NO. 93260-3

(Court of Appeals No. 46067-0-II)

IN THE SUPREME COURT
OF STATE OF WASHINGTON

TERI CAMPBELL,

Petitioner,

v.

TACOMA PUBLIC SCHOOLS, a/k/a
TACOMA SCHOOL DISTRICT NO. 10,

Respondent.

RESPONDENT TACOMA PUBLIC SCHOOLS' ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Respondent Tacoma School District No. 10 ("the District") requests that Petitioner Teri Campbell's Petition for Review be denied. Other than a broad and conclusory assertion that the there is a substantial public interest in all cases involving teacher discipline, Campbell fails to brief the criteria for review under RAP 13.4(b), none of which are satisfied here.

The Court of Appeals properly reversed the trial court and reinstated the Hearing Officer's decision, because Campbell never assigned error to any of the pertinent findings of fact, which were therefore verities on appeal. The Court of Appeals correctly held that District Policy 5201 was not unconstitutionally vague and rejected Campbell's claims that its requirement for random drug testing was *ultra vires*. Should this court grant Campbell's Petition for Review, it should also review the Court of Appeals' conclusion that Campbell was not precluded from challenging the random drug testing requirement entirely under the applicable Collective Bargaining Agreement ("CBA").

II. STATEMENT OF THE CASE

A. Campbell's Conduct

On the morning of November 2, 2011, the Tacoma Police Department responded to the intersection of North 30th Street and North

Proctor Street in Tacoma to investigate the report of a two-car collision. CP 160-61, 834-43. The intersection is approximately two blocks north of Mason Middle School. CP 769-70, 834-43. One of the drivers, Kyle Fockler, reported that while he was traveling south on North Proctor, his vehicle was struck head on by a white Ford Expedition that was traveling northbound in the southbound lane. CP 769. The Ford Expedition was driven by Campbell, a certificated teacher of the District, who was on her way to work. CP 528, 769.

Campbell's vehicle rolled in the accident, and she was subsequently transported to the hospital for the treatment of her injuries. CP 267. Campbell's blood was drawn by the Tacoma Police Department at the hospital, subsequently analyzed by the Washington State Toxicologist, and Campbell was thereafter arrested for suspicion of vehicular assault pursuant to RCW 46.61.522(c). CP 265. The results of the toxicology report indicated that she had 1.3 nanograms of THC in her system. CP 269. According to one of the police reports, the investigating officer suspected that "Campbell suffered a negative reaction to the numerous medications she is taking." CP 267.

Campbell is a chronic pain patient and therefore has had a pain pump, which continuously administers pain medications by delivering them to the intrathecal space in her spine since 2007. CP 95-96, 107.

According to Dr. Asokumar Buvanendran, "most of the intrathecal drugs are opioid derivatives." CP 108. Dr. Buvanendran confirmed that the intrathecal drugs Campbell has taken via the pain pump since at least 2010 have included Sufentanil, a narcotic which he described as a "potent drug like the morphine in Fentanyl and Dilaudid," and Bupivaceine, a local anesthetic. CP 107-09. In addition, he confirmed that Campbell has taken Nucynta, another pain medication, orally. CP 109. Campbell also took a number of medications orally.[1]

On May 22, 2012 Campbell pled guilty to one count of vehicular assault. CP 778-87.[2] In her plea, she stated:

> On November 2, 2011, in Pierce County, Washington, I was returning to work after being off for radiation treatment, I was taking pain killers and had 1 nanogram of THC in my system. I was nervous about work and I think everything combined caused me to black out and crash my vehicle into another car and that driver was injured substantially.

CP 76-77, 785. The court sentenced Campbell to thirty days of home detention along with other fines and assessments. CP 758-68.

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[1] In addition to the intrathecal drugs continuously administered through her pain pump, Campbell took two Ambien pills before going to bed the night before the collision. CP 124. She also woke up in the middle of the night and took Xanax. CP 125. When she woke up that morning, she took Cymbalta, an antidepressant and pain medication, and Lisinopril, a medication for diabetes and hypertension. CP 130. She had also smoked marijuana during the week prior to the collision, although she could not "pinpoint the day that [she] used it." CP 548-52. She also smoked "marijuana residue" the Sunday prior to the collision. CP 122-123.

[2] A copy of Campbell's plea is attached as **Appendix A**.

B. District's Investigation and Proposed Discipline of Campbell

Mason Middle School Principal Patrice Sulkosky learned about the accident on the date it occurred. CP 560. Although Principal Sulkosky was aware that Campbell used a pain pump, Campbell never notified her of the medications delivered with the pump. CP 559-61. Campbell herself admits that she never identified the specific drugs that she consumed to Ms. Sulkosky. CP 536. Following the collision, Campbell never reported to Ms. Sulkosky that she had been arrested or charged with vehicular assault. CP 561.

The District placed Campbell on administrative leave on January 5, 2012, to conduct an internal investigation of whether her conduct violated District Policy 5201, *Drug-Free Schools and Workplace*[3], which requires a teacher report to her supervisor that she is taking any drugs "known or advertised as possibly affecting judgment coordination, or any of the senses, including those which may cause drowsiness or dizziness." CP 777. The investigation revealed that prior to the November 2, 2012 collision, Campbell took a long list of drugs, which are "known or

[3] District Policy 5201 provides, "Any staff member who is taking a drug or medication whether or not prescribed by the staff member's physician, which may adversely affect that staff member's ability to perform work in a safe or productive manner is required to report such use of medication to his or her supervisor. This includes drugs which are known or advertised as possibly affecting judgment, coordination, or any of the senses, including those which may cause drowsiness or dizziness. CP 1316-17 (emphasis added).

advertised" to cause symptoms such that Campbell should have reported that she was taking them to her supervisor under the policy. CP 790-92, 831-33.

On September 26, 2012, Ms. Elijah issued a *Loudermill*[4] notice to Campbell, scheduling a hearing. CP 788-798. The *Loudermill* notice contained the list of drugs the District had determined Campbell was taking and the corresponding "known or advertised" side-effects of the drugs. CP 1269-71. At the *Loudermill* hearing, Campbell did not dispute that any of the drugs above had side-effects as stated in the *Loudermill* notice. CP 76. Campbell likewise did not dispute that her use of marijuana could augment the side-effects of these drugs. CP 76-77. On December 5, 2012, Superintendent Santorno issued a probable cause notice pursuant to RCW 28A.405.300, informing Campbell that she intended to impose a suspension of fifteen (15) days without pay.[5] CP 573-74, 799-808. In addition to the suspension, the District would require Campbell to submit to random drug tests for a period of three (3) years. CP 808.

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[4] *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L.Ed.2d 494 (1985), establishes the degree of pre-deprivation procedural due process owed to public employees who are terminated. In general, "[t]he tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his or her side of the story." *Id.* at 546.

[5] A copy of the probable cause notice is attached as **Appendix B**.

C. Hearing Officer's Decision Affirming District's Discipline

A closed hearing requested by Campbell pursuant to RCW 28A.405.310 occurred on May 30-31, 2013 with closing arguments by counsel on July 29, 2013. CP 13. On August 22, 2013, the Hearing Officer appointed to the decide matter, Judge Terry Lukens (ret.), issued his final findings of fact and conclusions of law.[6] CP 13-20. In his decision, Judge Lukens explained:

> Ms. Campbell acknowledges that she did not report her possession and use of Xanax, a controlled substance, to her supervisor or to human relations. She also takes many other medications, including pain medications, the identities and quantities of which were also not reported to her supervisor or to human relations.
>
> In the *Loudermill* letter (Ex. 8) the District outlined the medications that were used by Ms. Campbell and their side effects and potential impacts on her ability to teach. None of those conclusions was challenged either at or before the *Loudermill* meeting or this hearing.
>
> Policy 5201 is clear that any such use must be reported. The admitted side effects of the medications could adversely affect Ms. Campbell's ability to perform work in a safe or productive manner and thus the second basis for the Probable Cause Letter has been supported.

CP 18. Judge Lukens thus ultimately determined that "there is sufficient cause for discipline of Ms. Campbell on the basis that Ms. Campbell failed to report to her supervisor that she was taking drugs or medications that

[6] A copy of Judge Lukens' final findings of fact and conclusions of law is attached as **Appendix C**.

might adversely affect her ability to perform work in a safe or productive manner." CP 19 (emphasis added).

D. Superior Court Decision Reversing Hearing Officer

On September 10, 2013, Campbell filed a notice of appeal in Pierce County Superior Court, as permitted under RCW 28A.405.320. CP 1-3. In her appeal, Campbell did not assign error to Judge Lukens' findings of fact.

On March 17, 2014, after considering the parties' briefing and oral arguments, the Superior Court issued a Judgment and Final Order Reversing Hearing Officer's Decision. CP 1486-1498. Notwithstanding the absence of a constitutional challenge to Policy 5201 as vague, the Superior Court held that it was unenforceable on this basis *sua sponte*. CP 1492-94. Moreover, even though Campbell never assigned error to any of the findings of fact supporting Judge Lukens' decision, the court held that "there is no cognitive [sic] evidence to support allegations that Ms. Campbell violated Policy 5201." CP 1494-97. On August 15, 2014, the Superior Court also entered an order over the District's objections awarding Campbell $2,676.11 in costs and $46,800.00 in attorney fees. CP 1499-1500.

E. Court of Appeals Decision Reversing Superior Court and Reinstating Hearing Officer's Decision

The District appealed the Superior Court's decisions. CP 1338-52, 1484-1500. On March 8, 2016 the Court of Appeals issued its opinion reversing the Superior Court and reinstating the Hearing Officer's decision. *Campbell v. Tacoma Pub. Sch. Dist. No. 10*, 192 Wn. App. 874, 370 P.3d 33 (2015). The court ruled that the District's policy was not unconstitutionally vague and held that the Hearing Officer's findings of fact to which Campbell had not assigned error were verities on appeal. *Id.* at 886-88. As a result of the unchallenged findings of fact, it affirmed the Hearing Officer's conclusion that the District had established sufficient cause for Campbell's discipline. *Id.* at 888. Additionally, the court held that the sanctions imposed by the District, including the fifteen day suspension and the requirement for random drug testing, were neither arbitrary nor capricious. *Id.* at 890-91.

III. ARGUMENT

A. This Court Should Deny Campbell's Petition for Review

1. Campbell's Arguments Regarding the Applicable Standard of Proof are Moot, Because the Hearing Officer's Unchallenged Findings of Fact Are Verities on Appeal

Campbell's first asserted basis for review is that the Court of Appeals did not clarify that preponderance of the evidence is the proper

standard for a Hearing Officer to apply and that it incorrectly used the language "probable cause" rather than "sufficient cause" in discussing this issue in its opinion. Petition for Review, pp. 13-14. Campbell's argument is without merit. The Court of Appeals' conclusion that the Hearing Officer's decision must be reinstated was based on the fact that Campbell never assigned error to the pertinent findings of fact when she appealed to Superior Court:

> The hearing officer found that Campbell did not report the specific medications in her pain pump or her other medications to Principal Sulkosky, and Campbell did not dispute that the medications or their listed potential side effects. The hearing officer also found that the undisputed potential side effects of the medications could have potentially affected Campbell's ability to perform her job safely and productively. Campbell does not assign error to these findings, and therefore, they are verities on appeal.

Campbell, 192 Wn. App. at 887-88 (emphasis added). Moreover, contrary to Campbell's argument, the Court of Appeals' holding recognized that the "sufficient cause" was established in light of the unchallenged findings of fact:

> Thus, we hold that the undisputed findings of fact support the hearing officer's conclusion that the District had sufficient cause to sanction Campbell for violating Policy 5201 by failing to report her medications that could have potentially affected her ability to perform her job safety and productively. Accordingly, we reinstate the hearing officer's decision upholding the District's probable cause determination.

Id. at 888 (emphasis added).

Campbell does not claim that the Court of Appeals erred in holding that the findings of fact were unchallenged, nor does she point to anywhere in the record where she did assign error to the relevant findings. It is well settled that unchallenged findings of fact of an agency's final decision are verities on appeal. *Tapper v. Employment Sec. Dept.*, 122 Wn.2d 397, 407, 858 P.2d 494 (1993); *Roller v. Dept. of Labor & Industries*, 128 Wn. App. 922, 927, 117 P.3d 385 (2005); *Fuller v. Employment Sec. Dept.*, 52 Wn. App. 603, 605-06, 762 P.2d 367 (1988). Where an appellant fails to assign error to findings of fact, "it is unnecessary to determine whether there is substantial evidence to support the findings. They are the established facts of the case." *Goodman v. Bethel School Dist.*, 84 Wn.2d 120, 124, 524 P.2d 918 (1974). Where findings of fact are unchallenged, the court is "concerned only with whether the challenged conclusions of law are supported by the findings of fact." *Id.* Given that Campbell did not challenge the relevant findings of fact of the Hearing Officer when she appealed his decision to Superior Court, the Court of Appeals properly treated those findings as verities and reversed the Superior Court. Campbell identifies no error by the Court of Appeals in its discussion of the applicable standard of proof in this case, much less any basis for this Court's review under RAP 13.4 (b).

2. Because the District Did Not Terminate Campbell, it Was Not Required to Establish Lack of Remediability

Campbell next incorrectly claims that the District was required show lack of remediability to impose a suspension. In making this argument, she relies exclusively on cases where school districts were terminating teachers.[7] Here, the District did not terminate Campbell's employment. Rather, it merely imposed a fifteen-day suspension and random drug testing. As the Hearing Officer correctly found:

> The court in *Griffith v. Seattle School District*, 165 Wn. App. 663, 674 (2011) concluded that sufficient cause for suspension is different than sufficient cause for discharge, without specifically outlining which of the *Hoagland* factors will apply. It is clear, however, that *Hoagland* is satisfied here with respect to Ms. Campbell's use of medications that could adversely affect the health and safety of the children, without having reported such use to her supervisor and human relations so that they could take remedial steps, if necessary.

CP 19. In *Griffith* – a case involving a suspension – the court noted that "not all eight [*Hoagland*] factors are applicable in every case, and they may not apply at all when the cause for discipline is the teacher's improper performance of her teaching duties." *Griffith*, 165 Wn. App. at 673 (citing *Clarke*, 106 Wn.2d at 114)).

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[7] Petition for Review, p.16 (citing *Federal Way School Dist. No. 210 v. Vinson*, 172 Wn.2d 756, 261 P.3d 145 (2011); *Clarke v. Shoreline School Dist. No. 412*, 106 Wn.2d 102, 720 P.2d 793 (1986); and *Hoagland v. Mt. Vernon School Dist. No. 320*, 95 Wn.2d 424, 623 P.2d 1156 (1981))

In her petition, Campbell does not argue that the Court of Appeals in *Griffith* committed error or that this Court should overrule its holding. Thus, because Campbell was merely suspended temporarily and not terminated, the District was not required to prove that her conduct was not remediable. Indeed, the lower-level discipline of suspension was meant to provide Campbell with an opportunity to remediate her conduct.

3. There is An Obvious Nexus Between a Teacher's Effectiveness and Potential Impairment That Jeopardizes Student Safety

Campbell's suggestion that there is not an obvious nexus between her effectiveness as a teacher and her potential impairment from consumption of the drugs and medications at issue is preposterous. Petition for Review, pp. 16-17. Ensuring the safety of the students under her supervision is the most important aspect of Campbell's job. Had Campbell reported the drugs and medications she was consuming, the District could have taken steps to make certain that her students' safety were not placed in jeopardy. The terrible accident that occurred in this case while Campbell was on her way to school plainly illustrates the nexus that Campbell oddly claims is lacking.

4. The Random Retesting Requirement Was Not *Ultra Vires*

Campbell's claim that the requirement that she submit to random drug testing was *ultra vires* is also without merit. This precise issue was decided in *Yakima Police Patrolmen's Ass'n v. City of Yakima*, 153 Wn. App. 541, 222 P.3d 1217 (2009). The Yakima Police Patrolmen's Association filed unfair labor practice (ULP) complaints with the Public Employment Relations Commission (PERC) against the City of Yakima alleging, among other claims, that the City "unilaterally changed its drug testing policy, without providing the union with an opportunity to bargain." *Id* at 548. The association's charge was based upon Yakima Officer Dahl's suspension from the force after he admitted to an addiction to prescription drugs. The City, as a condition of Officer Dahl's return to active duty, required him to submit to six months of mandatory random drug testing notwithstanding the City's then drug policy that only allowed for testing upon a showing of reasonable suspicion of drug abuse. *Id.*

The hearing officer determined that the City committed the unfair labor practice of derivative interference with the collective bargaining rights of the Association for, in part, imposing six months of random drug testing on Dahl. PERC reversed and dismissed the complaint. The Superior Court and the Court of Appeals affirmed the dismissal, noting:

> PERC ultimately held that the City did not circumvent the Association when it discussed the terms of the reinstatement order with Dahl and that the City did not refuse to bargain the terms of the order. But PERC also concluded that, as soon as the City expressed a desire for a random drug testing policy that covered all bargaining unit employees and the Association responded with a proposal, the City was obligated to bargain.

Id. at 546, fn. 1. Thus, the City was not required to bargain the imposition of individual discipline upon Dahl. Here, the District did not impose a random drug testing policy upon all District employees that would require it to bargain with Campbell's union. Rather, the District imposed individual discipline upon Campbell in the form of random drug testing. Campbell fails to cite any authority requiring individual discipline to be collectively bargained.

5. Campbell's Claim that the District Violated the Americans with Disabilities Act is Baseless

Campbell's conclusory assertion that the District's imposition of a random drug testing requirement violates the Americans with Disabilities Act ("ADA") is also baseless. While Campbell's medical condition may qualify as a disability, discipline may be imposed where the purpose is safety rather than discriminatory treatment. *See, e.g., Collings v. Longview Fibre Co.*, 63 F.3d 828, 834 (9th Cir. 1995) ("Because of safety concerns involving the large, fast-moving machinery at the plant, the rule against alcohol and drug-related misconduct was a justified occupational

standard"). In order to seek relief under the ADA, an employee must be able to perform a position's essential functions with or without reasonable accommodation. 29 C.F.R. § 1630.2(m); 42 U.S.C. §12111. Additionally, the ADA specifically permits an employer to establish qualification standards that may include physical, medical and safety requirements. 29 C.F.R § 1630.2(q). Thus, in *Clarke* the Washington Supreme Court upheld the termination of a teacher of disabled children who was himself blind and hearing impaired, reasoning as follows:

> [A]n employer may discharge a handicapped employee who is unable to perform an essential function of the job, without attempting to accommodate that deficiency. In this case, the Superintendent gave as one of the reasons for Clarke's discharge and nonrenewal the fact that Clarke constituted "a hazard to the welfare and safety of students under [Clarke's] charge . . ." As found by the hearing officer, this deficiency in Clarke's performance was attributable to his handicaps. Maintenance of the safety and welfare of retarded students clearly is an essential function of a teacher of such students, a function Clarke was unable to perform. In other words, Clarke was not "otherwise qualified" to teach. Accordingly, we hold the School District was not required to accommodate Clarke in the manner he requested.

Clarke, 106 Wn.2d at 119. As *Clarke* illustrates, a teacher's impairment will not prohibit a school district from taking proper steps to ensure that the teacher can perform his or her job, especially when safety of students is a concern. Given that a lack of impairment is an essential function of a

teacher's position and necessary to maintain a safe classroom environment, the District's actions in this case were not discriminatory.

Moreover, in order to establish a violation of the ADA, Campbell would be required to prove that the District's requirement that she notify her supervisor that she was taking drugs that might potentially impair her is not itself a reasonable accommodation of her disability. *See, e.g., Humphrey v. Mem'l Hosps. Ass'n*, 239 F.3d 1128, 1137 (9th Cir. 2001) ("An appropriate reasonable accommodation must be effective, in enabling the employee to perform the duties of the position.") The District did not terminate Campbell. It merely required that she provide appropriate notice that she was consuming drugs that might affect her ability to teach and/or the safety of her students, so that it could appropriately monitor the issue and take further steps to ensure student safety if necessary. The court should thus reject Campbell's claims that there was any showing of a violation of the ADA or any other laws governing disability discrimination.

6. Campbell Has Never Previously Raised Any Claim that the District Violated EEOC Guidelines, and this Issue Would Therefore Not Be Properly Before the Court on Review

Absent particular circumstances involving described RAP 2.5 (a), this court will not review matters raised for the first time on appeal. For

the first time in this case, Campbell claims that the District's conduct violated unspecified EEOC guidelines. Petition for Review, pp.18-19. This issue was never raised by Campbell at any stage below. None of the exceptions in RAP 2.5 (a) applies here, and this issue is therefore not properly before the Court for the first time in her petition for review.

B. If this Court Accepts Review, it Should Also Review the Court of Appeals' Conclusion that Campbell Was Not Barred By the Collective Bargaining Agreement from Challenging the District's Random Drug Testing Requirement

If this Court accepts review of Campbell's claim that imposing a random drug testing requirement is *ultra vires*, it should also review the Court of Appeals' conclusion that she was not precluded by the CBA from making this challenge. *Campbell*, 192 Wn. App. at 888, fn.8. Where a claim against an agency is cognizable as a grievance under a CBA, the CBA's grievance process must be exhausted before a court will intervene. *See, e.g., Moran v. Stowell*, 45 Wn. App. 70, 75, 724 P.2d 396 (1986). The CBA in the instant case requires that employees be disciplined for cause and prohibits the District from disciplining employees "for an arbitrary and capricious reason." CP 1068. The CBA definition of a grievance is "a claim based upon an alleged violation of this Agreement, written District policies, regulations and rules adopted by the Board . . . ." CP 1163. The four-level grievance process begins with a discussion between the employee and his or

her immediate supervisor, and may be escalated all the way to binding arbitration if a mutually agreeable resolution is not reached first. CP 1164-66. Under the CBA, an employee must make a formal Level II written grievance "within fifty (50) business days of the act or the creation of the condition on which the grievance is based," or else "the grievance shall be waived." CP 1164. The Hearing Officer entered an unchallenged finding of fact that Campbell failed to file any grievance under the CBA concerning her discipline, and thus he appropriately declined to make any conclusions concerning the CBA. CP 16-20.

The Court of Appeals noted that Section 94, Subpart Part F of the CBA[8] exempts from the grievance procedure "any matter involving employee probation procedures, discharge, nonrenewal, adverse effect, or reduction in force" and it therefore concluded that "[t]he manner in which the District imposed the drug-testing requirement is similar to a probation condition, and does have an adverse effect on Campbell's employment contract. Thus, because of the specific exemptions, the CBA does not preclude Campbell from challenging the imposed drug-testing requirement." *Campbell*, 192 Wn. App. at 888, fn. 8.

However, the random drug testing requirement was not probation under the CBA simply because it provided the District with an objective

[8] See CP 707.

means of monitoring her compliance with Policy 5201. The term "probation procedures" in Section 94, Subpart F should be read in conjunction with Section 77 of the CBA, entitled "Probation Procedure." This section of the CBA establishes the procedure for placing a teacher on probation when his or her "evaluation shows an unsatisfactory rating(s)" under the District's evaluation tool. CP 690. This provision is consistent with legal requirements that teachers be evaluated based on an evaluation system meeting legally specified criteria. *See* RCW 28A.405.100 - .140. Campbell's evaluation ratings were not at issue, and thus she was not placed on probation by virtue of the District's random drug testing requirement.

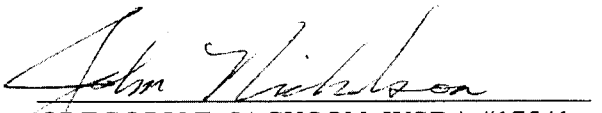
Moreover, the requirement that Campbell submit to testing did not cause any current adverse effect to her contract status, as would be required for Campbell to have a right to contest this requirement at a hearing under RCW 28A.405.300.[9] If Campbell complies with Policy 5201, she would remain employed by the District on the same terms and conditions. Therefore, the Court of Appeals' determination that random drug testing requirement was exempted from the provisions of the CBA was incorrect and should be reviewed if this Court grants Campbell's petition.

[9] The statute provides a right to a hearing only when a teacher is "discharged or otherwise adversely affected in his or her contract status . . ." RCW 28A.405.300.

IV. CONCLUSION

The Court of Appeals properly reinstated the decision of the Hearing Officer, because Campbell failed to challenge the relevant findings of fact and the Superior Court consequently overstepped the proper bounds of its appellate review. The District was not required to collectively bargain to impose a random drug testing requirement on Campbell individually, and she fails to cite any authorities suggesting otherwise. If this court is inclined to review the random drug testing issue, it should also review whether the CBA precluded Campbell from challenging that requirement in this forum. Finally, Campbell's claim that the District's actions here violated the ADA or any other anti-discrimination law are without merit. The District's actions here were not taken to discriminate against Campbell, but rather to safeguard the safety of students, an essential function of a teacher and a paramount objective of every school district.

RESPECTUFLLY SUBMITTED this 5th day of August, 2016.



GREGORY E. JACKSON, WSBA #17541
JOHN R. NICHOLSON, WSBA #30499
Attorneys for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the state of Washington, that the following is true and correct:

That on August 5, 2016, I served the foregoing Respondent's Answer to Petition for Review to the Court and to the parties to this action as follows:

Office of the Clerk Court of Appeals, Division II One Union Square 600 University Street Seattle, WA 98101-4170	___ Facsimile ___ Messenger ___ U.S. Mail ___ Overnight Mail ___ Hand Delivery _X_ Electronic Filing
Joseph W. Evans P.O. Box 519 Bremerton, WA 98337-0124 josephwevans@hotmail.com joe@jwevanslaw.com Attorney for Plaintiff	_X_ Email ___ Messenger _X_ U.S. Mail ___ Overnight Mail ___ Hand Delivery

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 5th day of August, 2016, at Olympia, Washington.

Kath. Sisson

KATHRINE SISSON

APPENDICES

APPENDIX A

25510 10/1/2013 30776

18844 5/24/2012 8813B

Case Number 11-1-05079-5 Date: April 8, 2013
SerialID: EB1DEED9-F20F-6452-DECCB34D0FDC9AD3
Certified By: Kevin Stock Pierce County Clerk, Washington

FILED
CRIMINAL DIV. 1
IN OPEN COURT
MAY 22 2012
PIERCE COUNTY Clerk
By DEPUTY

Superior Court of Washington
For Pierce County

State of Washington
Plaintiff

vs.

Teri Lynn Campbell
Defendant

No. 11-1-05079-5

Statement of Defendant on Plea of Guilty to Non-Sex Offense (STTDFG)

1. My true name is: Teri Lynn Campbell.
2. My age is: 44.
3. The last level of education I completed was 18th.
4. **I Have Been Informed and Fully Understand That:**

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is: Ted Rogge.

(b) I am charged with the crime(s) of:
Count I: Vehicular Assault
The elements are: In the State of Washington, did unlawfully and feloniously operate a Motor Vehicle with disregard for the safety of others and caused substantial harm to another

Count II:
The elements are:

Z-259

EXHIBIT 7 Campbell

Case Number 11-1-05078-5 Date April 8, 2013
SerialID: EB1DEED9-F20F-6452-DECCB34D0FDC9AD3
Certified By: Kevin Stock Pierce County Clerk, Washington

(c) _____ Additional counts are addressed in Attachment "B"

5. **I Understand I Have the Following Important Rights, and I Give Them All Up by Pleading Guilty:**

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

6. **In Considering the Consequences of my Guilty Plea, I Understand That:**

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a ***Standard Sentence Range*** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
1	0	1-3 mos	Ø	1-3 mos	12 month	10 years 10,000
2						

*(F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, See RCW 9.94A.533(6), (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, See RCW 9.94A.605

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the offender score, I

Case Number: 11-1-05079-5 Date: April 8, 2013
SerialID: EB1DEED9-F20F-6452-DECCB34D0FDC9AD3
Certified By: Kevin Stock Pierce County Clerk, Washington

understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement, the judge will order me to pay $500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

(f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody.

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OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons as defined by RCW 9.94A.411(2)	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)	9 to 12 months or up to the period of earned release, whichever is longer.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I have not completed my maximum term of total confinement and I am subject to a third violation hearing and the Department of Corrections finds that I committed the violation, the Department of Corrections may return me to a state correctional facility to serve up to the remaining portion of my sentence.

(g) The prosecuting attorney will make the following recommendation to the judge: 30 days (EHM okay) $500 CVPA, $100 DNA Fee $200 Filing fee, $200 for Lab Fee; NO CONTACT with victim; License suspension for D.O.L.; Restitution by later Court order

[ ] The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

(h) **The judge does not have to follow anyone's recommendation as to sentence.** The judge must impose a sentence within the standard range unless there is a finding of substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

(*i*) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.

(*ii*) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.

(*iii*) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.

(*iv*) The judge may also impose an exceptional sentence above the standard range if

the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed upon an agreed offender score, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can appeal the sentence.

(i) **If I am not a citizen** of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(j) I understand that **I may not possess, own, or have under my control any firearm** unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

(k) I understand that I will be **ineligible to vote** until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.

(l) **Public assistance will be suspended** during any period of imprisonment.

(m) I understand that I will be required to have a **biological sample** collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be required to pay a $100.00 DNA collection fee, unless the court finds that imposing the fee will cause me undue hardship.

Notification Relating to Specific Crimes. If Any of the Following Paragraphs *Do Not Apply*, They Should Be Stricken and Initialed by the Defendant and the Judge.

(n) This offense is a **most serious offense** or strike as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

(o) The judge may sentence me as a **first-time offender** instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.

(p) If this crime involves a kidnapping offense involving a **minor**, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for

complying with the new requirements.

(q) If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to $100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(r) If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

(s) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. Even if I qualify, the judge may order that I be examined by a licensed or certified treatment provider before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative. If the judge imposes the prison-based alternative, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of at least one-half of the midpoint of the standard range.

If the judge imposes the residential chemical dependency treatment-based alternative, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of *three to six months*, as set by the court. As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.715.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay $30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(f). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if any violations of the conditions of the sentence have occurred. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within

the standard range.

(t) If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

(u) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, a mandatory methamphetamine clean-up fine of $3,000 will be assessed. RCW 69.50.401(2)(b).

(v) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.

(w) If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked.

(x) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(13).

(y) If I am pleading guilty to felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements.

(z) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].

(aa) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

(bb) I understand that the offense(s) I am pleading guilty to include a Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.

(cc) I understand that the offense(s) I am pleading guilty to include a deadly weapon or

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firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

(dd) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

(ee) I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74 08.290.

(ff) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I can not currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I can not have a current or prior conviction for a sex or violent offense. RCW 9.94A.690

7. I plead guilty to count(s) 1 in the Amended Information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: On November 2, 2011, in Pierce County Washington I was refusing to work after being off for radiation treatment, I was taking pain killers and had 1 nanogram of THC in my system. I was nervous about work and I think anxiety combined caused me to black out and crash my vehicle into another car and that driver was injured substantially.

[ ] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

Defendant

I have read and discussed this statement with the defendant. I believe that the defendant is competent and fully understands the statement.

Prosecuting Attorney

Timothy F Jones 15728
Print Name WSBA No.

Defendant's Lawyer

Theodore C Rogge 20317
Print Name WSBA No.

The foregoing statement was signed by the defendant in the presence of the defendant's lawyer and acknowledged in open court before the undersigned judge. The defendant asserted that [check appropriate box]:

☐ (a) The defendant had previously read the entire statement above and that the defendant understood it in full;

☐ (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or

☐ (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: May 22, 2012

Judge

FILED
CRIMINAL DIV. I
IN OPEN COURT
MAY 22 2012
PIERCE COUNTY, Clerk
BY
DEPUTY

Interpreter's Declaration

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated the _____ for the defendant from English into that language.
(Identify document being translated)

The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated: _____

Interpreter

Print Name

Location: _____

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Certified By: Kevin Stock Pierce County Clerk, Washington

STATE OF WASHINGTON, County of Pierce
ss: I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of said Court this 08 day of April, 20 13
Kevin Stock, Clerk
By s/Chris Hutton Deputy

Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.
Dated: Apr 8, 2013 12:27 PM

SEAL OF THE SUPERIOR COURT WASHINGTON OF PIERCE COUNTY

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the aforementioned court do hereby certify that the document **SerialID: EB1DEED9-F20F-6452-DECCB34D0FDC9AD3** containing 9 pages plus this sheet, is a true and correct copy of the original that is of record in my office and that this image of the original has been transmitted pursuant to statutory authority under RCW 5.52.050. In Testimony whereof, I have certified and attached the Seal of said Court on this date.

Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:
https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm,
enter **SerialID: EB1DEED9-F20F-6452-DECCB34D0FDC9AD3.**
The copy associated with this number will be displayed by the Court.

APPENDIX B

Every Student. Every Day.
Tacoma Public Schools
Carla Santorno
Superintendent
601 South 8th Street • P.O. Box 1357
Tacoma, WA 98401-1357
253 571 1010 • Fax 253.571 1440
csantor@tacoma.k12.wa.us

December 5, 2012

Teri Campbell
3305 S. 12th St.
Tacoma, WA 98405

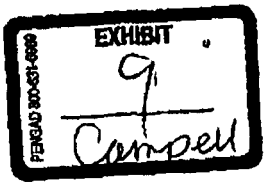
VIA Hand Delivery, Certified and Regular US Mail

Dear Ms. Campbell,

This letter is to notify you that the Tacoma School District's ("the District's") investigation into the allegations that you reported or intended to report to work under the influence of illegal chemical substances and opiates; failed to report to your supervisor that you were taking drugs or medications that may adversely affect your ability to perform work in a safe or productive manner, including drugs that are known or advertised as possibly affecting judgment, coordination, any of the senses or those which may cause drowsiness or dizziness; failed to report your conviction for a felony drug-related offense to the District; and that violated the directives given to you when you were placed on administrative leave on January 5, 2012, has been completed. The investigation identified that the allegations that you reported or intended to report to work under the influence of illegal chemical substances and opiates; failed to report to your supervisor that you were taking drugs or medications that may adversely affect your ability to perform work in a safe or productive manner; and that you failed to report your felony conviction of Vehicular Assault related to your use of drugs are substantiated.

As such, I have determined that there is probable cause to suspend you without pay for fifteen (15) work days. In addition, you will be required to submit to random drug tests for a period of three (3) years, and to comply with all District Policies and Procedures, including identifying to your supervisor any and all drugs or medications that you are taking that may impact your ability to perform work in a safe and productive matter as required under District Policy. In making the determination to issue a suspension to you rather than to terminate your employment, the District took into consideration that this was the first instance of misconduct in which you had engaged. However, the extremely serious nature of the conduct at issue, a commensurately serious disciplinary consequence was warranted.

Further, as the Washington Administrative Code identifies that good moral character and personal fitness is a continuing requirement for holding a professional educational certificate and because you have been convicted of a felony within the last ten years, I am also required to report this issue to the Office of the Superintendent of Public Instruction's ("OSPI") Office of Professional Practices ("OPP"). Any action taken by OSPI-OPP is separate from the disciplinary action that the District is taking against you.



CAM 00000001

CONDUCT AT ISSUE

On January 3, 2012, the District learned that you had been charged with vehicular assault due to a motor vehicle collision you were involved in on your way to your teaching job at Mason Middle School at 7:52 a.m. on November 2, 2011. The Information document obtained from Pierce County Superior Court stated that you were placed under arrest for Vehicular Assault for the collision and that you were under the influence of intoxicating liquor and/or drugs when you caused substantial bodily injury to another while driving. The Declaration of Probable cause filed by the Pierce County Prosecutor's Office identified that you were driving on the wrong side of the road at the intersection of North 30th and Proctor at the time the collision occurred and that the driver and passengers in the car you struck were transported to the hospital because of the injuries they sustained.

The Declaration of Probable Cause also identified that you told the responding Tacoma Police Officer that you did not remember what occurred prior to the collision or where you were going when the collision occurred. You apparently also told the Officer that you were a teacher at a nearby school, and he noted that you had in fact driven past Mason that morning. You also told the responding Officer that you were taking numerous medications and had doubled up your dose of sleep medication the night before the collision. You also advised him that you had thrown up that morning after taking a Xanax. You were placed under arrest and two vials of your blood were submitted to Washington State Toxicology Laboratory for analysis. The testing revealed that at the time the blood was drawn, you were under the influence of TCH (the active ingredient in hashish and marijuana). Had you made it to Mason, you would have reported to work under the influence an illicit substance.

As a result of your arrest, you did not report to work on November 2, 2011. You reported your absence at 9:14 a.m. that morning, claiming the missed time as sick leave. You also did not notify your supervisor or the District's Human Resources Department that you had been arrested on November 2. You instead submitted a note from Diane Reineman, MD on November 7, 2011 stating that you had "recently been under [her] care for medical reasons. she (sic) was advised to refrain from working from Wed Nov 2 through Nov 11, 2011."

When your supervisor received this note, she believed that you were not reporting to work because you had been undergoing treatment for cancer. The District received a second note from Dr. Reineman on November 12, 2011, identifying that you had "recently been under [her] care for injuries from a car accident" and that she was advising you to refrain from working from "Nov 12, 2011 through Jan 2, 2012."

After learning of the collision and your arrest from the documents provided to the District on January 3, 2012, the District confirmed that you had not advised your supervisor, Mason Principal Patrice Sulkosky, that you were taking any drugs or medications that might have adversely affected your ability to perform work in a safe or productive manner, including drugs that are known or advertised as possibly affecting judgment, coordination, any of the senses or those which may cause drowsiness or dizziness. Ms. Sulkosky was generally aware that you were taking some form of pain medications and that you suffered from diabetes, but identified that you did not report anything specific to her about the drugs you were taking.

On January 12, 2012, you met with Director of Human Resources Gayle Elijah, and Uniserv Representative Lynn Macdonald. Ms. Macdonald was present as your Tacoma Education Association representative. You were asked about the collision that had occurred on November 2, 2011. You stated that you did not remember anything about it. You stated that you do not recall the events of that morning, and could only recall haven awoken in the middle of the prior night to take additional prescribed medication. Ms. Elijah then read you excerpts from the charging documents that described the controlled substance found in your blood draw. You then stated that you had tried marijuana eight days prior to November 2, 2011, but had not tried it since and had no plans to do so again. At the January 12, 2012 meeting, you reported that you were taking pain medications that had been prescribed to you by two physicians. At the end of the meeting you were directed to provide the District with a list of current medications from each physician.

On January 13, 2012, Dr. Reineman cleared you to return to work, as medical clearance is required of any non-supervisory certificated teacher when they have been on leave for medical purposes for more than five days under Article IV, Section 33, A.5 of the Collective Bargaining Agreement between Tacoma School District and the Tacoma Education Association (attached hereto and incorporated herein). She stated that your "current medical treatment, including [your] current medications taken as directed, that I regulate, do not impair [your] ability to teach or [your] fitness for duty." The District had placed you on administrative leave on January 5, 2012, and determined that you would need to remain on administrative leave while the allegations were investigated.

On January 25, 2012, the District received information from Dr. Reineman identifying that the she was prescribing you the following medications:

- Insulin Glargine, a form of long-acting insulin given to control the blood sugar level of those with diabetes; Insulin Aspart, a form of fast acting insulin used in connection with eating to control the blood sugar level of those with diabetes; and Glucose Blood Strips for diabetes monitoring.

- Metoclopramide, a medication taken to prevent nausea and vomiting caused by slow stomach emptying in people who have diabetes. Metoclopramide is known or advertised as possibly causing drowsiness, excessive tiredness, weakness, dizziness, and confusion.

- Acyclovir, a medication commonly used to decrease pain and speed the healing of sores or blisters caused by viruses such as herpes. Acyclovir is known or advertised as possibly causing dizziness, tiredness, agitation, confusion, and hallucinations.

- Estradiol, a hormone used to treat symptoms of menopause. Estradiol is known or advertised as possibly causing dizziness, fainting, memory problems, and mental or mood changes.

- Tapentadol, an opiod pain reliever used to treat moderate to serve chronic pain that is not to be combined with other narcotic pain medications. Tapentadol is known or advertised as possibly causing dizziness, drowsiness, confusion hallucinations, memory problems, mood or mental changes, and impairment of thinking and/or reactions.

- Zolpidem (sold under the trade name of Ambien, Stilnox, and Sublnox), a nonbenzodiazepine hypnotic used for the treatment of insomnia. Zolpidem is known or advertised as possibly causing dizziness, anterograde amnesia, hallucinations, delusions, impaired judgment and reasoning, and short-term memory loss.

- Alprazolam (sold under the trade name of Xanax); a benzodiazepine psychoactive drug used for treating panic and anxiety disorders. Alprazolam may also be used in combination with other medications to treat chemotherapy-induced nausea and vomiting; however, Dr. Reineman identified that you were taking this drug as needed "for severe anxiety." Alprazolam is known or advertised as possibly causing sleepiness, confusion, slurred speech, impaired coordination, and diminished reflexes.

- Lisinopril, a medication used to treat high blood pressure. Lisinopril is known or advertised as possibly causing dizziness, tiredness, and olfactory disturbances.

Dr. Reineman also identified that a Dr. Ronald Graf had prescribed the following to you:

- Levothyroxine, a thyroid hormone used to treat hypothyroidism. Levothyroxine known or advertised as possibly causing mood changes, hyperactivity, nervousness, anxiety, irritability, and insomnia.

On February 8, 2012, Dr. Frank Li at the Seattle Pain Center identified that he had prescribed the following to you:

- Nucynta, which is another name for Tapentadol. Nucynta is known or advertised as possibly causing dizziness, drowsiness, confusion hallucinations, memory problems, mood or mental changes, and impairment of thinking and/or reactions.
- Sufentanil, a particularly powerful synthetic opioid analgesic drug. Dr. Li indicated that you were taking Sufentanil, through an intrathecal pump (a device used to deliver medications directly into the spinal cord). Because Sufentanil is known or advertised as possibly causing coma or death, the U.S. Food and Drug Administration specifically warns that "**AN OPIOID ANTAGONIST, RESUSCITATIVE AND INTUBATION EQUIPMENT AND OXYGEN SHOULD BE READILY AVAILABLE**" whenever individuals are taking Sufentanil.

- Bupivacain, anesthetic that blocks the nerve impulses and pain signals. Dr. Li indicated you were taking this through an intrathecal pump. Like with Sufentanil, Bupivacain is known or advertised as possibly causing coma or death, and the FDA advises that "resuscitative equipment, oxygen, and other resuscitative drugs should be available for immediate use" for those taking it.

The District noted that both providers had prescribed to you at least one of the same medications, with Dr. Li identifying that he was prescribing 100 mg of Nucynta to you for use every two to three hours and Dr. Reineman identifying that you were prescribed Tapentadol to take in 300 mg doses "twice daily." This called into question the accuracy of Dr. Reineman's January 13, 2012 clearance note, which was specific to medications that she regulated. As such, the District requested that you provide a letter from each of your providers acknowledging that each was aware of what the other was prescribing.

On April 4, 2012, the District received a fax from you, which appeared to be a letter to Dr. Reineman (attached hereto and incorporated herein). Because of the rambling and incoherent nature of the fax, the District became concerned that if your conduct was not the result of the use of either illicit substances or the impact of the various prescription medications you were taking, you might be suffering from a mental health disorder that could prevent you from fulfilling the essential functions of your position.

In order to resolve this issue, the District had an Independent Medical Examination (IME) conducted by a qualified mental health provider to assess your mental fitness for duty as a classroom teacher. The District retained Psychiatrist Dr. Lanny Snodgrass to conduct this IME.

The District received a report from Dr. Snodgrasss on July 30, 2012, concluding that:

> Ms. Campbell appears to be of sound mind and to be without psychiatric barriers which would prevent her from performing the essential functions of her position as a middle school teacher.
>
> Marijuana use could augment side effects of opioid analgesics and thus have an impact on her ability to teach. She does affirm today that she is not currently using this substance.

On September 24, 2012, the District learned that you entered a guilty plea in regards to the criminal charges against you related to the collision that occurred on November 2, 2011. The District has obtained a Statement of Defendant on Pleas of Guilty to Non-Sex Offense crime that was filed on your behalf on May 22, 2012. In that document, you acknowledge that you were on your way to work on November 2, 2011, had taken pain killers, and had THC in your system. You also wrote that you thought nervousness in combination with the drugs in your system had "caused [you] to black out and crash [your] vehicle into another car and that driver was injured substantially."

A Judgment and Sentence was issued to you on June 19, 2012, for the crime of Vehicular Assault. You were sentenced to 30 days in jail, with 25 of those days to be served on electronic home monitoring. On that same day, a Warrant of Commitment confining you to Pierce County Jail was issued. The Judgment and Sentence confirm that the crime you were convicted of was a felony.

On October 4, 2012, you met with Director of Human Resources Gayle Elijah, and Uniserv Representative Lynn Macdonald. Ms. Macdonald was present as your Tacoma Education Association representative. The purpose of this meeting was to discuss the outcome of the investigation of the above identified allegations prior to the District imposing any discipline against you. At the time of this Loudermill meeting, the District was considering terminating your employment. You provided the following information for the District to consider prior to taking final action:

- You stated that the prescribed medications you take have not impaired your ability to perform your job. You described the various options you had explored following an illness resulted in using a pump for the distribution of medication. You stated that you told Ms. Sulkosky of the illness and that she knew you were taking medications for pain. You also stated that the medication is taken only after 3 p.m. daily.

- You explained that the duplicate listings of medications are not indicative that both physicians each prescribed the medication, but that they both had them on record as your having taken them. You told Ms. Elijah the use for each drug including two drugs which are taken "as needed" and one drug for night only.

- When asked about the incoherent letter sent to the District on April 4, 2012, you stated that you had begun more than one letter and that the wrong letter was faxed to the District. You identified that you had been losing sleep and were very worried about your job status.

- You stated that on the morning of the accident, the Office Coordinator at Mason Middle School had called in your absence as sick leave. You said because you were hospitalized, you believed that was a legitimate reason for your absence.

- You stated that you had no idea that you had been placed under arrest or that you were charged with a crime until December 29, 2012.

- You said that you were never incarcerated but instead wore a home monitoring device. You stated that you had checked with the court and they stated that you could report to work with the device. Additionally, you stated that you had been given credit by the court for five days of time served.

- You stated that you have done everything asked by the District since the District became aware of the accident. You have fulfilled your obligations with the court and that you have learned from the experience. You stated that since the District made

the decision to return you to work you have worked hard to step up and be an exemplary employee. You requested that the District consult with your principal, Ms. Sulkosky about your performance. You stated that you have never had any discipline in the past and that your profession means a great deal to you.

The District has no information to support any conclusion other than that on November 2, 2011, you intended to report to work under the influence of illegal chemical substances (marijuana) and opiates and that you intended to work or intended to report to work under the influence of controlled substances that impaired or would have impaired your ability to function in your position. By your own admission, you do not recall the events of the morning and that all you could recall was waking in the middle of the prior night to take more medication. You reported on January 12, 2012, that you used marijuana eight days prior to November 2, 2011. You were present at work on October 25, 2012, which was eight days prior to November 2, 2011. Thus, all evidence provided to the District reflects that you actually came to work under the influence of marijuana. Based on the information provided by your medical providers, you were regularly reporting to work under the influence of controlled substances that were likely to have impaired your ability to function in your position. It is also undisputed that on June 19, 2012, you were convicted of a felony attributable to your use of illegal chemical substances and opiates.

DISTRICT'S CONCLUSIONS

Your conduct, collectively and individually, violates the following:

District Policy 5010, *Employee Conduct Rules*, which states in part:

An employee shall not:

6. Endanger, negligently or intentionally, the safety of oneself or another person.

11. Violate any rule, regulation or statute or other legal enactment applicable to the employees.

12. Illegally manufacture, distribute, dispense, or possess any controlled substance, use alcohol at work, work under the influence of alcohol, or work under the influence of any controlled substance unless the substance is prescribed by a doctor and does not impair the employee's ability to function in his or her position.

13. Fail to perform any responsibilities lawfully imposed upon the employee or fail to follow any lawful directives issued to the employee.

This listing represents the general guidelines of employee conduct for Tacoma School District No. 10 and is not inclusive. Individual schools or

departments may also have written rules which employees are expected to follow. A violation of the above rules may be sufficiently serious to constitute cause for termination of employment.

In addition, a situation may occur which is inherently offensive but no specific rule applies; in such a case an employee is subject to reasonable discipline which may include termination.

District Policy 5201, *Drug-Free Schools, Community and Workplace*, which states:

The board has an obligation to staff, students and citizens to take reasonable steps to ensure safety in the workplace and to provide safety and high quality performance for the students that the staff serves.

"Workplace" is defined to mean the site for the performance of district work. That includes any district building or any district premises; any district-owned vehicle or any other district-approved vehicle used to transport students to and from school or school activities; off school property during any district-sponsored or district-approved activity, event or function, such as a field trip or athletic event, where students are under the jurisdiction of the district.

For these purposes, the board declares that the following behaviors will not be tolerated:

A. Reporting to work under the influence of alcohol, illegal chemical substances or opiates.

B. Using, possessing, transmitting alcohol, illegal chemical substances (including anabolic steroids) or opiates in any amount or in any manner on district property at any time. Any staff member convicted of a felony attributable to the use, possession, or sale of illegal chemical substances or opiates will be subject to disciplinary action, including immediate termination.

D. Using, possessing or transmitting illegal chemical substances and opiates in a manner which is detrimental to the interest of the district.

Any staff member who is taking a drug or medication whether or not prescribed by the staff member's physician, which may adversely affect that staff member's ability to perform work in a safe or productive manner is required to report such use of medication to his or her supervisor. This includes drugs which are known or advertised as possibly affecting judgment, coordination, or any of the senses, including those which may cause drowsiness or dizziness. The supervisor in conjunction with the

district office then will determine whether the staff member can remain at work and whether any work restrictions will be necessary.

As a condition of employment, each employee shall notify his or her supervisor of a conviction under any criminal drug statute violation occurring in the workplace as defined above. Such notification shall be provided no later than 5 days after such conviction. The district shall inform the federal government within ten days of such conviction, regardless of the source of the information.

Each employee shall be notified of the district's policy and procedures regarding employee drug activity at work. Any staff member who violates any aspect of this policy may be subject to disciplinary action, which may include immediate discharge. As a condition of eligibility for reinstatement, an employee may be required to satisfactorily complete a drug rehabilitation or treatment program approved by the board, at the employee's expense. Nothing in this policy shall be construed to guarantee reinstatement of any employee who violates this policy, nor does the school district incur any financial obligation for treatment or rehabilitation ordered as a condition of eligibility for reinstatement.

Other actions such as notification of law enforcement agencies may be taken in regard to a staff member violating this policy at the district's discretion as it deems appropriate.

WAC 181-86-013, Good Moral Character and Personal Fitness-Definition, which states in part:

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

(2) No conviction of any crime within the last ten years, including motor vehicle violations, which would materially and substantially impair the individual's worthiness and ability to serve as a professional within the public and private schools of the state.

WAC 181-86-014 Good Moral Character and Personal Fitness-Continuing Requirement, which states in part:

The good moral character and personal fitness requirement of applicants for certification under the laws of the state of Washington is a continuing

requirement for holding a professional educational certificate under regulations of the professional educator standards board.

District Policy 5230, *Job Responsibilities*, specifically states that "School-based employees shall be directly responsible to the principal at their building for implementing the polices, instructions, rules and regulations of each principal, the superintendent, and the board of directors. It shall be the duty of all employees to know the rules, policies, and regulations of the school and the school district." Claiming that you were not aware of the District's Policies related to either Employee Conduct or Drug Free Schools would be further conduct in violation of applicable Policy.

As set forth above, I have determined that there is probable cause to suspend you without pay for fifteen (15) work days. In addition, you will be required to submit to random drug tests for a period of three (3) years, and to comply with all District Policies and Procedures, including identifying to your supervisor any and all drugs or medications that you are taking that may impact your ability to perform work in a safe and productive matter as required under District Policy.

Pursuant to RCW 28A.405.300, you have certain appeal rights relating to the determination to issue a suspension without pay to you. You may invoke these rights by filing a written request for a hearing with me, as Secretary to the Board of Directors, or with Catherine Ushka, President of the Board. Such a request must be filed within (10) days immediately following your receipt of this letter. For further information regarding your appeal rights, I refer you to RCWA.405.300, which can be found online at: http://apps.leg.wa.gov/rcw/default.aspx?cite=28A.405.300.

Sincerely,

Carla J. Santorno
Superintendent

c: Lynne Rosellini, Assistant Superintendent of Human Resources
Gayle Elijah, Director of Human Resources
Patrice Sulkosky, Principal, Mason Middle School
Shannon McMinimee, General Counsel
Adrienne Dale, TEA President
Lynn Macdonald, Uniserv Representative

APPENDIX C

BEFORE JUDGE TERRY LUKENS (RET.), HEARING OFFICER

In re: TERI CAMPBELL, Petitioner, and TACOMA SCHOOL DISTRICT, Respondent.	JAMS No. 1160019122 FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION [CORRECTED]

Pursuant to RCW 28A.405.300, a closed hearing was held before the Hearing Officer on May 30 and 31, 2013 in which the Petitioner Teri Campbell ("Ms. Campbell") was represented Joseph W. Evans, Esq. and the Respondent Tacoma School District (the "District") was represented by Gregory E. Jackson, Esq. of Freimund, Jackson & Tardif.

Testimony was received from the following witnesses:

Teri Campbell
Patrice Sulkosky
Carla Santomo
Gayle Elijah
Dr. Asokumar Buvanendran
Lynn MacDonald
Jeffrey Robillard
Lynn Rosellini

Exhibits were admitted and post-hearing briefs were submitted. Closing argument was presented on July 29, 2013. Counsel for Ms. Campbell also submitted a Supplemental Brief Regarding "Conjunctive" Probable Cause. Counsel for the District consented to the supplemental filing.

BACKGROUND DISCUSSION

The purpose of the hearing was to determine whether the District had sufficient cause for its decision to suspend Ms. Campbell for the reasons set forth in the letter of probable cause dated December 5, 2012 (Ex. 9) (the "Probable Cause Letter").

The District contends that there was sufficient cause for the superintendant to decide to suspend Ms. Campbell and to require drug testing in the future, based on each of the three separate allegations contained in the Probable Cause Letter.

Ms. Campbell, on the other hand, contends that that the District has not carried its burden and there was not sufficient cause to suspend her.

FINDINGS OF FACT

Based on the foregoing, the Hearing Officer enters the following Findings of Fact:

1. Ms. Campbell started teaching in 2002 and has been a teacher at Mason Middle School in the District since 2004.

2. There was no evidence of any disciplinary action having been previously taken against Ms. Campbell.

3. In 2006 Ms. Campbell began to experience some medical issues, including paralysis and pain in her legs and Guillain-Barre syndrome, resulting in hospitalization.

4. Treatment included physical therapy and oral pain medications.

5. In 2007 Ms. Campbell replaced the oral pain medications with a pain pump that dispensed pain medications on a regular basis.

6. Ms. Sulkosky, Ms. Campbell's principal, was aware that Ms. Campbell was using a pain pump that contained medication, but was not aware of and was not told about the specific medications.

7. In July, 2011 Ms. Campbell was diagnosed with thyroid cancer and began a course of treatment.

8. On October 26, 2011, she was administered a radiation pill, that required a one week quarantine period.

9. During the quarantine period, to deal with her pain, she smoked some marijuana on either October 27 or 28, 2011. The marijuana was smoked at her home.

10. On October 30, 2011, while at home, she smoked some of the marijuana residue for pain relief.

11. These were the only times that Ms. Campbell smoked or used marijuana. At no time did she ever smoke marijuana on the school premises.

12. Ms. Campbell was released by her doctor to return to work on November 2, 2011.

13. Ms. Campbell rested most of the day on November 1, 2011 and took two Ambien tablets before she went to bed.

14. She woke up about 1:00 or 1:30 on the morning of November 2, 2011 and took a Xanex pill. She then went back to sleep.

15. She woke up at the regular time, followed her regular morning regimen, and left for work. She did not take any oral pain medications.

16. She was not dizzy, drowsy or disoriented on her drive to work, following her regular travel route.

17. As she approached the school, she passed out and ultimately collided with another vehicle. She has no memory of the collision; her next memory was waking up at home.

18. Following the accident a blood draw was taken that demonstrated a level of 1.3 nanograms per milliliter of THC, the psychoactive ingredient in marijuana, and 32.2 nanograms per milliliter of carboxy-THC, the THC metabolite.

19. There was no testimony regarding the impact of those levels of THC on Ms. Campbell's ability to safely operate a motor vehicle.

20. At the time of her arrest, Ms. Campbell had 45 Xanex pills in her purse to use for anxiety attacks. She intended to take the pills to school in case she had an attack.

21. She did not report to Ms. Sulkosky that she had the Xanex pills in her possession at school.

22. Xanex is a non-narcotic Schedule IV controlled substance.

23. Ms. Campbell was also taking numerous other medications (Ex. 20) that she did not report to Ms. Sulkosky either as to type or dosage.

24. Ms. Campbell was originally charged with vehicular assault, a felony. She ultimately entered a plea of guilty to vehicular assault under RCW 46.61.522(1)(c), the non-violent prong. That is also a felony and she was sentenced to 30 days of electronic home monitoring, with no jail time.

25. As part of the plea, the state issued an amended information, explaining some of the evidentiary problems with the case and the absence of a "per se" amounts of THC for purposes of driving under the influence (Ex. 5).

26. As part of her statement on plea of guilty Ms. Campbell acknowledged that she was taking pain killers and had THC in her system and was stressed about returning to work and opined that "everything combined" caused her to black out.

27. No explanation for the actual cause of her blackout has ever been determined.

28. She did not disclose her marijuana use, her arrest, her felony charge or her felony plea to the District.

29. On January 5, 2012 Ms. Campbell was placed on administrative leave (Ex. 6).

30. On September 26, 2012 the District completed its investigation and scheduled a *Loudermill* meeting for October 4, 2012 (Ex. 8).

31. The *Loudermill* letter outlined the medications used by Ms. Campbell and the potential side effects and impacts on her ability to teach.

32. Ms. Campbell attended the meeting with her union representative.

33. Ms. Campbell did not dispute the medication usage or the side effects at the *Loudermill* meeting or at the subject hearing.

34. Following the *Loudermill* meeting, the District issued its Probable Cause Letter.

35. No grievance or other prior objection to the testing component of Ms. Campbell's discipline has ever been filed.

36. This appeal was timely filed.

37. Any Conclusion of Law which is deemed to be a Finding of Fact is incorporated herein as such.

DISCUSSION OF LEGAL ISSUES

The Probable Cause Letter is based on three claimed violations of Policy 5201 (Ex. 10):

1. Ms. Campbell reported or intended to report to work under the influence of illegal chemical substances and opiates;
2. Ms. Campbell failed to report to her supervisor that she was taking drugs or medications that might adversely affect her ability to perform work in a safe or productive manner, including drugs that are known or advertised as possibly affecting judgment, coordination, any or the senses or those which may cause drowsiness or dizziness; and
3. Ms. Campbell failed to report her conviction for a felony drug-related offense to the District.

Each of these will be discussed in turn.

Under the Influence

The term "under the influence" is not defined in Policy 5201. Ms. Santorno defined it to mean "zero tolerance" while Ms. Sulkowsky interpreted the term to mean that the substance was in the system and impaired a teacher's work or the teacher came to work high or drunk. None of these definitions is contained in any District policy or the Collective Bargaining Agreement, nor is the term "under the influence" elsewhere defined.

The deputy prosecutor, in filing his Prosecutor's Statement Regarding Amended Information (Ex. 5) concluded that "[a]lthough there are psychoactive effects associated with THC, there are no "per se" amounts set by the State of Washington as there are with DUI." The Hearing Officer also notes that Initiative 502 established a "per se" limit of 5 ng./ml. of THC for driving under the influence and under that definition Ms. Campbell was not "per se" driving under the influence. There was no evidence that the amounts of THC in her system resulted in Ms. Campbell being unable to safely drive her motor vehicle.

In her Statement of Defendant on Plea of Guilty (Ex. 7) Ms. Campbell does not admit that she was driving under the influence, but only that she "think(s) that everything combined [pain killers, stress about work, and THC] caused her to black out." The actual etiology of the blackout is unknown.

For all of the foregoing reasons the Hearing Officer concludes that the District has not met its burden of showing that Ms. Campbell reported or intended to report to work under the influence of illegal chemical substances and opiates.

Failure to Report

Ms. Campbell acknowledges that she did not report her possession and use of Xanex, a controlled substance, to her supervisor or to human relations. She also takes many other medications, including pain medications, the identities and quantities of which were also not reported to her supervisor or to human relations.

In the *Loudermill* letter (Ex. 8) the District outlined the medications that were used by Ms. Campbell and their side effects and potential impacts on her ability to teach. None of those conclusions was challenged either at or before the *Loudermill* meeting or this hearing.

Policy 5201 is clear that any such use must be reported. The admitted side effects of the medications could adversely affect Ms. Campbell's ability to perform work in a safe or productive manner and thus the second basis for the Probable Cause Letter has been supported.

Felony Conviction

Ms. Campbell was originally charged with the violation of RCW 46.61.522, without delineation as to which prong was the basis for the charge. RCW 46.61.522(1)(b) provides that a person is guilty of vehicular assault if she operates a vehicle while under the influence of any drug and causes substantial harm to another. A conviction or plea under this prong would have been a felony conviction for a drug-related offense and, thus, would have been reportable.

Ms. Campbell, however, ultimately plead guilty to RCW 46 61.522(1)(c) which provides that a person is guilty of vehicular assault if she operates a vehicle with disregard for the safety of others and causes substantial harm to

another. No guilty plea or conviction for a felony drug-related offense has occurred. The District has not supported the third basis for its Probable Cause Letter by a preponderance of the evidence.

Effect of Failure to Prove Multiple Causes

While the District alleged three bases for issuance of the Probable Cause Letter, only one was proven by a preponderance of the evidence. This issue was discussed at closing argument and counsel for Ms. Campbell has provided authority supporting the ability of the Hearing Officer to affirm the matter if only one such cause is supported, even though that authority was not supportive of his client's position. *See Lines v. Yakima Public School*, 12 Wn. App. 939, 945 (1975). Mr. Evans' recognition of his responsibilities under RPC 3.3(a)(3) does great credit to him and our profession.

Basis for Review

The court in *Griffith v. Seattle School District*, 165 Wn. App. 663, 674 (2011) concluded that sufficient cause for suspension is different than sufficient cause for discharge, without specifically outlining which of the *Hoagland* factors will apply. It is clear, however, that *Hoagland* is satisfied here with respect to Ms. Campbell's use of medications that could adversely affect the health and safety of the children, without having reported such use to her supervisor and human relations so that they could take remedial steps, if necessary.

CONCLUSIONS OF LAW

Based on the foregoing Background Discussion, Findings of Fact and Discussion of Legal Issues, the Hearing Officer enters the following Conclusions of Law:

1. There is not sufficient cause for the discipline of Ms. Campbell on the first basis for her discipline, to wit, that she was under the influence of illegal substances.

2. There is sufficient cause for discipline of Ms. Campbell on the basis that Ms. Campbell failed to report to her supervisor that she was taking drugs or medications that might adversely affect her ability to perform work in a safe or productive manner.

3. There is not sufficient cause for the discipline of Ms. Campbell on the third basis for her discipline, to wit, that she failed to report a drug-related felony conviction.

4. Any one of the bases set forth in the Probable Cause Letter is sufficient to support the proposed discipline.

5. Any Finding of Fact which is deemed to be a Conclusion of Law is incorporated herein as such.

FINAL DECISION

The Hearing Officer having found sufficient cause for discipline, the decision of the District to suspend Ms. Campbell and impose a testing requirement is affirmed.

DATED this 22 day of August, 2013.

Judge Terry Lukens (ret.)
Hearing Officer

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, August 05, 2016 2:32 PM
To: 'Kathrine Sisson'
Cc: Greg Jackson; John Nicholson; Kathie Fudge; josephwevans@hotmail.com; Joe Evans
Subject: RE: [E-filing] -- Teri Campbell v. Tacoma Public Schools

Received 8/5/16.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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From: Kathrine Sisson [mailto:KathrineS@fjtlaw.com]
Sent: Friday, August 05, 2016 2:15 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Greg Jackson <GregJ@fjtlaw.com>; John Nicholson <JohnN@fjtlaw.com>; Kathie Fudge <KathieF@fjtlaw.com>; josephwevans@hotmail.com; Joe Evans <joe@jwevanslaw.com>
Subject: [E-filing] -- Teri Campbell v. Tacoma Public Schools

Attached please find Respondent Tacoma Public Schools' Answer to Petition for Review.
Teri Campbell v. Tacoma Public Schools
Case #93260-3
Attorneys for Respondent:
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Thank you,

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