NO. 46067-0-II

COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON

TERI CAMPBELL,

Respondent,

v.

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

Appellant.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

Cases

TABLE OF AUTHORITIES

Cases

Statutes

Other

I. INTRODUCTION

Pursuant to RCW 28A.405.300, Appellant Tacoma School District No. 1 (hereinafter "the District") determined that probable cause supported imposing a fifteen-day suspension without pay and three years of random drug testing on Respondent Terri Campbell (hereinafter "Campbell"), a certificated teacher employed by the District. The District made this determination after discovering that Campbell pled guilty to vehicular assault after she "blacked out" on her way to work and drove her car into oncoming traffic, seriously injuring another driver in a head-on collision. The collision occurred after Campbell had taken a cocktail of controlled substances, including pain medications and marijuana. Campbell failed to notify the District that she regularly ingested these controlled substances in violation of District policy that required disclosure of any medication or controlled substance that may adversely affect the ability of teachers to safely supervise students.

In an appeal requested by Campbell, the Pierce County Superior Court overturned a duly appointed Hearing Officer's decision upholding the District's proposed disciplinary action. The District now asks this court to reinstate the Hearing Officer's decision and reverse the trial court's erroneous conclusions (1) that District Policy 5201 requiring teachers to disclose the use of drugs or medications "which may adversely

affect [the teacher's] ability to perform work in a safe or productive manner" was unenforceable due to vagueness; (2) that there was insufficient evidence that Campbell had violated Policy 5201; and (3) that Campbell was entitled to attorney's fees and costs under RCW 28A.405.350.

II. ASSIGNMENTS OF ERROR

A. ASSIGNMENTS OF ERROR

(1) The Superior Court erred when it concluded that District Policy 5201 is unenforceable due to unconstitutional vagueness. CP 1329-31.

(2) The Superior Court erred by reviewing findings of fact by the Hearing Officer which were never challenged by Campbell and were therefore verities on appeal. CP 1331-34.

(3) The Superior Court erred by applying an incorrect standard of review to the Hearing Officer's conclusion that sufficient cause existed to support the District's discipline on Campbell, where the findings of fact that supported that conclusion were unchallenged verities on appeal. CP 1331-34.

(4) The Superior Court erred by substituting its own judgment for that of the Hearing Officer on factual determinations that were supported by substantial evidence and not clearly erroneous. CP 1331-34.

(5) The Superior Court erred by holding that there was insufficient evidence to support the Hearing Officer's finding that Campbell violated District Policy 5201. CP 1331-34.

(6) The Superior Court erred when it concluded that it possesses the authority to review the appropriateness of the particular sanction imposed by the District. CP 1334-35.

(7) The Superior Court erred to the extent that it concluded that the District's requirement that Campbell submit to random drug testing for three years was "ultra vires." CP 1334.

(8) The Superior Court erred by awarding Campbell costs and attorney's fees under RCW 28A.405.350. CP 1499-1500.

B. ISSUES RELATED TO ASSIGNMENTS OF ERROR

(1) Is an employment policy, such as District Policy 5201, reviewed for constitutional vagueness under a more lenient standard than a criminal statute or ordinance?

(2) Is District Policy 5201 impermissibly vague where it notifies District employees that they may be subject to discipline and/or discharge for failing to report taking drugs or medications that "may adversely affect [their] ability to perform work in a safe or productive manner" where the policy specifically clarifies that "[t]his 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"?

(3) Are unchallenged findings of fact by the Hearing Officer verities on appeal in a proceeding before the Superior Court under RCW 28A.405.340?

(4) Was there substantial evidence supporting the Hearing Officer's determination that Campbell violated Policy 5201 where she admitted to taking numerous drugs and medications that were "known or advertised" as having side-effects that might adversely affect her ability to supervise middle school students or otherwise perform her work in a safe or productive manner?

(5) Is the Superior Court's review in an appeal under RCW 28A.405.350 limited to determining whether probable cause existed to support a school district's decision to impose a sanction?

(6) Is Campbell precluded from challenging the District's requirement that she submit to random drug testing for three years, because she failed to grieve the sanction as required by the Collective Bargaining Agreement governing the terms and conditions of her employment?

(7) Did Campbell establish that the District's sanction was arbitrary and capricious where there was no evidence that the District was

ever on notice of any other employee besides her who had engaged in similar conduct?

(8) Is Campbell entitled to attorney's fees or costs under RCW 28A.405.350, when she made no showing that "the probable cause determination was made in bad faith or upon insufficient legal grounds"?

III. STATEMENT OF THE CASE

A. CAMPBELL'S CONDUCT

On November 2, 2011, Campbell was a certificated teacher with the District and scheduled to return to her Social Studies teaching position at Mason Middle School following a week-long absence for health reasons. CP 523-24. At approximately 7:52 a.m., members of 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, 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 Campbell 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, a physician and professor of anesthesiology and pain medicine at Rush University, "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.

In addition to the intrathecal drugs continuously administered through her pain pump, Campbell admits that when she went to bed the night prior to the collision, she took two Ambien pills. CP 124. She also woke up in the middle of the night at approximately 1:30 a.m. and took Xanax. CP 125. When she woke up again in the morning, she took Cymbalta, an antidepressant and pain medication, and Lisinopril, a medication for diabetes and hypertension. CP 130. Campbell also smoked marijuana during the week she was off work prior to the collision, she believes on October 27, 2011, although she cannot "pinpoint the day that [she] used it." CP 548-52. She also smoked "marijuana residue" the Sunday prior to the collision. CP 122-123.

Campbell claims that she has no memory of the collision itself. CP 530-31. However, on May 22, 2012 she pled guilty to one count of vehicular assault. CP 778-87. In her plea, she made the following admission:

> 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 convicted Campbell on June 19, 2012, sentencing her to thirty days of home detention along with other fines and assessments. CP 758-68.

B. DISTRICT'S INVESTIGATION AND DETERMINATION OF PROBABLE CAUSE

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 likewise 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 Ms. Campbell's arrest. CP 777. District Policy 5201, *Drug-Free Schools and Workplace*, provides in pertinent part:

> 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). The internal investigation revealed that prior to the November 2, 2012, collision, Campbell took the following drugs, which are "known or advertised" to cause the corresponding symptoms indicated:

> **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** is known or advertised as possibly causing coma or death, the U.S. Food and Drug Administration specifically warns that "**AN OPIOD ANTOGONIST, RESUSCITIATIVE AND INTUBATION EQUIPMENT AND OXYGEN SHOULD BE READILY AVIALBLE**" whenever individuals are taking Sufentanil.
>
> **Buplvacain** 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."
>
> **Levothyroxine** is known or advertised as possibly causing mood changes, hyperactivity, nervousness, anxiety, irritability, and insomnia.
>
> **Acyclovir** is known or advertised as possibly causing dizziness, tiredness, agitation, confusion, and hallucinations.
>
> **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.
>
> **Alprazolam** (sold under the trade name of Xanax) is known or advertised as possibly causing sleepiness, confusion,

> slurred speech, impaired coordination, and diminished reflexes.
>
> **Zolpidem** (sold under the trade name of Ambien, Stillnox, and Sublnox) is known or advertised as possibly causing dizziness, anterograde amnesia, hallucinations, delusions, impaired judgment and reasoning, and short-term memory loss.
>
> **Metoclopramide** is known or advertised as possibly causing drowsiness, excessive tiredness, weakness, dizziness, and confusion.
>
> **Estradiol** is known or advertised as possible causing dizziness, fainting, memory problems, and mental or mood changes.
>
> **Lisinopril** is known or advertised as possibly causing dizziness, tiredness, and olfactory disturbances.

CP 790-92, 831-33. The District's director of Human Resources, Gayle Elijah, confirmed that Campbell was prescribed the above medications that that the medications were "known or advertised" to cause the corresponding symptoms by consulting an online medical resource. CP 75-76, 538-44, 790-92. The District also verified from a medical doctor who examined Campbell that marijuana, which she admitted to using during the week preceding the collision, "could certainly augment side effects of opioid analgesics and thus have impact on her ability to teach." CP 825.

On September 26, 2012, Ms. Elijah issued a *Loudermill*[1] notice to Campbell, scheduling a hearing for October 4, 2012.[2] CP 788-798. The *Loudermill* notice contained the above list of drugs and the corresponding known or advertised side-effects, and it informed Campbell that her failure to report consuming them would be a basis for disciplinary action. CP 1269-71. Campbell attended the *Loudermill* meeting with Lynn MacDonald, her union representative. CP 75. During the meeting, 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.

The District's Superintendent, Carla Santorno, is the final decision-maker with respect to teacher discipline. CP 571-72. Ms. Elijah recommended that the District impose a suspension on Campbell, although she believed that sufficient grounds to terminate Campbell had been established. CP 77. On December 5, 2012, Superintendent Santorno issued a probable cause notice pursuant to RCW 28A.405.300, informing

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[1] *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.

[2] A copy of the *Loudermill* notice is attached as **Appendix A.**

Campbell that she intended to impose a suspension of fifteen (15) days without pay.[3] 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.

C. HEARING OFFICER DECISION AFFIRMING DISTRICT

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 in this matter, Judge Terry Lukens (ret.), issued his final findings of fact and conclusions of law.[4] CP 13-20. Judge Lukens determined that there was sufficient cause to discipline Campbell based on her admitted failure 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. CP 19. Judge Lukens entered the following findings of fact, which have never been challenged by Campbell:

> 23. Ms. Campbell was also taking numerous other mediations (Ex. 20) that she did not report to Ms. Sulkosky either as to type or charge.
>
> 24. Ms. Campbell was originally charged with vehicular assault, a felony. She ultimately entered a plea of guilty to vehicular assault under RCW 46.62.522(1)(c), the non-violent prong. That is also a felony and she was

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

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

sentenced to 30 days of electronic home monitoring, with no jail time.

25. As part of the plea, the state issued amended information, explaining some of the evidentiary problems with the case and the absence of a "per se" amount 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* hearing, 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.

CP 16. Based on the above unchallenged findings, Judge Lukens concluded as follows:

> 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 entered a conclusion of law 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 might adversely affect her ability to perform work in a safe or productive manner." CP 19. Although he rejected the District's other bases for disciplining Campbell, Judge Lukens upheld the District's proposed disciplinary action, concluding that "[a]ny one of the bases set forth in the Probable Cause Letter is sufficient to support the proposed discipline." CP 20.

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 failed to challenge Judge Lukens' Findings

of Fact Nos. 23-35, referenced above. Likewise, Campbell never argued that Policy 5201 was unconstitutionally vague.

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.[5] 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. 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. The District now appeals both of the Superior Court's decisions. CP 1338-52, 1484-1500.

IV. ARGUMENT

The court below erred in reversing the Hearing Officer's decision. Preliminarily, the court held Policy 5201 unenforceable by applying a rigorous constitutional vagueness standard intended only for criminal statutes, which has no application to an employment policy. Policy 5201 is

[5] A copy of the Superior Court's final judgment reversing Judge Lukens' decision is attached as **Appendix D**.

not impermissibly vague according to well settled case law that the Superior Court never considered. The court disregarded the plain language of the policy, which clearly notifies District employees that drugs that must be reported to a supervisor include those "which are known or advertised as possibly affecting judgment, coordination, or any of the senses, including those which may cause drowsiness or dizziness." The court below also ignored the applicable "clearly erroneous" standard of review, giving no deference to the Hearing Officer's factual findings supporting his conclusions that Campbell violated the policy and that the District had probable cause to impose discipline, even though those findings were unchallenged by Campbell and supported by substantial and compelling evidence. Consequently, this court should reverse the Superior Court and reinstate the Hearing Officer's decision upholding the District's imposition of a fifteen-day suspension without pay and three years of random drug testing.

A. STANDARD OF REVIEW TO BE APPLIED TO HEARING OFFICER'S DECISION

A Hearing Officer's decision to uphold an adverse change in a teacher's contract may be overturned only if the decision was:

(1) In violation of constitutional provisions; or
(2) In excess of the statutory authority or jurisdiction of the board or hearing officer; or
(3) Made upon unlawful procedure; or

(4) Affected by other error of law; or
(5) Clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order; or
(6) Arbitrary or capricious.

RCW 28A.405.340. The court's review is confined to the Hearing Officer's decision, the verbatim transcript, and the evidence admitted at the hearing. *Id.* This court "reviews the findings and conclusions of the hearing officer; it owes no deference to the superior court's decision." *Griffith v. Seattle School Dist. No. 1*, 165 Wn. App. 663, 671, 266 P.3d 932 (2011) (citing *Clarke v. Shoreline School Dist. No. 412*, 106 Wn.2d 102, 110-11, 720 P.2d 793 (1986)).

A court reviewing the factual determinations of a hearing officer considers whether those determinations are clearly erroneous. *Clarke*, 106 Wn.2d at 109. "When reviewing the application of the law to the facts, a reviewing court makes a de novo determination of the applicable law but gives deference to the hearing officer's factual determinations and reviews them under the 'clearly erroneous' standard." *Id.* (citing *Franklin County Sheriff's Office v. Sellers*, 97 Wn.2d 317, 329-30, 646 P.2d 113 (1982), cert. denied, 459 U.S. 1106, 103 S. Ct. 730, 74 L.Ed.2d 954 (1983)). A factual determination is "clearly erroneous" only if it is not supported by

substantial evidence in the record. *Schlosser v. Bethel School Dist.*, 333 P.3d 475, 482 (Wash. App. 2014).

B. THE SUPERIOR COURT ERRED WHEN IT HELD THAT POLICY 5201 IS UNENFORCEABLE BASED ON A STANDARD OF CONSTITUTIONAL VAGUENESS THAT APPLIES ONLY TO CRIMINAL STATUTES

Without undertaking any analysis of what level of constitutional review for vagueness should be applied to an employment policy, the Superior Court determined that District Policy 5201 was impermissibly vague. CP 1346-48. The only authority cited by the court in reaching this conclusion was *City of Spokane v. Douglass*, 115 Wn.2d 171, 795 P.2d 693 (1990), a case in which a property owner who had been criminally charged by the City of Spokane challenged the constitutionality of the City's nuisance ordinance on vagueness grounds. *Id.* at 174-75. Given that the court relied on a case involving a challenge to a criminal ordinance, the standard of review that it applied to find Policy 5201 vague was whether "persons of ordinary intelligence are obliged to guess as to what conduct the ordinance proscribes." CP 1346.

This rigorous standard of constitutional review for vagueness has no application to an employment policy, such as Policy 5201. As the Washington Supreme Court in *Douglass* explained, "[t]he requirement that penal statutes define a criminal offense with sufficient definiteness,

i.e., provide fair warning, protects individuals from being held criminally accountable for conduct which a person of ordinary intelligence could not reasonably understand to be prohibited." *Id.* at 178 (emphasis added). However, "[a] greater degree of ambiguity will be tolerated in statutes which ... merely impose civil as opposed to criminal penalties." *Big Bear Super Market No. 3 v. I.N.S.*, 913 F.2d 754, 757 (9th Cir. 1990). Lesser degrees of specificity are required to overcome a vagueness challenge where only civil penalties are available, because the consequences of violating a criminal statute or ordinance are more severe. *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99, 102 S. Ct. 1186, 71 L.Ed.2d 362 (1982).

Policy 5201 is not a criminal statute, but rather a policy governing the terms and conditions of employment at the District. In the case at bar, the Superior Court failed to consider the seminal case specifying the appropriate level of constitutional review for vagueness in the employment context, *Arnett v. Kennedy*, 416 U.S. 134, 94 S. Ct. 1633, 40 L.Ed.2d 15 (1974), overruled on other grounds, *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L.Ed.2d 494 (1985). In *Arnett*, the plaintiff challenged as unconstitutionally vague a civil service statute that authorized the removal or suspension without pay of federal employees "for such cause as will promote the efficiency of the service."

Arnett, 416 U.S. at 158. Rejecting the plaintiff's vagueness challenge to this statute, the Court reasoned:

> [T]here are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest. "[T]he general class of offense to which ... [the provisions are] directed is plainly within [their] terms ..., [and they] will not be struck down as vague, even though marginal cases could be put where doubts might arise." *United States v. Harris*, 347 U.S. 612, 618, 74 S. Ct. 808, 98 L.Ed.2d 989 (1954).
>
> Congress sought to lay down an admittedly general standard, not for the purpose of defining criminal conduct, but in order to give myriad different federal employees performing widely disparate tasks a common standard of job protection. We do not believe that Congress was confined to the choice of enacting a detailed code of employee conduct, or else granting no job protection at all.

Id. at 159. Subsequently, courts have followed the holding of *Arnett* to uphold broadly worded employment policies and rules over vagueness challenges.[6]

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[6] *See, e.g.*, *Borden v. School Dist. of East Brunswick*, 523 F.3d 153,166-67 (3d Cir. 2008)(holding that policy providing that school district employees "cannot participate in student-initiated prayer" was not unconstitutionally vague); *Tindle v. Caudell*, 56 F.3d 966, 972 (8th 1995); *San Filippo v. Bongiovanni*, 961 F.2d 1125 (3d Cir. 1992), *cert. denied*, 406 U.S. 908, 121 L.Ed.2d 228, 113 S. Ct. 305 (1992) (upholding university regulations relating to dismissal of tenured professor); *Wishart v. McDonald*, 500 F.2d 1110, 1116-17 (1st Cir. 1974) (holding that school district policy prohibited "conduct unbecoming a teacher" not unconstitutionally vague); *Coover v. Saucon Valley Sch. Dist.*, 955 F. Supp. 392, 401-02 (E.D. Penn. 1997) (holding school district policy prohibiting "political activities upon property of the Board" not unconstitutionally vague).

For example, in *San Filippo v. Bongiovanni*, 961 F.2d 1125 (3d Cir. 1992), *cert. denied*, 406 U.S. 908, 121 L.Ed.2d 228, 113 S. Ct. 305 (1992), the Third Circuit Court of Appeals upheld a public university's regulation allowing dismissal of tenured professors for "failure to maintain standards of sound scholarship and competent teaching, or gross neglect of established University obligations appropriate to the appointment, or incompetence, or conviction of a crime involving moral turpitude." *San Filippo*, 961 F.2d at 1128. In doing so, it explained:

> In the public employment context, the Supreme Court has reiterated that the vagueness doctrine is based on fair notice that certain conduct puts persons at risk of discharge. Such standards are not void for vagueness as long as ordinary persons using ordinary common sense would be notified that certain conduct will put them at risk of discharge. *Arnett*, 416 U.S. at 159. Accordingly, broad public employee dismissal standards have been upheld against void for vagueness attacks.

Id. at 1136.

Whether Policy 5201 is unenforceable due to unconstitutional vagueness is a question of law, which this court reviews de novo. *Clarke*, 106 Wn.2d at 109; *Amunrud v. Board of Appeals*, 158 Wn.2d 208, 215, 143 P.3d 571 (2006) ("Constitutional challenges are questions of law subject to de novo review."). Here, the court committed error when it applied the same level of constitutional review to Policy 5201 as would be applied to a criminal statute in order hold that the policy was

impermissibly vague. The court reached this erroneous conclusion *sua sponte* and without considering the above authorities, which establish the appropriate less stringent level of constitutional review for an employment policy.

For example, the court criticized Policy 5201 as exceedingly vague because of multiple interpretations that could be attributed to the meaning of the simple word "taking," when referring to consumption of drugs and medications. CP 1348. The court's analysis would require that the District's policies, which are meant to be succinct and readable documents for employees, must be converted into codes that instead resemble complex statutes or ordinances. While this level of detail might be appropriate for a statute or ordinance that carried criminal penalties, it is far too onerous a standard for an employment policy.

Moreover, in *Arnett* the Supreme Court explained that if an employee's conduct clearly falls within an employment rule's prohibitions, the rule "will not be struck down for vagueness even though marginal cases could be put where doubts might arise." *Arnett*, 416 U.S. at 159. Even in criminal cases involving vagueness challenges, the court determines whether the statute or ordinance is impermissibly vague as applied to the party challenging it and not in a general sense: "the ordinance is tested for unconstitutional vagueness by inspecting the actual

conduct of the party who challenges the ordinance and not by examining hypothetical situations at the periphery of the ordinance's scope." *Douglass,* 115 Wn.2d at 182 (citations omitted).

Policy 5201 is not vague as applied to Campbell under the undisputed facts of this case. Campbell admitted to using Xanax and Ambien in the early morning hours of November 2, 2011 and/or the preceding evening.[7] Moreover, Dr. Buvanendran testified that in addition to taking Nycenta orally, Campbell had taken narcotic and opioid derivative drugs intrathecally with her pain pump since at least 2010. These intrathecal drugs, Dr. Buvanendran explained, are administered to Campbell continuously. Thus, the court's discussion of what meaning should be attributed to the word "taking," which it determined was vague, is a purely hypothetical dilemma not implicated by the facts of this case. There was no testimony or evidence that Campbell was confused or otherwise uncertain whether Policy 5201 required that she report to the District the multitude of controlled substances she was "taking," and there

[7] Medications Campbell testified to consuming the night before the collision and/or early on the morning of the collision included Xanax and Ambien. CP 124-25. Moreover, Campbell testified that she had a pain pump that administered drugs to her ever since October 2007, and that she regularly took oral pain medications along with the medications administered through the pump. While Campbell claims she did not actually consume the oral pain medications "during the work day," she regularly consumed four to six pills of pain medications, such as Nucynta, per day until recently receiving a new pain pump in April 2013. CP 96-98. With her newer pump, Campbell claims to need four to six oral pain medication pills per week. CP 98.

was no dispute that she "took" those substances under any ordinary understanding of the word. While it may theoretically be possible to conceive of differences of opinion over the meaning of the word "taking" under hypothetical scenarios, holding the policy unenforceable as to Campbell is error where the undisputed evidence shows that her conduct fell squarely within its prohibitions.

The Superior Court also found Policy 5201 vague, because "[t]here is no language specifying a requirement to report specific names of drugs or dosages." CP 1347. Thus, the court's holding would require that the District's policy identify by name each and every drug or medication that might adversely affect an employee's ability to perform work in a safe or productive manner in order for the policy to be enforceable. Given the myriad drugs and medications that have the potential to have such effects on employees, the lower court's holding effectively eliminates the District's ability to implement such a policy to protect its students. In *Arnett*, the Supreme Court rejected the notion that employers must either proscribe a "detailed code of employee conduct" or else impose no requirements at all, given that the purpose of an employment policy or rule is not to define criminal conduct. *Arnett*, 416 U.S. at 159. The exacting level of detail that the Superior Court would require of the District's policy is contrary to *Arnett*, and this court should reject its analysis for the

same reasons that the Supreme Court rejected the plaintiff's arguments in that case.

Policy 5201 puts a District staff member on notice that he or she may be disciplined and/or discharged for failing to report taking drugs or medications "which may adversely affect that staff member's ability to perform work in a safe or productive manner."[8] The policy is far more specific in terms of its prohibitions than those discussed in *Arnett* and the other cases where vagueness challenges were rejected *supra*, given that it clarifies that "[t]his 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." (Emphasis added.) Anyone of ordinary intelligence is capable of verifying whether a drug or medication is "known or advertised" to have these side-effects by reading the prescription for the medication, by reading the container the medication was in, by consulting widely published consumer information, or by discussing the potential side-effects with a physician. As the November 2, 2011 collision plainly illustrates, many of the substances

[8] Notably, teachers must provide similar information when they complete the application required by the Washington State Office of Superintendent for Public Instruction for certification. The application requires that applicants answer the following question: "If you use chemical substance(s), does this use in any way impair or limit your ability to serve in a certificated role with reasonable skill and safety?" A copy of the Application for Washington State Teacher Certification and Character and Fitness Supplement is attached as **Appendix E.**

Campbell was consuming had the potential to adversely affect her ability to perform work in a safe and productive manner, and they were "known or advertised" to have side-effects that the District's policy specified as requiring disclosure.

C. THE COURT ERRED BY REVIEWING FINDINGS OF FACT TO WHICH CAMPBELL NEVER ASSIGNED ERROR

As explained above, Campbell never assigned error to the findings of fact that supported the Hearing Officer's decision in this case. 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.*

Had the Superior Court properly accepted all of the unchallenged findings of fact entered by Judge Lukens as verities, it would have had no

choice but to uphold his conclusion that the District had sufficient cause to impose discipline on Campbell for her conduct. Thus, the Superior Court's decision should be reversed for failing to apply the appropriate standard of review to the Hearing Officer's legal conclusion in light of the unchallenged findings of fact, which conclusively established that Campbell failed to report taking drugs to her supervisor in violation of Policy 5201.

D. THE COURT ERRED BY SUBSTITUTING ITS OWN JUDGMENT FOR THAT OF THE HEARING OFFICER ON FACTUAL FINDINGS THAT WERE SUPPORTED BY SUBSTANTIAL EVIDENCE

Even assuming that the Superior Court properly reviewed the Hearing Officer's decision despite Campbell's failure to challenge his findings of fact, it erred when it concluded that there was "no cognitive [sic] evidence to support allegations that Ms. Campbell violated Policy 5201." CP 1348. The substantial evidence standard applicable in administrative proceedings requires a reviewing court to determine whether there is "'evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premises.'" *Heinmiller v. Dept. of Health*, 127 Wn.2d 595, 607, 903 P.2d 433 (1995)(quoting *Nghiem v. State*, 73 Wn. App. 405, 412, 869 P.2d 1086 (1994)). The court must "view 'the evidence and the reasonable inferences therefrom in the light

most favorable to the party who prevailed in the highest forum that exercised fact-finding authority, a process that necessarily entails acceptance of the factfinder's views regarding the credibility of witnesses and the weight to be given reasonable but competing inferences.'" *Freeburg v. City of Seattle*, 71 Wn. App. 367, 371-72, 859 P.2d 610 (quoting *State ex. Rel. Lige & Wm. B. Dickson Co. v. County of Pierce*, 65 Wn. App. 614, 619, 829 P.2d 217 (1992)). Because the District prevailed before the Hearing Officer, this standard requires that all evidence and reasonable inferences therefrom be viewed in the light most favorable to the District.

In reviewing the Hearing Officer's decision, the Superior Court determined that the District was required to proffer expert testimony that the drugs Campbell admitted to using had side-effects, such as drowsiness or dizziness, to establish that she was required to report them to her supervisor. CP 1349-50. Because the District did not call a physician to testify at the hearing, ostensibly the court found that substantial evidence was lacking to establish a violation of the policy.[9] However, this holding completely disregards the critical language of Policy 5201.

[9] In its written decision, the Superior Court noted that the District "did not call any medical experts or medical witnesses to explain or substantiate the 'side-effects' of Terri Campbell's medications that [District] Director of Employee and Labor Relations Gayle Elijah downloaded from an unknown, unidentified website." CP 1350.

Policy 5201 specifically defines drugs or medications that must be reported to an employee's supervisor to include those "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). While the District agrees that a lay witness would not be able to render an expert opinion that a drug actually caused particular side-effects for Campbell on the date of the accident, a lay witness is perfectly capable of verifying that a drug is known or advertised to have specific side-effects. In fact, the federal government requires that such information be provided by drug manufacturers to lay consumers, so that they will be able to understand relevant risks and make informed choices about drugs they consume.[10] This is precisely the type of information Ms. Elijah consulted when she ascertained the known and advertised side-effects of Campbell's medications online.

Ms. Elijah testified that she verified the "known and advertised" side-effects of the medications using an online resource. CP 75-76. As noted by the Hearing Officer, Campbell never disputed that the drugs had such side-effects, either at the *Loudermill* hearing or the hearing he

[10] The Food and Drug Administration (FDA) has adopted regulations that require drug manufacturers to label prescription drug products to include information about "any relevant hazards, contraindications, side effects, and precautions." 21 CFR § 801.109 (c). FDA regulations also require that prescription drug advertisements include similar information about side-effects. 21 § CFR 202.1 (e).

presided over. CP 16. Perhaps more importantly, Campbell herself admitted in in her guilty plea that she believed that "everything combined," which she described as including the "pain killers" she was taking and THC from marijuana she had consumed, caused her to "black out" at the time of the November 2, 2011 collision. CP 785.

Construing the evidence, testimony, and all reasonable inferences in favor of the District, as the court must, requires that it uphold Judge Lukens' determination that Campbell violated Policy 5201. The evidence was clear that Campbell never reported any of the controlled substances she had taken. Drugs that she failed to report included not only those taken at the time of her November 2, 2011 collision, but also those that she had continuously been taking long before that time. The Superior Court overstepped the proper bounds of its appellate review, and this court should consequently reverse the judgment below and reinstate the Hearing Officer's decision.

E. THE DISTRICT'S CHOICE OF DISCIPLINE IS NOT PROPERLY BEFORE THE COURT

In the Superior Court, Campbell challenged not only the District's determination of probable cause but also its choice of sanctions. Neither the Hearing Officer nor the court can properly review this issue. This court's prior case law establishes that review of the District's action is

limited to its determination of probable cause. Additionally, Campbell's claim that the District's requirement for drug testing violates the Collective Bargaining Agreement (CBA) is itself precluded by the CBA, which requires that she grieve such a claimed violation in accordance with its four-level grievance process.

1. Review of the District's Action is Limited to its Determination of Probable Cause and Does Not Include the District's Choice of Sanction

In the Superior Court, Campbell complained about the District's choice of disciplinary sanctions. Because the court held that there was insufficient evidence to impose any sanction, it did not specifically reach this argument. CP 1334-35.[11] As explained above, the Superior Court's holding that the District lacked probable cause was error and should be reversed. Moreover, the District's choice of sanction is not a proper subject of review for either the Hearing Officer or the court:

> . . . Simmons argues that the hearing officer could have prescribed a sanction less severe than a discharge. However, determination of the sanction to be imposed is within the province of the District; review of the District's action, both by the hearing officer and by the superior and appellate courts, is limited to a determination of whether

[11] While the Superior Court's decision reflects that it did not reach this argument in light of its determination that probable cause did not exist to sanction Campbell, one of the headings in its decision indicates that the District's decision to require random drug testing was "ultra vires." CP 1334. Moreover, despite not reaching the issue, the Superior Court's decision reflects that it agreed with Campbell that it had the authority review the District's choice of sanction separately from its review of whether the District had probable cause to impose a sanction. CP 1335.

there was cause to impose a sanction.

Simmons v. Vancouver School District No. 37, 41 Wn. App. 365, 380, 704 P.2d 648 (1985) (citing *Clark v. Central Kitsap Sch. Dist. 401*, 38 Wn. App. 560, 686 P.2d 514, *review denied*, 103 Wn.2d 1006 (1984)). Thus, once the court finds that there was probable cause for the District to impose a sanction, the court's inquiry is complete and it should affirm. Neither the court nor the Hearing Officer has authority to substitute its judgment for that of the District to determine whether or not the sanction imposed was appropriate.

Contrary to the holding of *Simmons*, Campbell relied on *Griffith* to argue that the Superior Court may review the District's choice of discipline even where sufficient cause to impose a sanction is affirmed. CP 1014-15 (citing *Griffith*, 154 Wn. App. at 675). *Griffith* is a Division I decision, whereas *Simmons* was decided by Division II. To the extent that there is a split in authority between divisions of the Court of Appeals, this court should follow its own prior holding in *Simmons*.

2. Campbell's Complaint Regarding the District's Requirement that She Submit to Drug Testing is Preempted by the Applicable Collective Bargaining Agreement

In the Superior Court, Campbell also specifically complained that the District's imposition of random drug testing as part of its sanction was

unlawful, because it was not permitted by the CBA. However, any challenge to the sanction as a CBA violation is preempted by the CBA itself, which required Campbell to follow a four-step grievance process to litigate claimed CBA violations. Campbell admittedly ignored this process and cannot now challenge the testing requirement in court. 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 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. If Campbell had a legitimate challenge to the imposition of drug testing as a violation of the CBA or as an unfair labor practice[12], she waived these claims by failing to pursue them in the appropriate forum. Given that Campbell failed to exhaust the administrative remedies specifically afforded to her, this court must decline to review any alleged CBA violations claimed by her.

F. THE DISTRICT'S SANCTION WAS NEITHER ARBITRARY NOR CAPRICIOUS

Even if this court accepts Campbell's argument that it may review the appropriateness of the District's sanction, the sanctions imposed by the District are neither arbitrary nor capricious and should be upheld. "An agency's decision is arbitrary and capricious if it results from willful and unreasoning disregard of the facts and circumstances." *Probst v. Dept. of Retirement Systems*, 167 Wn. App. 180, 191-92, 271 P.3d 966 (2012). "'Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.'" *City of Redmond v. Cent. Puget Sound*

[12] Notably, Campbell also failed to file any complaint with the Public Employment Relations Commission asserting an unfair labor practice.

Growth Mgmt. Hearings Bd., 136 Wn.2d 38, 47, 959 P.2d 1091 (1998)(internal quotation marks omitted)(quoting *Kendall v. Douglas, Grant, Lincoln & Okanogan Counties Pub. Hosp. Dist. No. 6*, 118 Wn.2d 1, 14, 820 P.2d 497 (1991)).

Here, the District learned that Campbell had failed to comply with Policy 5201 not merely on one occasion, but for years. It only learned of her failure to comply after she admittedly "blacked out" and had a serious head-on collision while on her way to work. Campbell herself admitted in her guilty plea that she believed that her undisclosed drug use contributed to the collision. Under these undisputed facts, imposing a fifteen-day suspension and a requirement for random drug testing is neither arbitrary nor capricious. Campbell's claim that the District's choice of sanction is too harsh is inconsistent with *Griffith*, which upheld a teacher's suspension and recognized that the degree of probable cause necessary to support a suspension is less than what would be required to support a termination. *Griffith*, 165 Wn. App. at 674-75.

To argue that the District's action was unwarranted, Campbell relies on the fact that no other teacher has been disciplined for similar conduct by the District in the past ten years. However, this fact alone does not establish that the sanction was arbitrary or capricious. There was no evidence at the hearing that the District had notice of any other employee

who had engaged in conduct similar to Campbell's within the last ten years. Without some showing that she has been treated differently from other similarly situated employees, Campbell cannot show that the District is enforcing the policy in an arbitrary and capricious manner. *See Griffith*, 165 Wn. App. at 675 (holding suspension of teacher was not arbitrary and capricious where it was consistent with discipline on another teacher who had engaged in similar conduct). Hence, if the court reviews the District's choice of sanction, it should affirm the sanction based on the lack of any showing that it was arbitrary or capricious.

G. THE SUPERIOR COURT ERRED IN AWARDING ATTORNEY'S FEES TO CAMPBELL

The Superior Court also erred by awarding attorney's fees to Campbell under RCW 28A.405.350, which provides:

> If the court enters judgment for the employee, and if the court finds that the probable cause determination was made in bad faith or upon insufficient legal grounds, the court in its discretion may award to the employee a reasonable attorneys' fee for the preparation and trial of his or her appeal, together with his or her taxable costs in the superior court.

RCW 28A.405.350. The Superior Court made no findings in support of its award, as the statute requires by its plain language, and thus the specific basis for awarding costs and attorney's fees under the statute remains unclear. This court reviews the lower court's application of court

rules and statutes authorizing attorney fee awards de novo as a question of law. *Huntington v. Mueller*, 175 Wn. App. 77, 80-81, 302 P.3d 530 (2013).

As a preliminary matter, if this court reverses the Superior Court's judgment and reinstates the decision of the Hearing Officer, obviously it must also reverse the Superior Court's award of costs and attorney's fees to Campbell. Where the District prevails, the statute does not authorize an award of costs or attorney's fees to an employee.

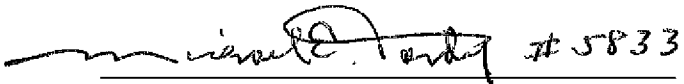
However, even if the court affirms the Superior Court's underlying decision, the court's award of attorney's fees must be reversed by this court, because the statute does not authorize them here. There was neither any evidence nor any finding by the court that the District, which conducted an extensive investigation of Campbell's conduct, engaged in bad faith when it determined that probable cause existed to discipline her. Additionally, the District clearly did have "legal grounds" to impose a sanction, where its long-standing policy required Campbell to report her drug use. Moreover, the Superior Court reversed the Hearing Officer not based on "bad faith" or "insufficient legal grounds," but rather because she determined Policy 5201 to be vague and that the District presented insufficient evidence to establish that the policy had been violated. Even if this court accepts the Superior Court's misguided conclusion that Policy

5201 was too vague, its findings do not support an award of attorney's fees and costs as provided in RCW 28A.405.350. Thus, whether or not this court reverses the Superior Court's underlying decision, it must reverse the award of fees and costs.

V. CONCLUSION

The Superior Court's decision ignored both the applicable law and the standards of review defining the scope of an appeal under RCW 28A.405.350. Because the District had probable cause to impose discipline on Campbell based on her admitted violations of Policy 5201, this court should reverse the judgment and award of costs and attorney's fees below and reinstate the Hearing Officer's decision.

RESPECTUFLLY SUBMITTED this 14th day of November, 2014.



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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 November 17, 2014, I served the foregoing Corrected Appellant's Brief 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 Attorneys for Plaintiff	_x_ Email ___ Messenger ___ 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 17th day of November, 2014, at Seattle, Washington.

KRISTY JENNE

APPENDIX A

Learning and Leadership
Tacoma Public Schools
Human Resources/Personnel
601 S 8th St • PO Box 1357
Tacoma, WA 98401-1357
253 571 1250 • Fax 253 571 1453

September 26, 2012

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

Hand Delivery, Certified and Regular US Mail

Dear Ms. Campbell,

Tacoma School District ("the District") has been investigating allegations that you reported to work or intended to report to work under the influence of illegal chemical substances and opiates and that you reported 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. During the course of this investigation, the District also became aware of allegations that you 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; that you failed to report your conviction for a drug-related offense to the District; and that you violated the directives given to you when you were placed on administrative leave on January 5, 2012. Additionally, the District has reason to believe that you no longer meet the continuing requirement of good moral character and personal fitness for being a certificated teacher as required under Washington regulation because you have been convicted of a crime that materially and substantially impaired your worthiness and ability to serve as a professional within the public and private schools of the state.

Based upon the information the District is aware of to date, the District is considering terminating your employment as a certificated teacher. The purpose of this letter is to provide you with written notice of the issues of concern identified in the investigation and the evidence that the District believes sets forth cause for your termination. Prior to the District making the final determination if discipline will be imposed against you and if so, what the appropriate disciplinary sanction would be, you will have an opportunity to present your case and address these allegations. The date and time for this meeting is identified at the end of this letter.

ALLEGATIONS 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 (attached hereto and incorporated herein). 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 (attached hereto and incorporated herein).

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 of 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" (attached hereto and incorporated herein). 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 22, 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" (attached hereto and incorporated herein).

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 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 me, 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. 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" (attached hereto and incorporated herein). 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 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 given 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 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.

[Reports from both Physicians attached hereto and incorporated herein.]

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 (attached hereto and incorporated herein).

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.

(Complete IME Report attached hereto and incorporated herein.)

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 (attached hereto and incorporated herein). 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 the driver was injured substantially."

A Judgment and Sentence was issued to you on June 19, 2012 for the crime of Vehicular Assault (attached hereto and incorporated herein). 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 on June 19, 2012 to serve 5 days in jail was issued. Of those five days you were incarcerated, June 19, 20, 21, and 22 were school days. Contrary to the directives provided to you when you were placed on administrative leave on January 5, 2012, you did not notify me of this change in where you were residing nor were you available to meet with or receive calls from District administration during your regular work hours for those four days.

As of the writing of this letter, Ms. Sulkosky advises that to date you have never reported to her that you are taking any drugs or medications that might have adversely affected your ability to perform work in a safe or productive manner nor have you reported to her that you were taking a number of drugs that are known or advertised as possibly affecting judgment, coordination, or any of the senses, including those which may cause drowsiness or dizziness. As set forth above, according to your physicians, you were taking at least ten (10) different medications that are known or advertised as possibly affecting judgment, coordination, or any of the senses, including those which may cause drowsiness or dizziness.

DISTRICT'S CONCLUSIONS TO DATE

Based upon the information obtained during the investigation to date, the District has reason to believe that your conduct, collectively and individually, violates the following:

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

An employee shall not:

1. Falsify or omit material information from District records or any report or statement required of or submitted by the employee.

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.

15. Be absent without authorization or approved excuse.

20. Commit an act of moral turpitude.

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.

C. Using district property or the staff member's position within the district to make or traffic alcohol, illegal chemical substances or opiates.

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.

The District also believes that by failing to notify me of your incarceration from June 19 through June 22, you failed to follow the directives issued to you in the January 5, 2012 letter placing you on administrative leave (attached hereto and incorporated herein). That letter specifically stated that:

> While on administrative leave you are directed as follows:
> - Be available to meet with or receive calls from District administration during your regular work hours.
> - Notify Ms. Elijah of any changes in your current home address and telephone number.

It should be noted that 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.

Based upon the results of the IME, 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 oplates 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.[1] By your own

[1] You have never claimed to have had a prescription for medical marijuana, and neither of your providers have identified prescribing this to you. Regardless, it should be noted that the Washington Supreme Court has determined that the Washington State Medical Use of Marijuana Act ("MUMA") does not prohibit an employer from discharging an employee for use of medical marijuana. Roe v. Teletech Customer Care Management, LLC, 171 Wn 2d 736 (2011) The Court specifically noted that MUMA was passed only to provide an affirmative defense to criminal charges, and confirms that the statute explicitly states that it does not require accommodation of any medical use of marijuana in any place of employment and on any school grounds. The Court confirmed that MUMA was not passed to give employees a free pass to violate their employer's drug-free workplace policies, and that employers may continue to hold their employees – even those with a lawful medicinal marijuana prescription – accountable under their drug-free policies. Given that your employer is a school, there is simply no debate that MUMA does not provide any protection to you as a school employee for having used marijuana.

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.

Additionally, you reported on January 12, 2012 that you used marijuana eight days prior November 2, 2011. You were present at work on October 25, 2012, which was eight days prior to November 2, 2011. Thus, the District has reason to believe that it is possible that you actually came to work under the influence of marijuana, in addition to attempting to come to work on November 2, 2011 under the influence of marijuana and opiates. Based on the information provided by your medical providers, it also appears that 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 also appears that you have failed to comply with the requirements of Policy 5201 with respect to advising your supervisor of your use of a number of prescription opioid analgesics for pain management that on their own or in combination with illicit substances may have adversely affected your ability to perform work in a safe or productive manner. It also appears that you further violated Policy 5201 by failing to notify Ms. Sulkosky within five days of June 19, 2012 that you had been convicted of an offense related to your use of illicit substances.

Your use of sick leave of November 2, 2011 is also of concern. It would have been appropriate for you to stay home and not report to work that day because of the illness you reported to the responding Tacoma Police Department you were suffering from. However, rather than take leave that day, you engaged in course of conduct that resulted in your not being able to report to work because you had been arrested.

The District also has reason to believe that by failing to notify me of your incarceration on June 19, 2012, you not only violated the directives issued to you regarding informing me of where you were residing and maintaining your availability during regular work hours while on paid administrative leave, you fraudulently received four days of pay. It was impossible for you to fulfill your contractual obligations on the days you were incarcerated. Had you reported either your conviction within five days to Ms. Sulkosky (as required under Policy 5201) or advised me that you were unable to meet with or receive calls from District administration during your regular work hours and that your place of residence had become the Pierce County Jail (in compliance with the directives in the leave letter), you would have appropriately been placed on leave without pay status for those four days. Finally, your having been convicted of Vehicular Assault on June 19, 2012 for causing substantial bodily injury to another while driving to school under the influence of drugs raises question as to if you continue to meet the good moral character and personal fitness requirements that must be meet by all certificated school staff in the State of Washington.

A meeting is scheduled for Thursday, October 4, 2012 at 9:30 a.m. at Central Administration in the Fourth Floor Board Room, to allow you an opportunity to present any and all information that you believe the District should consider before making a determination as to if discipline should be imposed against you related to this incident, and

If so, what the specific disciplinary sanction should be. You have the right to have a representative of your choosing at this meeting.

Please confirm your intent to attend this meeting by calling me at 253.571.1237 or by emailing me at gelijah@tacoma.k12.wa.us no later than 4 p.m., October 2, 2012. If you fail to contact me or to attend this meeting, the District will assume that you are not contesting the allegations made against you or the evidence that was discovered during the course of the investigation and will move forward as if all of the allegations outlined in this letter are true. The District will also consider a failure to contact me or to attend the meeting to be a waiver of any rights you may have to contest the imposition of discipline under the collective bargaining agreement between the District and the Tacoma Education Association and the laws and regulations of the State of Washington

Sincerely,

Gayle Elijah

Gayle Elijah
Director of Human Resources

c: Lynne Rosellini, Assistant Superintendent of Human Resources
Patrice Sulkosky, Principal, Mason Middle School
Lynn Macdonald, Uniserv Representative

Teri Campbell
Employee Signature
Signature indicates receipt of this letter

September 27, 2012
Date

APPENDIX B

Every Student, Every Day.
Tacoma Public Schools
Carla Santorno
Superintendent
601 South 8th Street • PO 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.

EXHIBIT 9 Campbell

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,	JAMS No. 1160019122
and	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION [CORRECTED]
TACOMA SCHOOL DISTRICT, Respondent.	

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

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Campbell, Teri vs. Tacoma School District
Reference No. 1160019122

I, Michele Wilson, not a party to the within action, hereby declare that on August 22, 2013 I served the attached Findings of Fact, Conclusions of Law and Final Decision [Corrected] on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Seattle, WASHINGTON, addressed as follows:

Joseph W. Evans Esq.
L/O Joseph W. Evans
Box 519
Bremerton, WA 98337
Phone: 360.782-2418
joe@jwevanslaw.com
Parties Represented:
Teri Campbell

Gregory E. Jackson Esq.
Freimund, Jackson, Tardif, et al
711 Capitol Way S.
Suite 602
Olympia, WA 98501
Phone: 360-534-9960
GregJ@fjtlaw.com
Parties Represented:
Tacoma School District

I declare under penalty of perjury the foregoing to be true and correct. Executed at Seattle, WASHINGTON on August 22, 2013.

Michele Wilson
mwilson@jamsadr.com

APPENDIX D

HONORABLE KATHRYN J. NELSON
Department 13
Hearing Date: February 28, 2014

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

TERI CAMPBELL, Appellant, vs. TACOMA PUBLIC SCHOOLS, a/k/a TACOMA SCHOOL DISTRICT No. 10, Respondent.	JUDGMENT AND FINAL ORDER REVERSING HEARING OFFICER'S DECISION Case No.: 13-2-12835-2

Introduction

This is an RCW28A.405.320 appeal from the Statutory Hearing Officer's ("Hearing Officer") Findings of Fact, Conclusions of Law and Final Decision [Corrected] ("Decision"), dated August 22, 2013.[1] The appeal is governed by RCW 28A.405.340, "Adverse change in contract status of certificated employee . . . – Appeal from – Scope." Teri Campbell seeks reversal of the Hearing Officer's Decision of August 22, 2013, because it is "[a]ffected by... error of law" [RCW 28A.405.340(4)], "clearly erroneous" [RCW 28A.405.340(5)] and/or "arbitrary or capricious" [RCW 28A.405.340(6)].

[1] Administrative Record Pages (hereinafter "ARP") 0004-0012. (Each page of the Administrative Record has been numbered in the lower, left-hand corner, i.e., "Administrative Record Page 0004, No. 13-2-12835-2.")

The Court has thoroughly considered the administrative record on appeal, the briefs of the parties and the argument of counsel. For the reasons set out herein, the Hearing Officer's Decision is reversed, Teri Campbell is awarded damages for her lost compensation, and Teri Campbell is awarded attorney's fees and costs for the prosecution of her appeal pursuant to RCW 28A.405.350.

Facts

Teri Campbell started teaching in 2002. She has taught U.S. history, language arts, highly capable program, reading and social studies for Tacoma Public Schools ("TPS") at Mason Middle School since 2004.[2] In 2006, Teri Campbell was diagnosed with Guillain-Barré Syndrome, a debilitating disorder affecting the peripheral nervous system with symptoms of ascending paralysis and weakness in the feet, legs and hands.[3] Teri Campbell has treated symptoms with an intrathecal pump since 2007.[4] In 2007, Teri Campbell reported to her principal at Mason Middle School, Patrice Sulkosky, that she had an intrathecal pump that administered pain medications.[5]

On November 2, 2011, Ms. Campbell blacked out while driving to work and drove into oncoming traffic, causing an accident. As a result of this accident, she was placed on paid administrative leave from early-January 2012 through August 2012. Teri Campbell has never

[2] ARP 0489, lines 1-9, and ARP 0084, lines 17-22.
[3] Id.
[4] ARP 0087, lines 18-19.
[5] ARP 0501, lines 10-25; ARP 0502, lines 1-25; ARP 0503, lines 1-15, ARP 0526, line 2; and, ARP 0527, line 10.

had another "black out" episode as she did on November 2, 2011.[6] In August 2012, she returned to work at Mason Middle School.[7]

On December 5, 2012, the TPS issued a Notice of Probable Cause to Teri Campbell. This appeal concerns the only allegation that was affirmed by the Hearing Officer:

> • Teri Campbell failed to report to her supervisor that she was taking drugs or medications that may adversely affect her ability to perform in a safe or productive manner."[8]

TPS sought to impose a sanction of fifteen (15) day suspension without pay and random drug testing for three years.

The Hearing Officer's Decision

Following receipt of the December 5, 2013 Tacoma Public Schools Notice of Probable Cause, Teri Campbell filed a timely request for a RCW 28A.405.310 statutory hearing. That Hearing was held on May 30th and 31st, 2013, before Judge Terry Lukens (Ret.), who was selected by the parties to serve as the Statutory Hearing Officer. After Post-Hearing Briefing[9] and oral argument on Monday, July 29, 2013,[10] the Hearing Officer issued his Decision on August 22, 2013.[11]

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[6] ARP 0134, lines 20-25.

[7] Teri Campbell finished the school year with no problems, she continues to teach at Mason Middle School for the 2013-2014 school year. ARP 0165, lines 14-22.

[8] ARP 0765.

[9] Post-Hearing Briefing in this matter consisted of the following: Teri Campbell's Post-Hearing Brief (ARP 0821-0859), TPS's Post-Hearing Brief (ARP 0861-0882), Teri Campbell's Supplemental Brief Regarding "Conjunctive" Probable Cause (ARP 0813-0816) and TPS's Supplemental Authority (ARP 0818-0819).

[10] See, transcript of July 29, 2013 oral argument at ARP 0024-0058.

[11] ARP 0004-0012.

As to the allegation that Ms. Campbell violated TPS policy by failing to report the use of medications, the Hearing Officer stated:

> "**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."[12]

The Hearing Officer entered the following Conclusion of Law:

- "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."[13]

Therefore, in the Final Decision portion of his Decision, the Hearing Officer "found sufficient cause for [: (1)] discipline [; (2)] the decision of the District to suspend Ms. Campbell [for fifteen working days without pay[;] and [, (3)] impos[ing] a [random drug] testing requirement [for a period of three (3) years]. . . ."[14]

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[12] Id., ARP 0009.
[13] Id., ARP 0010.
[14] Id., ARP 0011.

Standard of Review

Any final decision of the Hearing Officer must be established by a preponderance of the evidence. RCW 28A.405.310(8). Gaylord v. Tacoma School District, 84 Wn.2d 348, 350, 535 P.2d 804, 806 (1975) [burden of proof is placed on the district and cause for discipline or discharge must be established by a preponderance of the evidence at the hearing] and Wojt v. Chimacum School District, 9 Wn.App. 857, 862 fn. 4, 516 P.2d 1099, 1103 fn.4 (Div. 2 1973) ["[B]urden of establishing sufficient cause . . . is upon the school district."]. The legislative purpose of these types of statutes is to prevent injustice from occurring. Wojt, *supra*, 9 Wn.App. at 862, 516 P.2d at 1103.

The Court may "reverse the decision [of the hearing officer] if the substantial rights of the employee have been prejudiced because the decision was . . . [a]ffected by other error of law . . . ." RCW 28A.405.340(4). Review is *de novo* in "determining whether the decision contains a legal error." Kittitas County v. Kittitas County Conservation, 176 Wn.App. 38, 308 P.3d 745, 748 (Div. 3 2013), citing RCW 34.05.570(3)(d) [formerly RCW 34.04.130(6)(d)] and Kittitas County v. Eastern Washington Growth Management Hearings Board, 172 Wn.2d 144, 155, 256 P.3d 1192, 1198 (2011). See, also, Spokane County v. Eastern Washington Growth Management Hearings Board, 176 Wn.App. 555, 309 P.3d 673, 678 (Div. 3 2013).

The Court may "reverse the decision [of the hearing officer] if the substantial rights of the employee have been prejudiced because the decision was . . . [c]learly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order...." RCW 28A.405.340(5). The APA's RCW 34.04.130(6)(e) clearly erroneous standard is identical to RCW 28A.405.340(5). See, Johns v. Employment

Security, 38 Wn.App. 566, 569-70, 686 P.2d 517, 520 (Div. 2 1984), which held that, "An administrative finding is 'clearly erroneous' when, though there is supporting evidence, a reviewing court considering the entire record, and the public policy of the legislation concerned, is left with a definite and firm conviction that a mistake has been made." See, also, State, Department of Revenue v. Martin Air Conditioning and Fuel Company, Inc., 35 Wn.App. 678, 682, 668 P.2d 1286, 1289-90 (Div. 2 1983) [factual questions associated with an issue of law means "[t]he clearly erroneous standard of review for factual questions governs."]; Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 274-75, 552 P.2d 674, 678-79 (1976) [clearly erroneous standard is broader than arbitrary or capricious standard because it mandates a review of the entire record and all the evidence; clearly erroneous standard also requires consideration of public policy which means that public policy is part of the standard of review]; and, State, Department of Ecology v. City of Kirkland, 8 Wn.App. 576, 580, 508 P.2d 1030, 1032 (Div. 2 1973) [clearly erroneous standard requires evaluation of the entire record, not just findings and/or conclusions].

The Court may reverse the decision of the hearing officer if the substantial rights of the employee have been prejudiced because the decision was... [a]rbitrary or capricious. RCW 28A.405.340(6). Under the arbitrary and capricious standard of review for administrative decisions, "this court 'determines whether the evidence presented adequately supports the action of the [hearing officer]'." Snider v. Board of County Commissioners of Walla Walla County, 85 Wn.App. 371, 377, 932 P.2d 704, 707 (Div. 3 1997), citing Norquest/RCA-W Bitter Lake Partnership v. City of Seattle, 72 Wn.App. 467, 476, 865 P.2d 18, 24 (Div. 1 1994), *review denied*, 124 Wn.2d 1021 (1994).

Issues on Appeal

Ms. Campbell appeals the Hearing Officer's finding that she was subject to discipline for violation of policy 5201 "Drug-Free Schools, Community and Workplace." First, Ms. Campbell argues that the policy is void for vagueness. Second, Ms. Campbell argues that if the policy is not void, TPS did not provide cognitive evidence that Ms. Campbell had violated that policy. Third, Ms. Campbell argues that requiring her to submit to three years of mandatory drug testing is contrary to Washington State law and public policy.

Decision

A. Policy 5201 "Drug-Free Schools, Community and Workplace" reporting requirement is vague so that enforcement would be arbitrary and violate public policy.

Tacoma Public Schools' Policy No. 5201, "Drug-Free Schools, Community and Workplace," is the *sine qua non* for the District's efforts to impose discipline in this matter. Yet, this policy is fatally flawed due to vagueness. The policy is vague, meaning that persons of ordinary intelligence are obliged to guess as to what conduct the ordinance proscribes. City of Spokane v. Douglass, 115 Wn.2d 171, 795 P.2d 693 (Wash. 1990). There are several reasons that the policy is vague.

First, the policy leaves persons of ordinary intelligence guessing who determines which drugs or medications "may adversely affect [a teacher's] ability to perform work in a safe or productive manner", by failing to identify such a person. If it is the teacher or her treating physicians that identify whether a drug may adversely affect her ability to perform, the record overwhelmingly supports a finding that Ms. Campbell did not fail to report.

Ms. Campbell testified that the painkillers administered by her pump did not affect her ability to perform.[15] She also testified that she had never taken Xanax for her anxiety while she was at school.[16] Ms. Campbell's treating physician provided letters reporting that she was on a stable opioid treatment that would not negatively affect her ability to perform her job.[17]

If the supervisor or HR department determines which drugs must be reported, that determination should be supported by expert medical testimony. TPS's failure to present expert medical testimony at the hearing is discussed below at greater length.

Second, the policy fails to mandate any degree of specificity for reporting, leaving persons of ordinary intelligence to guess at what would constitute sufficient reporting. There is no language specifying a requirement to report specific names of drugs or dosages. The purpose of the policy is to make supervisors aware of the situation so that the teacher could be monitored for adverse affects.[18] This is not a case in which the employee's supervisor had no knowledge that the she was taking drugs for chronic pain. Ms. Campbell's supervisor was aware of that Ms. Campbell was on a pump of "pain killers" and frequently used that knowledge to monitor Ms. Campbell.[19] It is unclear that further reporting, including greater

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[15] ARP 0088, lines 11-16.
[16] ARP 0141, lines 20-24.
[17] Dr. Frank Li, Seattle Pain Clinics, wrote, "medical treatment, including the [pain] prescriptions that I regulate for Teri's use, does not impair Teri's level of fitness for duty on a usual basis . . . . I am confident that Teri is able to work physically, emotionally, and mentally with the students in the Tacoma School District while taking her usual medications as prescribed. During the three plus years that I have been treating her, the patient has been on a stable medication regimen and has been able to work without impairment to her fitness for duty."ARP 0279-0281.
[18] ARP 0540-0541.
[19] ARP 0502, lines 15-20.

specificity, would have made any difference in the supervisor's response. This vagueness of the policy leads to arbitrary enforcement.

Third, the word "taking" is similarly vague. It leaves persons of ordinary intelligence to guess about what "taking" means. This word could be interpreted as broadly as requiring employees to report having taken medication one time during summer vacation or over the weekend, or as narrowly as meaning actively taking the medication while reporting to work. The Hearing Officer appears to fault Ms. Campbell under Policy 5201 for having Xanax readily available for her on a morning before she set foot on the school grounds and before she would have had the occasion to tell her principal that she had taken or was to take said prescribed medication. There is no cognizable evidence of what Teri Campbell intended to do with the Xanax found in her car after the accident on November 2, 2011, nor is there any cognizable evidence of what she would or would not have reported to Principal Patrice Sulkosky or left school had she then needed to take her Xanax medication.

This problem with Policy No. 5201 is made apparent by the unanswered testimony that the District has never disciplined an employee in the past ten years for failing to report "a drug or medication . . .which may adversely affect that staff member's ability to perform work in a safe or productive manner."

B. There is no cognitive evidence to support allegations that Ms. Campbell violated Policy 5201.

The rules of evidence applicable in the Superior Court apply to the admissibility of evidence. RCW 28A.405.310(7)(a). A Hearing Officer must rely on duly admissible evidence, not mere fiat, to support a decision. Jepson v. Department of Labor and Industries, 89 Wn.2d

394, 401, 573 P.2d 10 (1977). "[A] finding or conclusion... made without evidence to support it is arbitrary." Richard A. Finnigan *et al.*, Washington Administrative Law Practice Manual 9-38 (2006).

Physician's Deskbook Reference-type effects, without expert medical testimony, are not cognizable evidence. Clausing v. State, 90 Wn.App. 863, 869, 955 P.2d 394, 397 (Div. 1 1998) [expert testimony referencing Physician's Deskbook References dosages was cognizable evidence]. Speculation and/or conjecture by non-medical personnel is not cognizable evidence. Miller v. Staton, 58 Wn.2d 879, 886, 365 P.2d 333, 337 (1961) [medical testimony necessary to establish causal relationship -- speculation and conjecture not enough]; O'Donoghue v. Riggs, 73 Wn.2d 814, 824, 440 P.2d 823, 829 (1969) [medical testimony is necessary to prevent fact-finder from resorting to speculation or conjecture]; and, Bruns v. PACCAR, Inc., 77 Wn.App. 201, 214-217, 890 P.2d 469, 477-478 (Div. 1 1995) [medically complex reactions "lie[] beyond ordinary lay knowledge and require[] expert medical testimony to demonstrate a causal link"]

TPS Director of Employee and Labor Relations Gayle Ruth Elijah was the only source of the side-effects information on the medications that Teri Campbell was taking, and she obtained that information from an unknown, unidentified website.[20]

TPS Superintendent Carla Jo Santorno did not know where Tacoma Public Schools' side-effects information for the medications that Teri Campbell was taking came from.[21]

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[20] ARP 0064, lines 9-14, and ARP 0067, lines 4-8.
[21] ARP 0547, lines 16-25, and ARP 0548, lines 1-14.

TPS did not call any medical experts or medical witnesses to explain or substantiate the "side-effects" of Teri Campbell's medications that TPS Director of Employee and Labor Relations Gayle Elijah downloaded from an unknown, unidentified website.[22]

The letters from Teri Campbell's treating physicians were evidence that was properly before the District, the Hearing Officer and is properly before this Court in the form of impeachment by contradiction. Jacqueline's Washington, Inc. v. Mercantile Stores Company, 80 Wn.2d 784, 789, 498 P.2d 870, 873 (1972). "The substantive facts contained in [these] exhibits (variant statements . . . .) have direct and independent relevance to a material fact in issue." Id. The probative value of the statements made in the letters of Dr. Reineman and Dr. Li cannot be ignored because "[such] evidence . . . to impeach by mere contradiction constitutes an exception to the general rule and is competent to prove the substantive facts encompassed in such evidence." Id. Compare, Erickson v. Nationwide Mutual Insurance Company, 97 Idaho 288, 291, 543 P.2d 841, 844 (1975) [letter by doctor written to insurance company, at the request of the insurance company, was substantive evidence even though the doctor did not testify at trial].

The evidence shows that Teri Campbell was on a stable opioid therapy and other medications that would not adversely affect her judgment, coordination and senses.[23]

At the request of TPS, Teri Campbell's primary treating physician, Dr. Diane Reineman, in a letter dated January 13, 2012, eight (8) months before the *Loudermill* hearing in September 2012 and eleven (11) months before the TPS issued its December 5, 2012, Notice of Probable Cause, stated that Teri Campbell's "current medications taken as directed, that I

[22] ARP 0450 and ARP 0062-0063.
[23] ARP 0101, lines 2-25, and ARP 0102, lines 1-14.

regulate, do not impair Teri's ability to teach or her fitness for duty. Her medications or their interactions, do not affect her behavior to the extent that would impair her ability to work physically, mentally and emotionally with student[s] in the Tacoma School District."[24]

At the request of TPS, Teri Campbell's pain physician, Dr. Frank Li, Seattle Pain Clinic, in a letter dated January 20, 2012, eight (8) months before the *Loudermill* hearing and eleven (11) months before the TPS issued its December 5, 2012 Notice of Probable Cause, stated that Teri Campbell's "medical treatment, including the [pain] prescriptions that I regulate for Teri's use, does not impair Teri's level of fitness for duty on a usual basis . . . I am confident that Teri is able to work physically, emotionally, and mentally with the students in the Tacoma School District while taking her usual medications as prescribed. During the three plus years that I have been treating her, the patient has been on a stable medication regimen and has been able to work without impairment to her fitness for duty."[25]

C. A mandatory three-year, random drug-testing regimen for a teacher as part of a Title 28A RCW process is *ultra vires*.

Ms. Campbell argues that requiring drug-testing as part of a disciplinary action is contrary to Washington State law and public policy. She contends that drug–testing is a mandatory subject of collective bargaining, and because it was never negotiated in the collective bargaining agreement, TPS cannot require her to comply. City of Tacoma, 4539-A (PECB, 1994). Yakima Police Patrolmen's Ass'n v. City of Yakima, 153 Wn.App. 541, 547-548, 222 P.3d 1217, 1221-1222 (Div. 2 2009).

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[24] ARP 0276.
[25] ARP 0279-0281.

This Court agrees, "The choice of sanction is a policy decision made by the district that is reviewed to determine if it is arbitrary, capricious, or contrary to law." Griffith, *supra*, 165 Wn.App. at 675, 266 P.3d at 939, citing Butler v. Lamont School District, 49 Wn.App. 709, 712, 745 P.2d 1308, 1311 (Div. 3 1987). However, the cases cited by Ms. Campbell indicate that such a determination is applicable only after the Court has determined that probable cause existed for discipline. Here, the Hearing Officer's decision is reversed, because there is not substantial evidence to support disciplinary action. Additionally, TPS made no effort to support this particular sanction and omitted it in the proposed decision for this Court. Although Ms. Campbell's argument may have merit, the Court does not need to reach a conclusion regarding the argument.

Conclusion

For the reasons set out above, based on a review of the entire record in this matter, based upon the briefing of the parties in the appeal and the oral argument held on Friday, February 28, 2014, this Court hereby: (1) reverses the Decision of the Hearing Officer pursuant to RCW 28A.405.340(4), (5) and (6); (2) awards Teri Campbell damages for the loss of compensation;[26] and, (3) awards Teri Campbell reasonable attorney's fees and costs for the preparation and prosecution of her appeal pursuant to RCW 28A.405.350. Teri Campbell shall submit her Application for Fees and Costs within thirty (30) days of the date of this Order.

DATED this 17 of March, 2014.

HONORABLE KATHRYN J. NELSON

[26] TPS withheld one week's pay, then agreed to voluntarily stay the withholding of the remaining two weeks' pay during the pendency of this appeal.

FILED
DEPT. 13
IN OPEN COURT
MAR 17 2014
By DEPUTY

APPENDIX E

OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION
Professional Certification
OLD CAPITOL BUILDING, PO BOX 47200
OLYMPIA WA 98504-7200
(360) 725-6400 TTY (360) 664-3631
Web Site: http://www.k12.wa.us/certification/
E-Mail: cert@k12.wa.us

APPLICATION FOR WASHINGTON STATE TEACHER CERTIFICATION

Please complete the following questions and sign the affidavit.

Certificate requested: ☐ Residency ☐ Professional* ☐ Substitute

* For those who hold a National Board certificate or an Oregon CTL certificate.
See attached checklist for appropriate fee amount to submit with your application materials to the OSPI office.

1. NAME LAST	FIRST	MIDDLE	MAIDEN/FORMER NAME
2. ADDRESS			3. DATE OF BIRTH
CITY/STATE/ZIP			4. SOCIAL SECURITY NO. (OPTIONAL)
5. TELEPHONE: BUSINESS ( )	HOME ( )		6. E-MAIL

7. Have you ever held a Washington teacher, administrator, or educational staff associate certificate? 7. ☐ YES ☐ NO
If yes, what was your certificate number?

8. Have you held an educational certificate in another state? If yes, list all such states here. 8. ☐ YES ☐ NO
Complete Form SPI/CERT 4020C if you do not hold a currently valid Washington certificate.

9. From what regionally accredited college or university did you receive your bachelor's degree?

	Date

10. From what college/university did you complete your approved teacher preparation program (if different from No. 9 above)?

	Date

If you are applying for your first residency certificate, you must take and pass the three subtests (Reading, Math, and Writing) of the Washington Educator Skills Test—Basic (WEST-B) or equivalent within twelve months after submitting this application. You must also pass the WEST-E in each endorsement area for which you qualify.

11. Date you have taken or will take the WEST-B or CBEST or Praxis I:

12. Date you have taken or will take the WEST-E:

12. If you are applying for the professional certificate, a course or course work relating to issues of abuse is required. Indicate class title, date, and where (college, university, SD, etc.), requirement was completed.

CLASS TITLE	DATE	WHERE COMPLETED

DO NOT WRITE IN THIS SPACE BELOW

For Professional Education and Certification Use Only				
Type of Cert. Issued			Endorsement	Mailed:
Approved by	Date	State		Issued:
Materials Sent:				Codes:

A "RUSH" request can be accepted only for regular contracted employment.

13. Provide your employment history for the past ten years.

EDUCATIONAL EXPERIENCE - Please list your most recent experience first.

☐ I have not been employed in an educational setting in the past ten years.

Grades Taught	Dates of Employment	District	City/State	No. of Days If less than Full-Time	Type of Certificate Held

ATTACH ADDITIONAL SHEETS IF NECESSARY.

NON-EDUCATIONAL EXPERIENCE

☐ I have not been employed in a non-educational setting in the past ten years.

Employer or District	Dates of Employment	Name and Address of Immediate Supervisor
Position	Telephone No.	
Employer or District	Dates of Employment	Name and Address of Immediate Supervisor
Position	Telephone No.	

ATTACH ADDITIONAL SHEETS IF NECESSARY.

14. List the name of every community college and undergraduate and graduate institution you have attended in the space below and provide the additional information requested. Official transcripts (those with the college or university seal) must be submitted and attached to this page of your application.

Institution	Location City/State	Dates Attended From	To	Degrees Granted	Post BA Credits Earned Semester	Quarter	Transcript Enclosed

ATTACH ADDITIONAL SHEETS IF NECESSARY.

NOTE: YOU MUST INCLUDE OFFICIAL TRANSCRIPTS (ISSUED TO STUDENT). PHOTOCOPIES ARE NOT ACCEPTABLE. DEGREE TRANSCRIPTS AND THOSE WHERE YOU COMPLETED YOUR EDUCATION PREPARATION ARE REQUIRED.

AFFIDAVIT

I, _____, certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing and all information included in this application is true and correct. If the answers to any question on the application or the character and fitness supplement on the application change prior to my being granted certification, I must immediately notify Professional Certification at OSPI.

_____ _____

Signature Date City/State

THIS FORM MUST BE INCLUDED IN THE APPLICATION PACKET. ATTACH YOUR CHECK TO THIS FORM.

APPLICATIONS RECEIVED THAT DO NOT INCLUDE ALL OF THE REQUESTED MATERIALS WILL BE RETURNED TO THE APPLICANT.

OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION
Professional Certification
Office of Professional Practices
Old Capitol Building, PO BOX 47200
OLYMPIA WA 98504-7200
OPP (360) 725-6130 TTY (360) 664-3631
Web Site: http:/ /www.k12.wa.us/certification
E-Mail: cert@k12.wa.us

CHARACTER AND FITNESS SUPPLEMENT

Please complete the following questions carefully and completely before providing information and signing the affidavit. **Any falsification or deliberate misrepresentation, including omission of a material fact, in completion of this application can be grounds for denial of certification, or in the case of a certificate holder, reprimand, suspension, or revocation of the educational certificate, credential, or license.**

ALL REQUIRED DOCUMENTATION REQUESTED BELOW MUST ACCOMPANY THIS FORM. ALL QUESTIONS MUST BE ANSWERED. IF ADDITIONAL SPACE IS NEEDED, ATTACH ON A SEPARATE SHEET OF PAPER.

SECTION I - PERSONAL INFORMATION (please print or type)

1. NAME LAST FIRST MIDDLE	2. MAIDEN NAME
3. ADDRESS	4. DATE OF BIRTH
CITY/STATE/ZIP	5. SOCIAL SECURITY NO. (OPTIONAL)
6. TELEPHONE BUSINESS: ( ) HOME: ( )	7. E-MAIL

8. Please list all former names you have used and approximate dates of use. (If more than three, list on separate sheet of paper.)

Date _____
Date _____
Date _____

SECTION II - PROFESSIONAL FITNESS

Yes	No		
☐	☐	1.	Have you ever held or do you currently hold a Washington education certificate?
☐	☐	2.	Have you ever held or do you currently hold any education certificate, credential or license authorizing service in the public/private schools in another state, province, territory, or country? If "yes," list the states, provinces, territories, and/or countries:
☐	☐	3.	Are you currently or have you ever been the subject of any certificate or licensing investigation or inquiry by any certification or licensing agency for allegations of misconduct? If "yes," on a separate sheet of paper, list the agency, including complete address and telephone number as well as the purpose of the investigation or inquiry.

If you answer "yes" to questions 4 through 11 (Section II), on a separate sheet of paper, give a complete explanation, including duties, circumstances, and supporting documentation.

☐	☐	4.	Have you ever had any adverse action taken on any certificate or license? (Adverse action includes letters of warning, reprimands, suspensions [including stayed], revocations, voluntary surrenders, or voidance.)
☐	☐	5.	Have you ever been denied, or otherwise rejected for cause, an education certificate, credential, or license?
☐	☐	6.	Have you ever withdrawn an application for any education certificate, credential, or license?
☐	☐	7.	Have you ever practiced in any educational position in a public school for which you did not hold the appropriate valid educational certificate, credential, or license for that position?
☐	☐	8.	Have you ever been dismissed, discharged, or fired from any employment position involving children or dependent adults? (Do not include RIFs)
☐	☐	9.	Have you ever resigned from or otherwise left any employment (e.g., settlement agreement) while allegations of misconduct were pending?

Yes ☐ No ☐ 10. Have you ever been disciplined by a past or present employer because of allegations of misconduct?

☐ ☐ 11. Are you currently or have you ever been the subject of any investigation or inquiry by an employer because of allegations of misconduct?

SECTION III - CRIMINAL HISTORY

If you answer "yes" to any of the questions 1–5 (Section III), please provide the following:

A. On a separate sheet of paper state the following:

a. A detailed statement including what occurred, the nature of the offense, charge or warrant.
b. The name and address of the arresting agency.
c. If a court was involved, the name and address of the court.
d. The date of the arrest.
e. The final disposition, if any.

B. If a court was involved, provide a copy of the court docket (can be obtained at the court in which the charge[s] were filed).

C. Provide a copy of the complete arresting officer's report.

D. If a court was involved, provide the sentence and judgment (can be obtained at the court in which the charge[s] were filed).

E. If the arrest was driving related, provide a copy of a current and complete 5-year driving abstract.

NOTE: For questions 1, 2, 3, DO NOT include minor in possession (MIP)/minor in consumption (MIC) occurring more than 2 years ago or driving under influence (DUI) occurring more than 5 years ago.

Yes ☐ No ☐ 1. In the last 10 years, have you ever been arrested for any crime or violation of the law? (Do NOT include Minor in Possession [MIP]/Minor in Consumption [MIC] occurring more than 2 years ago or Driving Under Influence [DUI/DWI] occurring more than 5 years ago.) (Note: For "yes" responses to 1, 2, 3, even if your case was dismissed or your record was sealed you must answer this question in the affirmative.) You need not list traffic violations for which a fine or forfeiture of less than $300 was imposed.

☐ ☐ 2. In the last 10 years, have you ever been fingerprinted as a result of any arrest for any crime or violation of the law?

☐ ☐ 3. In the last 10 years, have you ever been convicted of any crime or violation of any law? (Note: For the purpose of this question "convicted" includes [1] all instances in which a plea of guilty or nolo contendere is the basis of conviction, [2] all proceedings in which a sentence has been suspended or deferred, [3] or bail forfeiture.) You need not list traffic violations or fines for which a fine or forfeiture of less than $300 was imposed.

☐ ☐ 4. Have you ever been convicted of any felony crime?

☐ ☐ 5. Do you currently have any outstanding criminal charges or warrants of arrest pending against you? This would include Washington State, any other state, province, territory, and/or country.

☐ ☐ 6. Have you ever been or are you presently under investigation in any jurisdiction for possible criminal charges? If your answer is "yes," identify agency and location (street address, city, state) and the circumstances or details relating to the investigation on a separate piece of paper.

SECTION IV - FITNESS

If you answer "yes" to any question (Section IV), provide a written explanation on a separate sheet of paper:

Yes ☐ No ☐ 1. Have you ever exhibited any behavior or conduct which might negatively impact your ability to serve in a role which requires a certificate, credential, or license?

☐ ☐ 2. In the past 10 years, have you ever engaged in any conduct which resulted in the damage or destruction of property? (For purposes of questions 2 and 3, property includes both real and personal property owned by you or another. Do not list damages done as the result of an automobile accident.)

☐ ☐ 3. In the last 10 years, have you ever threatened to damage or destroy property?

☐ ☐ 4. Have you ever engaged in any conduct which resulted in the physical injury or harm of any person(s)? (Do not list injury or harm caused as the result of duties performed due to a job assignment such as police officer, armed forces member, or athlete.)

☐ ☐ 5. Have you ever threatened to do physical injury or harm to any person(s)? (Do not list threats issued as the result of duties performed due to a job assignment such as police officer, armed forces member, or athlete.)

SECTION IV - FITNESS

Yes ☐ No ☐ 6. Do you have a medical condition which in any way impairs or limits your ability to serve in a certificated role with reasonable skill and safety?

N/A

☐ ☐ ☐ 7. If you use chemical substance(s), does this use in any way impair or limit your ability to serve in a certificated role with reasonable skill and safety?

N/A

☐ ☐ ☐ If you disclosed a "yes" answer to questions 6 or 7 above, are the limitations or impairments caused by your medical condition(s) or substance abuse reduced or ameliorated because you receive ongoing treatment (with or without medications) or participate in a monitoring program? Please explain on a separate sheet of paper and provide the name, address, and telephone number of the program.

☐ ☐ 8. Do you currently use illegal drugs?

☐ ☐ 9. Have you used illegal drugs in the last year?

N/A

☐ ☐ ☐ If you disclosed a "yes" answer to question 9 above, have you successfully completed or are you participating in a supervised rehabilitation program? Please explain on a separate sheet of paper and provide the name, address, and telephone number of the program.

If you answer "yes" to questions 10 or 11, attach copies of any court orders entered in the proceeding.

Yes ☐ No ☐ 10. Have you ever been found in any dependency or domestic relation matter to have sexually assaulted or exploited any minor?

☐ ☐ 11. Have you ever been found in any dependency or domestic relation matter to have physically abused any person?

If you answer "yes" to questions 12 or 13, and a repayment agreement has been established, attach copies of the repayment agreement from the appropriate agency.

Yes ☐ No ☐ 12. Are you currently in default status on any educational loan or scholarship? (Do not include loans that are currently in a compliant deferment status.)

☐ ☐ 13. Are you currently in non-compliance with a support order?

SECTION V - CHARACTER REFERENCES

List three individuals, not related to you, who will serve as character references.

NAME	TELEPHONE NUMBER ( )
MAILING ADDRESS	CITY/STATE/ZIP
E-MAIL ADDRESS (OPTIONAL)	

NAME	TELEPHONE NUMBER ( )
MAILING ADDRESS	CITY/STATE/ZIP
E-MAIL ADDRESS (OPTIONAL)	

NAME	TELEPHONE NUMBER ( )
MAILING ADDRESS	CITY/STATE/ZIP
E-MAIL ADDRESS (OPTIONAL)	

*** ATTENTION ***

Please complete the appropriate sections on the next page (pg. 4 of 4).

ALL APPLICANTS MUST COMPLETE THE AFFIDAVIT

AFFIDAVIT

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

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

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

SIGNATURE _____ DATE _____ CITY/STATE _____

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED BY WASHINGTON COLLEGE/UNIVERSITY STUDENTS AND THOSE COMPLETING A PESB APPROVED TRAINING PROGRAM.

AFFIDAVIT

I hereby authorize _____ to release, orally or in writing as may be requested, all student
(name of institution or organization)
records and other personally identifiable information to the Office of the Superintendent of Public Instruction (OSPI) for the purpose of investigating and determining my eligibility for Washington State certification pursuant to RCW 28A.410, WAC 181-86, and WAC 181-87, as now or hereafter amended.

SIGNATURE OF APPLICANT _____ DATE _____

FREIMUND JACKSON & TARDIF PLLC

November 17, 2014 - 11:35 AM

Transmittal Letter

Document Uploaded: 460670-Appellant's Brief~3.pdf

Case Name: Campbell
Court of Appeals Case Number: 46067-0

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Appellant's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

Second corrected adding all pages to Appendix C-E

Sender Name: Kathrine Sisson - Email: kristyj@fjtlaw.com

A copy of this document has been emailed to the following addresses:

josephwevans@hotmail.com
joe@jwevanslaw.com