added to the above considerations that the Appellant took home the under-desk videotape that was made at school. (It must have been taken home because either he or his ex-wife compiled it into a DVD together with other videotapes.) Taking home footage of students for personal, not educational, purposes is an invasion of student privacy and against generally recognized professional standards. This is all the more true if the students did not give permission for the taping in the first place. The Appellant has two behavioral problems, according to Ms. Slagle: a prurient interest in minor students and dishonesty. It is an educator's responsibility to demonstrate to students truth and honesty. Testimony of Slagle.

44. The testimony about generally recognized professional standards set forth above is well-founded and credible, and is therefore adopted.

Character Evidence in Support of the Appellant

45. Four former colleagues testified that the Appellant was a talented teacher and an excellent colleague. The former colleagues who testified were: Michael Robinson, an assistant principal in the Kent School District and formerly an administrator in Tacoma Public Schools, and three Bellarmine teachers, Shannon Casey, Barbara Henderson and Lindley Schmitt. However, all of these individuals testified that they did not know the conduct of which the Appellant was accused.

46. Other former colleagues wrote letters of support for the Appellant, but did not testify. J-22 through J-25; J-29. It is unknown whether any of them know the conduct of which he is accused.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

1. The Washington Professional Educator Standards Board has the authority to develop regulations determining eligibility for, and certification of, personnel employed in the common schools of Washington pursuant to RCW 28A.410.010. OSPI administers these regulations, with the power to issue and revoke education certificates. *Id.* OSPI may delegate to OAH the authority to hear appeals of actions to suspend or revoke education certificates, and has done so in this case. *See* WAC 181-86-150. OAH hearings of those appeals are governed by Chapter 34.05 RCW, Chapter 34.12 RCW, and Chapter 10-08 WAC.

2. The burden of proof in a suspension or revocation hearing lies with OSPI. WAC 181-86-170(2). OSPI "must prove by clear and convincing evidence that the certificate holder is not of good moral character or personal fitness or has committed an act of unprofessional conduct." *Id*.

3. 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). The evidence must show that the ultimate fact at issue is "highly probable." *In Re Welfare of C.B.*, 134 Wn. App. 336, 346, 139 P.3d 119 (2006).

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Pertinent Regulations and their Application in this Case

4. RCW 28A.410.090(1)(a) authorizes OSPI to suspend a professional educator certificate "based upon . . . the complaint of any school district superintendent, . . . for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state."

5. OSPI may suspend a professional educator certificate in situations including the following:

> 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.

WAC 181-86-070(2).

6. Acts of unprofessional conduct include the following:

> Any performance of professional practice in flagrant disregard or clear abandonment of generally recognized professional standards in the course of any of the following professional practices is an act of unprofessional conduct:
>
> (1) Assessment, treatment, instruction, or supervision of students.
> (2) Employment or evaluation of personnel.
> (3) Management of moneys or property.

WAC 181-87-060.

7. Regarding private conduct versus professional conduct, the regulations state the following:

> As a general rule, the provisions of this chapter shall not be applicable to the private conduct of an education practitioner except where the education practitioner's role as a private person is not clearly distinguishable from the role as an education practitioner and the fulfillment of professional obligations.

WAC 181-87-020.

8. "Student" is defined in the regulations as follows:

> As used in this chapter, the term "student" means the following:

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(1) Any student who is under the supervision, direction, or control of the education practitioner.

(2) Any student enrolled in any school or school district served by the education practitioner.

(3) Any student enrolled in any school or school district while attending a school related activity at which the education practitioner is performing professional duties.

(4) Any former student who is under eighteen years of age and who has been under the supervision, direction, or control of the education practitioner. Former student, for the purpose of this section, includes but is not limited to drop outs, graduates, and students who transfer to other districts or schools.

WAC 181-87-040

9. OSPI has carried its burden of proof and established by clear and convincing evidence that the Appellant committed acts in flagrant disregard and clear abandonment of generally recognized professional standards. First, he secretly videotaped the crotch area of his sixth grade teaching assistant as she sat at his desk, and did so for the purpose of sexual gratification. Second, he repeatedly made false statements under oath about this and other matters.

10. It is not found by clear and convincing evidence that the Appellant's videotaping of females at the Tacoma Mall, which included videotaping pre-teen or early adolescent girls, rose to the level of unprofessional conduct. It was private activity unconnected with his role as an educator, and he did not specifically seek out minor girls; rather, he treated them the same way he treated the grown women he saw entering and exiting the mall. The inclusion of the minor girls in his videotaping made more likely the existence of a sexual purpose for his under-desk videotaping of another minor girl a few weeks later. However, it is insufficient in and of itself to constitute an act of unprofessional conduct.

11. The Appellant's creation of pornographic videotapes provides no evidence of unprofessional conduct. It was personal activity unrelated to his role as an educator. If it had been proven by clear and convincing evidence that it was *he* who placed the under-desk videos and girls' basketball team videos onto the DVD interspersed with the pornographic videos, then the pornographic videos would have been material evidence in this case. Since his role in the compilation was not proven, the existence of the pornographic videos on the DVD is not part of the unprofessional conduct found herein.

Appropriate Level of Discipline

12. The imposition of a disciplinary order requires consideration of at least eleven factors:

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:

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(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.

13. *Factor (1) – Seriousness of the acts, and actual or potential harm to persons or property*. The Appellant's acts were very serious. He secretly videotaped the crotch area of an 11 to 12 year old student in his classroom for sexual gratification, and has testified falsely about his conduct ever since. The videotaping created the risk of psychological harm to the student if she learned about it or if the tape fell into the wrong hands. Placing an adult with a demonstrated sexual interest in young students in a relationship of power and prestige over such students creates a future risk of harm to them. Although less serious, the Appellant's demonstrated dishonesty has the potential to harm students and colleagues in the future. The Appellant has shown that he is willing to engage in repeated dishonesty in order to save something of value to him (in this case his professional license). A teacher, on the contrary, has the duty to demonstrate truthfulness and honesty to his students. This factor weights against the Appellant.

14. *Factor (2) – Criminal history*. The Appellant has no criminal history. This factor weighs in favor of the Appellant.

15. *Factor (3) – Age and maturity level of participants*. At the time of the under-desk videotaping, the Appellant was a 23-year old college graduate occupying a position of great moral responsibility regarding the students in his charge. The girl he secretly videotaped was 11 to 12 years old. This factor weighs against the Appellant.

16. *Factor (4) – Proximity or remoteness of time of the events*. The Appellant's under-desk videotaping of his student occurred 13 years before OPP suspended his certificate. However, he has not taken any steps to address or treat his sexual interest in minor children during the intervening years. He continues to justify and deny his conduct. The remoteness in time of these events therefore does not weigh in favor of the Appellant.

17. *Factor (5) – Whether conduct demonstrates a disregard for health, safety or welfare*. For the reasons discussed under factor (1), above, and (6), below, the Appellant's conduct

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demonstrates a disregard for the safety and welfare of students. This factor weighs against the Appellant.

18. *Factor (6) – Whether conduct demonstrates a behavioral problem*. The suspension here is based on a single set of events over a short period of time in 2003. Yet the events are highly serious, and the problem that led to them has never been treated. For this reason, clear and convincing evidence exists that the Appellant has a behavioral problem that makes it unsafe to permit him to have unsupervised contact with students. The Appellant had such a strong sexual interest in one of his students that he risked his career to secretly videotape her crotch in order to gratify that sexual interest. The Appellant continues to deny that he has a problem and he has never sought treatment for it. Based on these facts, a behavioral problem has been established despite the isolated nature of the events in question. The Appellant's repeated falsehood under oath demonstrate a second behavioral problem. Though of a less serious nature than the other conduct, the falsehoods have been repeated over several years and are not isolated events. For these reasons, this factor weighs against the Appellant.

19. *Factor (7) – Whether conduct demonstrates a lack of fitness*. The Appellant's conduct demonstrates a lack of fitness to have unsupervised contact with children, for the reasons discussed under factors (1), (5) and (6), above. This factor weighs against the Appellant.

20. *Factor (8) – Discipline imposed by any governmental or private entity*. The Appellant had one prior instance of discipline: Bellarmine Preparatory School terminated his employment as a teacher. However, since that discipline was imposed for the same conduct at issue here, this factor does not weigh significantly against the Appellant.

21. *Factor (9) – Aggravating or mitigating circumstances*. The Appellant's dishonesty about the purpose for his under-desk videotaping is an aggravating circumstance on the primary charge of unprofessional conduct, in addition to being a secondary instance of unprofessional conduct standing alone. The Appellant argues that his character references are a mitigating factor. This argument is rejected for the reasons discussed above. The Appellant also argues it is a mitigating factor that the DVD at the center of this case was furnished by his ex-wife, a convicted child rapist with a motive to damage him. The immorality and motivations of Keshia Shaw are unrelated to, and do nothing to mitigate, the unprofessional conduct of the Appellant. The identity of the person who put the DVD in the mail is irrelevant to the contents of the DVD, and to how and why the Appellant created the videos on it. The Appellant's arguments on mitigating circumstances are therefore rejected. This factor weighs against the Appellant due to the aggravating circumstance of long-standing and repeated dishonesty about his under-desk videotaping.

Factor (10) – Information to support character and fitness. The testimony and letters of support from former colleagues establish that the Appellant was a talented teacher and an excellent colleague. However, they have very little value as evidence in this case, for the reasons stated above.

Factor (11) – Any other relevant information submitted. No other relevant information was submitted.

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22. After considering the Appellant's conduct and the factors discussed above, it is determined that the three year suspension of the Appellant's teaching certificate imposed by OPP is appropriate. The Appellant's conduct was very serious. He demonstrated a prurient interest in one of his 11 to 12 year old students, an interest so strong that he was willing to put his career at risk in order to gratify it. He has never sought treatment for his sexual interest in minor children. He also demonstrated repeated dishonesty under oath about this and other matters. For the reasons set forth above, a three-year suspension of the Appellant's teaching certificate is appropriate.

Conditions for Reinstatement of Certificate

23. The conditions required by OSPI for reinstatement of the Appellant's teaching certificate are appropriate. He should be required to undergo a psychosexual evaluation and successfully complete any treatment recommended by the psychologist. He should be required to give OPP access to his treatment records, undergo criminal background checks, and be found to demonstrate good moral character and personal fitness to serve as an educator. These reinstatement terms are necessary to ensure the safety of any children with whom the Appellant may have unsupervised contact in the future.

ORDER

a. The Appellant's Washington State teaching certificate no. 391697J is suspended for three years, as ordered in OSPI's Amended Final Order of Suspension of January 13, 2017.

b. In order to obtain reinstatement of his Washington State teaching certificate, the Appellant must comply with the conditions for reinstatement set forth the in OSPI's Amended Final Order of Suspension of January 13, 2017.

Dated at Seattle, Washington on June 15, 2017.

Signed: Michelle C. Mentzer
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

This is a final agency decision subject to a petition for reconsideration filed within ten days of service pursuant to RCW 34.05.470. Such a petition must be filed with the ALJ at the address at OAH. The petition will be considered and disposed of by the ALJ. A copy of the petition must be served on each party to the proceeding. 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

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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.

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

CERTIFICATE OF SERVICE

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

Ronald Shaw, Address Redacted to Protect Privacy, Tacoma, WA 98407 via us mail and certified mail.

Catherine Slagle, Director, OPP, OSPI, P.O. Box 47200, Olympia, WA 98504-7200 via us mail.

Drew Davis, Attorney at Law, DC Law Group NW, 221 1st Ave W, suite 320, Seattle, WA 98119 via us mail.

Justin Kjolseth, Assistant Attorney General, P.O. Box 40100, Olympia, WA 98504-0100, via us mail.

cc: Administrative Resource Services, OSPI
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator

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