

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

MAILED
OCT 15 2013
SEATTLE - OAH

IN THE MATTER OF

DONNA PAIRADEE

CERT. NO. T103535

TEACHER CERTIFICATION
CAUSE NO. 2012-TCD-0005

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND FINAL ORDER

RECEIVED

OCT 17 2013

OFFICE OF PROFESSIONAL PRACTICES

A hearing in the above matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker on August 19 - 21, at Port Angeles, Washington. The Appellant, Donna Pairadee, appeared and was represented by John F. Hayden, attorney at law. The Office of the Superintendent of Public Instruction (OSPI) appeared through Catherine Slagle, director of the Office of Professional Practices (OPP), and was represented by Anne Shaw, assistant attorney general. The following is hereby entered.

STATEMENT OF THE CASE

On November 19, 2012, OSPI issued a Final Denial Order for Certification concerning the Appellant's application for a Washington State education certificate.¹ On December 17, 2012, the Appellant filed a Notice of Appeal of the Final Denial Order for Certification pursuant to Washington Administrative Code (WAC) 180-86-150. The Notice of Appeal was forwarded to the Office of Administrative Hearings (OAH), and an ALJ was assigned.

On December 17, 2012, OAH mailed the parties a Scheduling Notice setting a prehearing conference for January 8, 2013, and an administrative hearing for February 26, 2013. The prehearing conference was continued to January 11, 2013, due to the unavailability of the ALJ. The prehearing conference was held on January 11, 2013, and a Prehearing Order was entered on January 17, 2013. The Prehearing Order set a briefing scheduling at the Appellant's request regarding the burden and standard of proof for the administrative hearing, continued the administrative hearing to May 20 - 24, 2013, and set a readiness prehearing conference for May 6, 2013. A Prehearing Order was entered on March 25, 2013, which determined the burden and standard of proof and the issue for the administrative hearing.

The Appellant and her counsel failed to appear for the readiness prehearing conference on May 6, 2013. By agreement of the parties, the readiness prehearing conference was reset to May 7, 2013. The readiness prehearing conference was held on May 7, 2013, and OSPI moved to continue the administrative hearing. The Appellant did not object. On May 13, 2013, a Prehearing Order was entered continuing the administrative hearing to August 19 - 23, 2013. The administrative hearing was held August 19 - 21, 2013, at Port Angeles, Washington. The

¹ The Final Denial Order was entered by OSPI's review officer on November 19, 2012, but was not mailed to all parties and their counsels of record until November 20, 2012. Exhibit S1:1.

record in this matter closed effective August 21, 2013. The due date for a written decision is October 20, 2013, which is sixty (60) calendar days from the close of record.

EVIDENCE RELIED UPON

Testimony was taken under oath from the following witnesses:

- Donna Pairadee, Appellant;
- Regan Lée Larsen, former owner/director, Cuddles and Crayons Daycare;
- Erin Eveland, former assistant, Cuddles and Crayons Daycare;
- Maureen Martin, supervisor, Child Protective Services (CPS), Division of Children and Family Services (DCFS), Department of Social and Health Services (DSHS);
- Catherine Slagle, director, OPP, OSPI;
- Kenneth Feldman, M.D.;
- Shane Martin, officer, Port Angeles Police Department.

The following exhibits were admitted into evidence:

Appellant Exhibits:

A through D.

OSPI Exhibits:

- S1, S2, S3, S5, S6,
- S7 (solely for the purpose of establishing a referral was made to CPS),
- S8 and S9A (solely for the purpose of establishing what Maureen Martin considered in making her founded finding of physical abuse of a child),
- S9B,
- S9C (limited to that portion of the exhibit at and above the last signature dated December 11, 2008),
- S9D through S9F,
- S10A through S11,
- S13A through S21,
- S22 (excluding all hearsay statements),
- S23A through S24.

ISSUE

As set forth in the Prehearing Order entered March 25, 2013, the issue in this matter is whether the Appellant has provided clear and convincing evidence establishing she possesses the good moral character and personal fitness to approve her application for a Washington State teaching certificate under Washington Administrative Code (WAC) 181-86-13 and WAC 181-86-170.

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FINDINGS OF FACT

Cuddles and Crayons Daycare and Events of December 2008

1. The Appellant's son began attending Cuddles and Crayons Daycare during February 2008. Exhibit S22, p. 19. Cuddles and Crayons Daycare was owned and directed by Regan Lee Larsen. The Appellant's son was approximately 18 months old when he began attending the daycare. Testimony of Larsen.
2. On December 7, 2008, the Appellant spanked her son on his buttocks or bottom. S6, p. 7.² By this time, her son was approximately 2¼ years old.
3. On the morning of Monday, December 8, 2008, the Appellant noticed bruising on her son's bottom. The Appellant called Cuddles and Crayons Daycare and spoke with Ms. Larsen.³ The Appellant told Ms. Larsen that she was not going to bring her son to daycare that day because he had bruises on his bottom from her spanking him, that she knew the daycare would have to report the bruising to the authorities, and that she did not want to place the daycare staff in that position or make them uncomfortable because of the bruises. Exhibit S6, p. 7; Testimony of Appellant; Testimony of Larsen.
4. On the morning of Tuesday, December 9, 2008, the Appellant brought her son to Cuddles and Crayons Daycare. The Appellant told Ms. Eveland that her son had quite a bruise from the spanking, that if the staff were going to turn her in she would just keep her son home for the day, and that even she was shocked at how bad the bruising was. The Appellant also stated in a light or joking manner that her son ran and plopped on the cement, that was her story, and she was going to stick to it. The Appellant then left the daycare. Testimony of Appellant, Testimony of Eveland; Exhibits S3, S6, p. 7.
5. Within minutes of the Appellant leaving the daycare, Ms. Eveland changed the child's diaper and immediately noticed bruises on the child's bottom. The bruises Ms. Eveland observed are accurately depicted in photos of the child's bottom taken later that same day by law enforcement officers. Testimony of Eveland; Exhibit S9B.

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² Exhibit S6, p. 7, is part of the Narrative Report prepared by Police Officer Shane Martin. At that time, Officer Martin was employed with the Clallam County Sheriff's Office. As of the administrative hearing in the above matter, Officer Martin is employed with the Port Angeles Police Department. Officer Martin's Narrative Report identifies December 7, 2008 as falling on a Monday. Judicial notice is taken of the fact that December 7, 2008 fell on a Sunday. This is also consistent with the remaining evidence of record.

³ There is conflicting evidence of record whether the Appellant spoke with Ms. Larsen or Erin Eveland. Ms. Eveland testified she spoke with the Appellant. Ms. Larsen testified she spoke with the Appellant. Officer Martin's Narrative Report reflects the Appellant stating that she spoke with Ms. Larsen. It is found as fact that the Appellant more likely spoke with Ms. Larsen when she called the daycare on December 8, 2008.

6. After Ms. Eveland observed the bruises on the child's bottom, the assistant director and lead teacher, Kristi, called and reported the bruises to Ms. Larsen. Ms. Larson arrived within 5 to 10 minutes of receiving the telephone call. Testimony of Eveland; Testimony of Larsen.

7. The bruises Ms. Larsen observed on the child's bottom are accurately depicted in photos of the child's bottom taken later that same day by law enforcement officers. The child appeared to be in pain when his legs were raised or his bottom was touched. Testimony of Larsen; Exhibit S9B.

8. Believing the child may have been abused, Ms. Larsen called Child Protective Services (CPS) intake and reported the child's bruising. Ms. Larsen was told that police would be called and not to contact the Appellant. Testimony of Larsen.

9. Officers from the City of Sequim Police Department responded and arrived at the daycare. The officers took the child into protective custody and transported him to the Sequim Police Department, where the investigation was turned over to Officer Shane Martin of the Clallam County Sheriff's Office because it was determined the daycare was located outside the City of Sequim boundaries. Testimony of Larsen, Testimony of Martin; Exhibit S6.

10. The child was examined at by a physician at Peninsula Children's Clinic on December 9, 2008. The examination concluded the bruises on the child's buttocks were very suspicious for abuse and non-accidental trauma (NAT). Exhibit S6, p.41; Testimony of Kenneth Feldman, M.D. A whole-body bone scan of the child did not identify any abnormality. Exhibit S6, p. 42.

CPS Investigation, Initial Founded Finding of Physical Abuse, and Settlement Agreement

11. In a letter to the Appellant dated December 12, 2008, CPS made a founded finding of physical abuse of a child regarding the Appellant and her son. Exhibit S10A. The Appellant timely requested review of the founded finding. Exhibit S10A, p. 6. The founded finding was affirmed in a CPS letter to the Appellant dated February 4, 2009. Exhibit S10B. The Appellant timely appealed this affirmation and requested an administrative hearing before the Office of Administrative Hearings (OAH).

12. The Washington State Department of Social and Health Services (DSHS)⁴ and the Appellant entered into a Stipulated Settlement Agreement and Order on November 10, 2010. Exhibit S16.

13. Under the terms of the Stipulated Settlement Agreement and Order, the Appellant agreed she would not to apply for a foster care license, would not apply for a child care license or work in such a facility, and would not seek to adopt a child in the State of Washington. In return, DSHS agreed to amend the finding of physical abuse from "founded" to "unfounded" with respect to the Appellant's son and the bruises discovered on him at Cuddles and Crayons Daycare on December 9, 2008. The Appellant in turn agreed to waive her right to an administrative hearing, and her appeal to OAH was dismissed with prejudice. Exhibit S16.

⁴ Child Protective Services (CPS) is part of the Department of Social and Health Services (DSHS).

Criminal Proceedings

14. On March 3, 2009, the Clallam County Prosecuting Attorney filed a criminal charge against the Appellant in Clallam County Superior Court. The criminal charge was Assault of a Child in the Third Degree-Criminal Negligence and Weapon, or in the alternative, Assault of a Child in the Third Degree-Criminal Negligence and Substantial Pain. The criminal charges stemmed from an allegation the Appellant caused bodily harm to her son on or about December 7 to 9, 2008; the same incident for which CPS initially made a founded finding of physical abuse. Exhibit S19A.

15. On April 6, 2009, the Clallam County Prosecuting Attorney made a Plea Offer to the Appellant. The State agreed to Friendship Diversion with specific conduct/prohibitions similar to those if the Appellant were to plead guilty of the criminal charge. Exhibit S19C.

16. On May 12, 2009, the Appellant, her attorney, and a deputy prosecuting attorney signed a Declaration of Defendant, Waiver of Jury Trial, and Stipulation to Facts Sufficient for Quilt. Exhibit S19D. By signing the document, the Appellant requested that the Clallam County Prosecuting Attorney's Office and the Superior Court permit her to enter into the county's Friendship Diversion Program, which if the Appellant successfully completed would result in dismissal or reduction of the pending criminal charges against her. The Appellant's declaration goes on to state that:

I stipulate that this Court may determine my guilt or innocence for the charge(s) presently filed against me in this matter based upon the law enforcement/investigating agency's reports on which this prosecution was based and any testimony of officers or witnesses to the events on which the charges are based, and I stipulate that the facts contained within the investigation reports are sufficient for a trier of fact to find me guilty of the charge(s) presently filed against me in this matter.

...

BY MY SIGNATURE below I waive any and all defenses to the commission of the charges(s) filed against me.

Exhibit S19D, pp.2-3.

17. On June 1, 2010, a Clallam County Superior Court judge signed a Motion and Order, dismissing with prejudice the criminal charges against the Appellant. The basis for the motion was "that the defendant [the Appellant] has complied with the terms of PDA (See attached letter from Friendship Diversion Services)." Exhibit S19F, p. 1.

The Medical Condition of the Appellant's Son

18. In a letter to the Appellant's attorney⁵ dated February 19, 2010, Dana Matthews, M.D., diagnosed the Appellant's son with von Willebrand disease, the most common but often

⁵ The Appellant's attorney who represented her with respect to the criminal charges filed in Clallam County Superior Court is the same attorney who represented the Appellant regarding the founded finding of physical abuse by CPS, and the same attorney who represented the Appellant regarding the denial of the her application for an education certificate; John F. Hayden.

undiagnosed type of bleeding disorder. Exhibit S14A. The letter was regarding or in response to the CPS appeal. Exhibit S14A, p. 1, See Re: Child Protective Services Appeal. Dr. Matthews first saw the Appellant's son on December 31, 2009, more than a year after the events of December 9, 2008, at Cuddles and Crayons.

19. In her letter, Dr. Matthews states, "(a)ny CPS case against Donna Pairadee because of [her son's] bruising should be dropped immediately. Exhibit S14A, p. 2 Dr. Matthews did not appear at the administrative hearing to provide testimony under oath or affirmation regarding her findings or conclusions.

20. The Appellant would subsequently include Dr. Matthews' February 19, 2010, letter with her application for an education certificate. Exhibit S23A, p. 13.

21. In a letter to the Appellant's attorney dated June 28, 2010, Dr. Matthews modified her earlier letter. While Dr. Matthews maintained that the Appellant's son had a bleeding disorder and would sustain larger bruises in response to a given physical injury than a child without his disorder, she acknowledged she was not an expert in the analysis of bruising patterns, and she had not studied the original photographs of the son's bruises taken December 9, 2008. Additionally, since her first letter Dr. Matthews had reviewed the written opinion of Kenneth Feldman, M.D., and had also discussed the son's case in person with Dr. Feldman, a colleague. Dr. Matthews went on to modify her earlier conclusions as follows:

...I am not an expert in bruising *patterns* and thus not an appropriate judge of how he developed the original bruises on his buttocks. Any CPS case against Donna Pairadee because of [her son's] bruising needs to have his bleeding disorder as a major part of the considerations.

Exhibit S14B, p. 2; emphasis in original.

22. Dr. Matthews also provided a copy of this letter to the area administrator for CPS. Exhibit S14B, p. 3.

23. The Appellant first testified at the administrative hearing that she had never seen Dr. Matthews' June 28, 2010 letter prior to the hearing. She then changed her testimony and stated she could not recall if she had received a copy of the letter from Dr. Matthews, but may have received a copy of the letter from her attorney. The Appellant's testimony on this is not found credible. Dr. Matthews' letter modifying her original conclusions was extremely relevant and related to the ongoing resolution of the founded finding of physical abuse of her son, which was not resolved by the Stipulated Settlement Agreement and Order until November 10, 2010, almost five months after Dr. Matthews' second letter. There is no logical rationale or plausible set of circumstances to explain why the Appellant would not have either been timely provided a copy of Dr. Matthews' second letter by her attorney, or thoroughly briefed as to its contents by her attorney. It is found as fact that the Appellant more likely than not either received a copy of Dr. Matthews' second letter, or was made aware of its contents, circa the time the letter was written by Dr. Matthews.

24. Despite including a copy of Dr. Matthews' February 19, 2010 letter with her application for an education certificate, the Appellant did not include a copy of Dr. Matthews' June 28, 2010 letter with her application, nor did she inform OSPI of the letter's existence or content. It is found as fact that the Appellant intentionally omitted a copy of Dr. Matthews' second letter and intentionally failed to inform OSPI of its existence or content because she was aware the second letter was not as favorable or supportive of her application for a teaching certificate as Dr. Matthews' February 19, 2010 letter.

Appellant's Application for an Education Certificate⁶

25. On July 23, 2011, OSPI received an application for a Washington State Residency Teacher Certificate (the application) from the Appellant.⁷ Exhibit S23A.

26. The application was signed by the Appellant on September 13, 2011, certifying or declaring under penalty of perjury that all the information included in the application was true and correct. Exhibit S23A, p. 1.

27. The application included an affidavit which stated, in part, "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 ground for denial of certification." Exhibit S23A, p. 1.

28. The application included a section entitled "Criminal History". That section included the following question: "In the last 10 years, have you ever been arrested for any crime or violation of the law?" The Appellant answered yes to this question. Exhibit S23A, p. 5.

29. The application required a "Detailed Statement" in the event an applicant answered the above question in the affirmative. The Appellant provided the following statement:

I was summoned to appear on charges related to child abuse of my 2-year old son. My attorney tells me that I was never arrested, but I was instead, summoned. *My son was found to have had bruises on him after the daycare neglected to care for him properly for several hours.* Enclosed with court paperwork is a copy of a letter from my son's hematologist that supports my contention that I did not physically abuse my son.

⁶ The application is identified as a Residency Teacher Certificate Application. Exhibit S23A, p. 1. OPP's Final Denial Order for Certification makes reference to an application for a Washington education certificate. The terms teacher or teaching certificate and education certificate are used interchangeably in these Findings of Fact, Conclusions of Law, and Final Order.

⁷ The application bears a received stamp dated September 28, 2011. Exhibit S23A, p. 1. The application also reflects a date submitted of July 23, 2011. Exhibit S23A, p. 2. The application process is an on-line process, and OSPI's Final Denial Order for Certification states the Appellant applied on July 23, 2011. Testimony of Catherine Slagle; Exhibit S1, p. 1. Under the facts in this case, the specific date the Appellant applied for a teaching certificate is not material to resolution of the issue presented, so the earlier date has been selected.

Exhibit S23A, p. 5, emphasis added.

30. There is no credible evidence of record to find that the Appellant's son was ever found to have bruises on him after or due to any neglect in the care provided to him at Cuddles and Crayons Daycare. It is found as fact that this statement on the Appellant's application for an education certificate is false and untrue. It is also found as fact that the Appellant knew the statement was false and untrue at the time she completed and signed the application, certifying all the information in the application was true and correct. Exhibit S23A, p. 1.

31. In response to the request for information regarding the "Final Disposition" of the arrest, the Appellant stated on her application, "(c)harges were dismissed, *after* it was discovered that my son suffers from von Willebrand disease, which is a bleeding disorder that causes severe bruising." Exhibit S23A, pp. 5-6, emphasis added.

32. OSPI asserted this response is false or misleading. The Appellant asserted her response is true and correct. Resolution of these conflicting assertions requires a careful analysis and interpretation of the word "after" in the Appellant's response. The Appellant argued she used the word "after" in a *temporal* sense, to indicate that the criminal charges were dismissed at *some point in time* after her son was diagnosed with von Willebrand disease. The Appellant's son was diagnosed with von Willebrand disease on or about February 19, 2010. Exhibit S14A. The criminal charges against the Appellant were dismissed on June 1, 2010. Exhibit S19F. This sequence of events is consistent with the use of the word "after" in a temporal sense; the charges were dismissed almost four months after the child was diagnosed with von Willebrand disease. OSPI argued the use of "after" in the Appellant's response is false or misleading because OSPI interpreted the Appellant's use of the word "after" in a *causative* sense; that the charges were dismissed *because* the Appellant's son was diagnosed with von Willebrand disease. The facts are clear that the criminal charges were dismissed not because the Appellant's son was diagnosed with von Willebrand disease, but because the Appellant completed her pretrial diversion program.

33. The Appellant's testimony she used the word "after" in a temporal rather than a causative sense is not credible. The Appellant had already made an intentionally false and untrue statement on her application for her education certificate. Finding of Fact 30, above. In addition, for reasons discussed at greater length below, the Appellant was generally not a credible witness. It is found as fact that a reasonable and disinterested person reading the Appellant's response that "(c)harges were dismissed, after it was discovered that my son suffers from von Willebrand disease, which is a bleeding disorder that causes severe bruising" would interpret her response in the same manner that OSPI interpreted her response. A reasonable and disinterested person would interpret the response to mean the criminal charges were dismissed because the Appellant's son was diagnosed with von Willebrand disease. Accordingly, it is found as fact that the Appellant's response on her application for her education certificate was at the very least misleading, and that the Appellant's phrasing of the response and use of the word "after" was a knowing attempt by the Appellant to mislead OSPI as to the reason or cause for the criminal charges being dismissed.

34. The Criminal History section of the application included the following question: "Have you ever been or are you presently under investigation in any jurisdiction for possible criminal

charges?" The Appellant answered "No" to this question. Exhibit S23A, p. 6. It is found as fact that the Appellant's answer to this question is false and untrue. The Appellant was clearly aware at the time she answered no that she had been investigated by the Clallam County Sheriff in connection with the spanking of her son, and that this investigation had actually resulted in criminal charges filed against her by the Clallam County Prosecuting Attorney, charges later dismissed only upon completion of her pretrial diversion program.

35. The application also included a section entitled "Personal Fitness". That section included the following question: "Have you ever engaged in any conduct which resulted in the physical injury or harm of any person(s)?" The Appellant responded "No" to this question. Exhibit S23A, p. 7. It is found as fact that this is a false and untrue answer. The facts are clear the Appellant spanked her son, and the spanking caused bruising on her son's bottom which was clearly visible two days later upon the son's arrival at Cuddles and Crayons. The bruises constituted physical injury to the child. The fact that the bruising may have been more extensive due to the son's von Willebrand disease does not mean the Appellant did not inflict physical injury on her son.

36. The Appellant included the following documents with her application: Clallam County Sheriff's Department Case Report (Exhibit S23A, pp. 9-10), Summons (Criminal) from Clallam County Superior Court (Exhibit S23A, p. 11), Motion and Order to Dismiss from Clallam County Superior Court (Exhibit S23A, p. 12), and the February 28, 2010 letter from Dana Matthews, M.D., to the Appellant's counsel, John F. Hayden (Exhibit S23A, pp. 13-14).

37. The Appellant's application was forwarded to OPP due to the Appellant's responses on the character and fitness supplement. OPP requested the Appellant provide additional documentation and further clarification in order to determine her eligibility for an education certificate. Exhibit S23B, p. 1; Testimony of Slagle.

38. The Appellant went to the Clallam County Courthouse and asked for the "whole file," which she then sent to OPP. But the Appellant admitted at hearing she likely did not provide all the additional documentation OPP had requested and identified for her. Testimony of Appellant.

39. After review of the additional documentation provided by the Appellant, OPP undertook to obtain the remaining documents directly from Clallam County Superior Court. OPP also obtained records from CPS regarding the investigation, founded finding of physical abuse, and ultimate settlement of the founded finding. Testimony of Slagle. Upon receipt and review of all this documentation, OPP became concerned due to the felony charge involving a young child. After review of all the information it had, OPP determined the Appellant had not answered questions on her application honestly, or the Appellant's answers were misleading. Testimony of Slagle.

40. Although the exact date is unclear from the evidence of record, OSPI informed the Appellant that her application for an education certificate was denied. The Appellant appealed the denial and requested a formal appeal before the superintendent of public instruction.

41. On November 19, 2012, OSPI issued a Final Denial Order for Certification concerning the Appellant's education certificate. On December 17, 2012, the Appellant filed a Notice of Appeal of the Final Denial Order for Certification. Exhibits S1, S2.

Credibility of Appellant's Testimony

42. The Appellant appeared for the administrative hearing and gave testimony under oath or affirmation. For the following reasons, it is found as fact that the Appellant is generally not a credible witness. The Appellant testified at hearing that she did not cause and was in no way responsible for the bruises on her son's bottom discovered at Cuddles and Crayons on December 9, 2008. This is clearly inconsistent with other testimony given by the Appellant at the hearing, and statements she made to daycare staff and law enforcement officers on and about December 9, 2008. The Appellant testified she called the daycare on December 8, 2008, and told the staff that her son had received his first "big boy spanking," and that she was not bringing him to the daycare that day because she did not want the staff to be "uncomfortable" with the marks or bruises. When she arrived at the daycare with her son on December 9, 2008, the Appellant told Ms. Eveland that her son had quite a bruise from spanking. When interviewed later by Police Officer Martin, the Appellant admitted spanking her son. There is no credible evidence of record going to any other source or cause of the child's bruising other than the Appellant spanking her son. Then there are the Appellant's statements to daycare staff that her son had been jumping on concrete and landing on his bottom, that was her story, and she was sticking to it. The Appellant's statements are most consistent with a real and genuine concern that, as mandatory reporters, the daycare staff would have to report the bruises to CPS, that the Appellant knew this, and was concerned for possible consequences. The Appellant testified under oath at the administrative hearing that her son would have diaper rash which would later change to bruises. Dr. Feldman credibly testified based on his very extensive education, training and experience that diaper rash does not somehow change to bruises. This is further evidence of the Appellant's lack of credibility and her self-serving testimony at hearing. The Appellant testified she changed her son's diaper before taking him to Cuddles and Crayons on December 9, 2008, and did not observe any bruises of the type or severity discovered within minutes after she dropped her son off at the daycare, and later photographed by law enforcement within a matter of a few hours. This testimony is not logically compelling or plausible. Finally, as found above, the Appellant deliberately provided misleading and false and untrue answers on her application for an education certificate. All these facts compel a finding the Appellant is generally not a credible witness. To the extent any Findings of Fact have been based primarily on the Appellant's testimony, it is because that testimony is testimony generally adverse to the Appellant's interest in obtaining an education certificate, and therefore likely more reliable.

Appellant's Evidence of Good Moral Character and Personal Fitness

43. The Appellant offered evidence going to establish her good moral character and personal fitness to hold an education certificate. The evidence includes the Appellant's curriculum vitae (Exhibit A1-A4). The curriculum vitae sets out the Appellant's education, training and experience, but it does not directly go to the issue of whether the Appellant possesses the good moral character and personal fitness to hold an education certificate. OSPI did not deny the Appellant's application because it determined she does not possess the

requisite educational training or work experience to hold a certificate. The Appellant's curriculum vitae lists her history as a volunteer in numerous roles, but this standing alone is not compelling evidence.

44. The Appellant's evidence includes letters of recommendation or reference (Exhibit B1-B10). None of the individuals who wrote the letters appeared or offered testimony under oath or affirmation at the administrative hearing. Nor was it practical for OSPI to attempt to contact or subpoena the authors of these letters to appear for testimony, as despite explicit instruction to the parties, the Appellant did not provide these exhibits to OSPI or the undersigned ALJ until the first day of the administrative hearing.⁸ Many of these letters are unsigned by the authors. See e.g., Exhibits B3, B4, B7, B9. At least one of the letters is in excess of ten years old. Exhibit B5. Other letters reflect the authors have known the Appellant for only brief periods of time, and those periods coincide with the Appellant's application for a teaching certificate. See, e.g. Exhibit B2 (dated 10/24/12 – "I have known Donna Pairadee for almost one year"), B3 (dated 10/24/12 – "I have known Ms. Pairadee for almost a year"). All these factors must be taken into consideration when determining what weight, if any, these letters should be given as reliable evidence of the Appellant's good moral character and personal fitness.

45. One of the letters offered by the Appellant is from Terilee Allsop, who identifies herself as a speech therapist for the Appellant's son. Exhibit B6. Ms. Allsop's letter states, in part, that when the Appellant "was separated from [her son] due to allegations related to his easy bruising (as a result of Von Willebrand's Disease), she continued to participate in the Play Group with him (he was brought to the class by others)." Ms. Allsop did not appear at the administrative hearing, so it cannot be determined how or from whom she came to learn about the circumstances leading to the bruises on the Appellant's son which were discovered at Cuddles and Crayons Daycare. While Ms. Allsop was apparently aware the Appellant was separated from her son for some period of time, it cannot be determined if Ms. Allsop was in any way fully informed about the initial founded finding of physical abuse by CPS, the felony criminal charges brought against the Appellant, or the eventual settlements of those matters. It cannot be determined if or how Ms. Allsop's letter of reference might have been impacted if she had been fully aware of all the facts in this matter.

46. One of the letters offered by the Appellant is from Mary A. Longstaff, R.N. Exhibit B10. This reference or recommendation is brief, cursory, and summary in nature. It is not given substantial weight as evidence establishing the good moral character or personal fitness of the Appellant.

47. One of the letters offered by the Appellant is from Rose Gibbs, clinic director for the Dungeness Valley Health & Wellness Clinic. Ms. Gibbs describes the Appellant's volunteer work as the clinic's assessment nurse, praises her demeanor with clients, and opines the Appellant works well with the clinic staff. It cannot be determined, however, if Ms. Gibbs has any knowledge of the events leading to the initial founded of physical abuse or the criminal charges brought against the Appellant in connection with the bruises discovered on the

⁸ See Prehearing Orders entered January 17, 2013 and May 13, 2013; the parties were instructed to file all proposed exhibits by specific dates, each time five business days prior to commencement of the scheduled administrative hearing.

Appellant's son at his daycare. Nor is there any information in Ms. Gibbs' letter going to whether the Appellant may possess the good moral character and personal fitness to be certificated as a teacher who would have unsupervised contact with children/students of young age. Ms. Gibbs did not appear at the administrative hearing.

48. One of the letters offered by the Appellant is from Annette Hawthorne, apparently a personal friend. This letter is undated, so it cannot be determined when the letter was written. It also cannot be determined if at the time she wrote the letter whether Ms. Hawthorne had any knowledge concerning the bruises discovered at Cuddles and Crayons Daycare, the initial founded finding of physical abuse, the criminal charges brought against the Appellant, or how such knowledge may have affected her opinion of the Appellant. This is a fundamental problem with offering such evidence unsupported by any testimony from the author.

49. After careful review and consideration of the evidence which appears in Exhibits B1-B10, it is found that the evidence warrants some, but not substantial weight in a determination of whether the Appellant possesses the good moral character and personal fitness to hold a teaching certificate.

50. The Appellant offered what are identified collectively as certificates and licenses as evidence of her good moral character and personal fitness. Exhibit C1-C26.

51. Exhibit C1 through C11 are copies of various certificates and letters of appreciation, recognizing the Appellant's history of volunteerism and/or academic achievement. It is found this evidence warrants some weight in determining whether the Appellant possesses the good moral character and personal fitness to hold a teaching certificate.

52. Exhibit C15 is a copy of the Appellant's Washington State Department of Health license as a Registered Nurse, issued August 18, 2011. The Appellant argued that issuance of this license by Washington State is evidence supporting her good moral character and personal fitness to hold a teaching certificate. This argument is not compelling, as no evidence was offered by the Appellant going to the application process, what information the Appellant was required to provide to obtain the license, or whether she was required to provide information regarding any criminal background or history as is required to receive an education certificate. The Appellant did not offer her application for her registered nursing licensure as an exhibit.

53. Exhibit C17, C18, C20, and C22 are documents regarding the Appellant's licensure as a nurse in Washington and other states which all predate the events circa December 9, 2008 involving the Appellant's son, his bruises, and her application for licensure as a teacher in Washington State. The fact that the Appellant may have been licensed in Washington and other states during periods prior to the events involving her son and her application for a Washington State education certificate do not constitute substantial evidence of her good moral character and personal fitness to hold an education certificate.

54. The Appellant has previously held teaching certificates in Missouri and Texas. Exhibit C19, C26. The fact that the Appellant has held teaching certificates in other states is some evidence of her good moral character and personal fitness to hold a teaching certificate in Washington State.

55. The Appellant provided copies of various evaluations of her performance as a teacher in multiple jobs in Missouri, Texas, and a United States Department of Defense school in Germany. Exhibit D1 – D64. Review of those evaluations reflects generally favorable evaluations of the Appellant's performance as a teacher. These evaluations are some evidence of the Appellant's good moral character and personal fitness to hold a teaching certificate in Washington State.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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

2. If an application for certification or reinstatement has been denied for lack of good moral character or personal fitness, the evidence submitted by the applicant must prove by clear and convincing evidence that he or she is of good moral character and personal fitness or the application will be denied. WAC 181-86-170(1). OPP denied the Appellant's application because it determined she did not provide clear and convincing evidence of good moral character or personal fitness to hold an education certificate in Washington State. Therefore, the Appellant bears the burden of proof to present clear and convincing evidence she does in fact possess the requisite good moral character and personal fitness.

3. Clear and convincing evidence requires more than a mere preponderance of the evidence. *Nguyen v. Dept. of Health, Medical Quality Assurance Comm'n*, 144 Wn.2d 516, 534, 29 P.3d 689 (2001), *cert. denied*, 535 U.S. 904, 122 S.Ct. 1203 (2002). The evidence must show that the ultimate fact at issue is "highly probable." *In Re Welfare of C.B.*, 134 Wn. App. 336, 346, 139 P.3d 119 (2006). The issue then is whether the Appellant has presented sufficient credible evidence of record to establish it is highly probable that she possesses the good moral character and personal fitness to hold a Washington State education certificate.

4. Good moral character and personal fitness means the:

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:

- (1) No conviction of any felony crime involving:
 - (a) The physical neglect of a child under chapter 9A.42 RCW;

- (b) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, excepting motor vehicle violations under chapter 46.61 RCW;
 - (c) The sexual exploitation of a child under chapter 9.68A RCW;
 - (d) Sexual offenses where a child is the victim under chapter 9A.44 RCW;
 - (e) The promotion of prostitution of a child under chapter 9A.88 RCW;
 - (f) The sale or purchase of a child under RCW 9A.64.030;
 - (g) Provided, That the general classes of felony crimes referenced within this subsection shall include equivalent federal and crimes in other states committed against a child;
 - (h) Provided further, That for the purpose of this subsection "child" means a minor as defined by the applicable state or federal law;
 - (i) Provided further, That for the purpose of this subsection "conviction" shall include a guilty plea.
- (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. In determining whether a particular conviction would materially and substantially impair the individual's worthiness and ability to practice, the following and any other relevant considerations shall be weighed:
- (a) Age and maturity at the time the criminal act was committed;
 - (b) The degree of culpability required for conviction of the crime and any mitigating factors, including motive for commission of the crime;
 - (c) The classification of the criminal act and the seriousness of the actual and potential harm to persons or property;
 - (d) Criminal history and the likelihood that criminal conduct will be repeated;
 - (e) The permissibility of service as a professional educator within the terms of any parole or probation;
 - (f) Proximity or remoteness in time of the criminal conviction;
 - (g) Any evidence offered which would support good moral character and personal fitness;
 - (h) If this subsection is applied to a person certified under the laws of the state of Washington in a suspension or revocation action, the effect on the education profession, including any chilling effect, shall be weighed; and
 - (i) In order to establish good moral character and personal fitness despite the criminal conviction, the applicant or certificate holder has the duty to provide available evidence relative to the above considerations. The superintendent of public instruction has the right to gather and present additional evidence which may corroborate or negate that provided by the applicant or certificate holder.
- (3) *No behavioral problem which endangers the educational welfare or personal safety of students, teachers, or other colleagues within the educational setting.*
- (4) No practice within the state of Washington within the previous five school years with an expired, lapsed, suspended, surrendered, or revoked certificate in a professional position for which certification is required under the rules of the professional educator standards board.

WAC 181-86-013, emphasis added. Significant in this nonexclusive laundry list are the requirements that certificated teachers have the good moral character and personal fitness to have contact with, to teach, and to perform supervision of children, and no behavioral problem which endangers the educational welfare of students.

5. It is first important to note that the only evidence presented by the Appellant was her testimony, which has been found generally not credible based upon the above Findings of Fact, and the Appellant's exhibits. The exhibits were not supported by the testimony of any other witness who appeared at the administrative hearing. Accordingly, as found above, that documentary testimony is some, but not substantial evidence going to establishing the Appellant has the good moral character and personal fitness to hold an education certificate. When considered in its entirety then, it cannot be concluded there is any more than some evidence of record presented by the Appellant that she has possesses the requisite good moral character and personal fitness to hold an education certificate.

6. Implicit in the requirement for possession of good moral character and personal fitness are the traits of honesty and integrity. Teachers are reasonably expected to model those traits for impressionable young students. This is recognized in the admonishment on the application form for certification, which states any "falsification or deliberate misrepresentation, including omission of a material fact, in completion of this application can be ground for denial of certification." Finding of Fact 27.

7. The Appellant completed the Criminal History section of the application answering multiple questions with false and untrue or misleading responses. As found above, there is simply no credible evidence of record to find the Appellant's son was ever found to have had bruises on him after staff at Cuddles and Crayons Daycare neglected to care for him properly for several hours. This is a manifestly false and untrue statement, and it is a statement the Appellant knew was false and untrue when she made it on the application. The Appellant's motivation for providing such a false and untrue answer can reasonably be inferred from her actions and knowledge. The Appellant was clearly aware by the time she completed her application for an education certificate that deflecting blame for the bruises on her son from her own actions to the neglect of a third party, i.e. Cuddles and Crayons, would enhance the likelihood of her obtaining that certificate. This response by the Appellant on her application is compelling evidence of a lack of honesty and integrity.

8. The Appellant's response on her application that "(c)harges were dismissed after it was discovered that my son suffers from von Willebrands disease, which is a bleeding disorder that causes severe bruising" is at best a misleading statement. The only direct evidence of the Appellant's intent in using the word "after" in her response comes from the Appellant's testimony at the administrative hearing. But for the reasons cited above, the Appellant's testimony is generally not credible. The undersigned agrees with OPP's interpretation of this statement. A reasonable person reading this statement in light of the limited information provided by the Appellant on her application would interpret the response to mean charges were dismissed *because* the child was diagnosed with von Willebrand disease. This is another example of the Appellant attempting to deflect responsibility from herself, and is strong evidence of a lack of honesty and integrity on the part of the Appellant.

9. The Appellant's response that she had not ever been under investigation for possible criminal charges is again manifestly false and untrue. It is not an understatement to say that it is inconceivable how the Appellant could have honestly believed her response was true in light of the police investigation of her son's bruises, and the subsequent felony criminal charges filed against her. This is another compelling example of evidence establishing the Appellant lacks

honesty and integrity, and hence the good moral character and personal fitness to hold an education certificate.

10. The Appellant's response that she had never engaged in conduct which resulted in the physical injury or harm of any person is also false and untrue. The Appellant spanked her two year old son sufficient to cause bruising on both buttocks visible two days later at Cuddles and Crayons. These bruises constituted physical injury to her son. The Appellant's attempt to again deflect responsibility for her actions to, in this case, her son's von Willebrand disease only serves to reinforce a pattern of behavior on her part that is particularly troubling. It evidences a lack of a sense of responsibility. The fact the bruises may have been more extensive due to the von Willebrand disease does not in any way diminish the fact that it was the Appellant who inflicted the physical trauma causing the bruises, and the Appellant must have known this at the time she completed her application for an education certificate. This is more compelling evidence the Appellant lacks the honesty and integrity, and hence good moral character and personal fitness to hold an education certificate.

11. After careful consideration of all the evidence of record, it is concluded the Appellant deliberately completed her application in an intentionally false, untrue, and misleading manner in an attempt to conceal unfavorable information from OPP and obtain an education certificate under false and misleading circumstances. This is very compelling evidence the Appellant lacks honesty and integrity, and hence the good moral character and personal fitness to hold such a certificate.

12. It is also concluded there is compelling evidence the Appellant has a behavioral problem that would endanger the educational welfare of students should her application for an education certificate be approved. The evidence establishes the Appellant continues to deny responsibility for her actions in December 2008. The Appellant testified under oath or affirmation that she did not cause and was in no way responsible for the bruises on her son's bottom discovered at Cuddles and Crayons in December 2008. Yet the Appellant told staff at the daycare that she was not going to bring the child to daycare on December 8, 2008, because the child had received his first big boy spanking and she knew they were obligated to report bruises like those on the child's bottom to CPS. Then when she brought the child to daycare on December 9, 2008, the Appellant concocted a story about the child falling on his bottom on concrete, apparently in an effort to provide daycare staff with an "out" or excuse to somehow justify in their own minds a decision not to inform CPS. Fortunately, the staff at Cuddles and Crayons reacted in a sensible and responsible manner given the extent of the bruises on the child and the Appellant's nonsensical story. The Appellant's attempt to enlist the cooperation of the daycare staff in covering up her responsibility for inflicting the trauma on her son is particularly problematic. It is evidence the Appellant is willing to use others to help her advance an agenda that is in her own best interests. Impressionable young students likely would not possess the resolve and adult sense of responsibility exhibited by the staff at Cuddles and Crayons.

13. In summation, the Appellant has presented only some evidence she possesses the honesty and integrity, and hence good moral character and personal fitness to hold an education certificate in Washington State. OPP has presented compelling evidence the Appellant does not possess the honesty and integrity, and hence good moral character and personal fitness to hold an education certificate in Washington State. Given the Appellant has

the burden of proof to establish by clear and convincing evidence she does in fact possess the requisite good moral character and personal fitness, the conclusion that she has failed to carry her burden of proof is easily reached. Reaching the conclusion the Appellant has a behavioral problem which would endanger the educational welfare of students should she be granted an education certificate is equally easily made. Given the Appellant has failed to prove she possesses the good moral character and personal fitness and that she does not have a behavioral problem that would endanger the educational welfare of students, it is concluded her application for an education certificate should be denied.

FINAL ORDER

The Appellant's application for a Washington State education certificate is DENIED.

Dated at Seattle, Washington on October 15, 2013.



Matthew D. Wacker
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

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

Pursuant to Chapter 34.05.542 RCW, this matter may be further appealed to a court of law. The Petition for Judicial Review of this decision must be filed with the court and served on OSPI, the Office of the Attorney General, all parties of record, and OAH within thirty days after service of the final order. If a petition for reconsideration is filed, this thirty-day period will begin to run upon the disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). Otherwise, the 30-day time limit for filing a petition for judicial review commences with the date of the mailing of this decision.

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

CERTIFICATE OF SERVICE

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

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