

**BEFORE THE PROFESSIONAL STANDARDS COMMISSION
OF THE STATE OF IDAHO**

LISA COLÓN DURHAM, Chief Certification Officer, Complainant,)	Case No. 21628
vs.)	
EVAN J. CURRY, Respondent.)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER OF THE HEARING PANEL

The Chief Certification Officer Lisa Colón-Durham (CCO) filed an Administrative Complaint against Evan J. Curry for not using a high level of honesty, accuracy, and responsibility when handling public property. Mr. Curry requested a hearing on the Administrative Complaint. A Hearing Panel of the Professional Standards Commission was convened and held a hearing as noticed beginning at 9:00 a.m. on Wednesday, March 22, 2017, in the Barbara Morgan Conference Room, Len B. Jordan Building, 650 West State Street, Boise, Idaho. Anne Ritter chaired the Hearing Panel. Anna Schneider and Karen Nichols were the other members of the Hearing Panel. Michael S. Gilmore, Deputy Attorney General, advised the Hearing Panel. Brian V. Church, Deputy Attorney General, represented the Chief Certification Officer. James Piotrowski, Herzfeld & Piotrowski, PLLC, Boise, Idaho, represented Mr. Curry. This written decision of the Hearing Panel reviews the proceedings before the Panel, makes Findings of Fact and Conclusions of Law, and enters a Final Order to issue a letter of reprimand to Mr. Curry and to require him to take a three-credit ethics class that will not count toward renewal of his certificate.

I. SUMMARY OF THE PLEADINGS AND EVIDENCE AT HEARING

Mr. Curry holds a Standard Elementary Certificate, All Subjects K-8, Literacy K-12, and History 6/9. CCO Exhibit 1. He taught at Liberty Elementary School in the Boise School District during the 2014-2015 and 2015-2016 school years; his contract was not renewed for 2016-2017 because of declining enrollment in that school. The Administrative Complaint's allegations against him can be grouped into two categories: On June 2, 2016, the last day of the school year, when Mr. Curry was expected to leave all School District property at the school, Mr. Curry (1) did not leave a laptop computer, an iPod, and some other equipment (*e.g.*, a charging cable) that were School District property at the school, but directed their return some weeks later, and (2)

did not leave a MacBook Pro (a kind of laptop computer) that was the School District's property at the school and has never returned it. Administrative Complaint, ¶¶ 11-16.

The testimony of Boise Public Schools Education Foundation (BPSEF) Executive Director Jennifer Henderson and CCO Exhibits 2, 3, 10, 11, 12, & 13 showed that Mr. Curry donated enough money to BPSEF for BPSEF to cover the cost of a 15-inch MacBook Pro for Mr. Curry's classroom account, that BPSEF reimbursed Mr. Curry \$2,012.94 for his purchase of a MacBook Pro for his classroom, and that the MacBook Pro became School District property. Mr. Curry testified that the MacBook Pro was used in his classroom by student council members until mid-May 2016, when student council stopped meeting, and that it was placed in an unlocked cabinet in this classroom because there was no locked storage available. Although the MacBook Pro was School District property, the testimonies of Janel Fraley of the School District Information Technology staff and of Mr. Curry indicated that the MacBook Pro was not logged into the School District's inventory or tagged as School District property. No witness at hearing testified about seeing the MacBook Pro after its mid-May use by the Liberty Student Council.

Liberty Elementary Principal Jennifer Weske testified. We could tell from her and Mr. Curry's testimonies that by the spring of 2016 there was considerable friction between them, if not outright animosity. Matters that should have been addressed or resolved through simple conversation were instead handled by e-mail, which could lead to them not being properly handled or resolved at all. For example, shortly before the start of class on June 2, 2016, the last day of school, Ms. Weske e-mailed Mr. Curry that he should leave School District property in his classroom, especially computers and other electronic devices. But the failings in communication were not Ms. Weske's alone; it was also apparent that Mr. Curry had not taken simple and necessary steps to update the school's and/or the School District's IT personnel concerning the electronic devices in his classroom and to identify which devices were his and which were the School District's.

As noted, the evidence at hearing showed a haphazard inventory system for school property. There were some school-owned devices that Mr. Curry did not have at the school on the

last day of school — a laptop computer, an iPod, and other equipment like a charging cable. Issues of what to do if property were missing could have more easily been discussed and perhaps speedily resolved if Ms. Weske and Mr. Curry had jointly inventoried his classroom after the last students left. Instead, Mr. Curry had been asked to turn in his keys and to leave the building; he was not in the classroom when Ms. Weske and an assistant gathered up all of the electronic devices in his classroom and impounded them in her office.

The day after school ended, Mr. Curry had major surgery and was incapacitated for some time after that. Less than two weeks after school ended, without any informal communication to Mr. Curry about School District property, the Boise School District's attorney sent a letter to Mr. Curry demanding the return of various items of property and listing criminal, civil, and professional consequences for retaining School District property. The property list included items that were Mr. Curry's own property and items that were not. It took some time for Mr. Curry, who was still recuperating from surgery, to look through his home, garage, etc., to find several of the items that belonged to the School District, which his parents took to the Idaho Education Association's attorney, who in turn returned them to the School District. CCO Exhibit 19. The MacBook Pro has never been located.

II. THE LAW TO BE APPLIED

Idaho law allows the Professional Standards Commission to discipline a certified educator for willful violation of a code of ethics adopted by the State Board of Education.¹ State Board of Education Rules, in turn, require certified educators entrusted with public property to honor that trust with a high level of honesty, accuracy, and responsibility.² This Hearing Panel's

¹ Idaho Code § 33-1208, subsection 1.j provides:

§ 33-1208. Revocation, suspension, denial, or place reasonable conditions on certificate — Grounds. — 1. The professional standards commission may deny, revoke, suspend, or place reasonable conditions on any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, upon any of the following grounds:

...

j. Willful violation of any professional code or standard of ethics or conduct, adopted by the state board of education;

² State Board of Education Uniformity Rule 76.06, IDAPA 08.02.02.076.06, provides:

disciplinary options under the law include placing reasonable conditions upon a certificate and issuing letters of reprimand.³

III. APPLICATION OF THE LAW TO THE FACTS OF THIS CASE

It is apparent from the testimony that Mr. Curry has an affinity for computers and related equipment that is unusual in an elementary school teacher and that it was also unusual for an elementary classroom to have as much electronic equipment as his did, a significant portion of which was his own personal equipment. The public property belonging to the School District that is the subject of this case and that was intermingled with Mr. Curry's own equipment was sloppily handled at every level: by Mr. Curry, who did not separate his own property from the School District's and who did not take necessary steps to see that the School District property used in his classroom was properly identified, tagged, and inventoried; by Principal Weske, who did not follow up about expensive equipment that appeared in Mr. Curry's classroom and who did not designate anyone in the school who was more familiar with technological equipment than she was to figure out what was going on with the equipment in Mr. Curry's classroom and to keep track of it; by the School District's Information Technology staff, which did not follow up on a March 2016 inspection and inventory of Mr. Curry's classroom to get to the bottom of what was the District's property and what was Mr. Curry's property. The list could go on from there. Further, Liberty Elementary School did not provide a locked cabinet or drawer in which to keep very expensive equipment owned by the School District, in particular, the MacBook Pro.

Sloppiness is not necessarily a willful violation of the ethical obligation to use a high lev-

06. Principle V — Funds and Property. A professional educator entrusted with public funds and property honors that trust with a high level of honesty, accuracy, and responsibility. ...

³ Idaho Code § 33-1209 includes issuing letters of reprimand and placing reasonable conditions on a certificate among this Panel's disciplinary options:

§ 33-1209. Proceedings to revoke, suspend, deny or place reasonable conditions on a certificate — Letters of reprimand — —

...

(6) ... The hearing panel may determine to suspend or revoke the certificate, or the panel may order that reasonable conditions be placed on the certificate or a letter of reprimand be sent to the certificate holder, or if there are not sufficient grounds, the allegation against the certificate holder is dismissed and is so recorded.

el of honesty, accuracy, and responsibility when dealing with School District property. If the ethical rules were read over-literally, every School District notebook, pencil, or paperclip that was misplaced, unaccounted for, or intermingled with a teacher's personal property would be an ethical violation and grounds for discipline. We are confident that result was not intended.

Mr. Curry should have been more careful in separating his personal property from the School District's, but we believe that School District equipment like the laptop computer, iPod, and charging cable that were at his home and that were later returned to the School District were not taken home because of a willful violation of the ethical rule concerning honesty, accuracy, and responsibility in dealing with public property. Mr. Curry's treatment of these items of property may have been at the outer boundaries of sloppiness before that sloppiness would become an ethical violation, but they did not cross the line because (1) there was such a short turn-around time (from right before the start of school to the end of school on the last day of school) for accounting for those items, (2) he had no chance to be present as electronic devices were collected from his classroom and to compare them to any records that he or that the school might have had, and (3) his return of the property was reasonably prompt under the circumstances given his incapacity following surgery.

The MacBook Pro is another matter. It was more valuable than any other item; it should have stood out regarding how it was to be handled. Mr. Curry should have taken more affirmative steps to inventory and keep track of the MacBook Pro because it demanded more attention to satisfy Mr. Curry's obligation of honesty, accuracy, and accountability. When a \$2,000 item of School District equipment in Mr. Curry's classroom was not inventoried and tagged as School District property and went missing with no one the wiser what happened to it, something went wrong that was more serious than sloppiness; it was a willful ethical violation.

That brings us to the issue as to what discipline is appropriate for Mr. Curry's failure to bring a high level of honesty, accuracy, and responsibility to taking care of the MacBook Pro. The CCO's Administrative Complaint had proposed discipline of a two-year suspension of his certificate and a requirement that he complete an approved three-credit ethics course that will not

count toward renewal of his certificate. That is too harsh under the circumstances, particularly when there was no ability to lock the MacBook Pro in Mr. Curry's classroom. We think a letter of reprimand and a requirement that he complete an approved three-credit ethics course that will not count toward renewal is sufficient and reasonably balances the harm (loss of a valuable piece of school property) with responsibility (which is shared by Mr. Curry and others).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Respondent Evan J. Curry holds a Standard Elementary Certificate, All Subjects K-8, Literacy K-12, and History 6/9. CCO Exhibit 1.
2. Mr. Curry taught at Liberty Elementary School in the Boise Independent School District No. 1 (the School District) during the 2014-2015 and 2015-2016 school years.
3. Mr. Curry donated money to the Boise Public Schools Education Foundation (BPSEF) that was used in part to purchase a MacBook Pro for use in his classroom at Liberty Elementary School. He purchased the MacBook Pro himself, then obtained reimbursement of \$2,012.94 for the purchase from the BPSEF. CCO Exhibits 2, 3, 4, 11, 12 and 13.
4. Mr. Curry's classroom at Liberty Elementary contained many electronic devices, some of which were the School District's property and some of which were his property. At the end of the 2015-2016 school year Mr. Curry was instructed by an e-mail that he received on the last day of school to leave the School District's property in his classroom. As instructed, Mr. Curry turned in his keys on the last day of school, then Liberty Elementary's Principal Jennifer Weske and an assistant collected all of the electronic devices from his classroom and secured them in Ms. Weske's office.
5. Neither Ms. Weske nor a member of the School District's Information Technology staff contacted Mr. Curry concerning the electronic devices left in his classroom. Instead, the School District's attorney sent a letter to Mr. Curry asking Mr. Curry to return a list of equipment, some of which was the School District's and some of which was Mr. Curry's.
6. Mr. Curry did not immediately return several items of School District property

that were on the letter's list because he had had major surgery the day after the 2015-2016 school year ended and was incapacitated as result. He later returned several items to the School District through his attorney, including a laptop computer, an iPod, and other equipment like charging cables. CCO Exhibit 19.

7. Neither Mr. Curry nor personnel for the School District have located the MacBook Pro. The MacBook Pro is unaccounted for.

B. Conclusions of Law

1. This Hearing Panel has authority under Idaho Code § 33-1208 and § 33-1209 to hear this contested case initiated by the Chief Certification Officer's Administrative Complaint against Mr. Curry.

2. This Hearing Panel has authority under Idaho Code § 33-1208 and § 33-1209 to order the issuance of a letter of reprimand to Mr. Curry and/or to place reasonable conditions upon his certificate if it finds that he willfully violated any professional code or standard of ethics or conduct adopted by the State Board of Education.

3. The MacBook Pro described in Finding of Fact 3 became the School District's property when Mr. Curry was reimbursed for its purchase. *Cf.* CCO Exhibit 12.

4. Mr. Curry did not willfully violate State Board of Education Ethics Principle V, Uniformity Rule 76.06, IDAPA, 08.02.02.076.06, with regard to School District property described in Finding of Fact 6, all of which he returned to the School District in a reasonable time under the circumstances.

5. Mr. Curry willfully violated State Board of Education Ethics Principle V, Uniformity Rule 76.06, IDAPA, 08.02.02.076.06, with regard to the MacBook Pro because he failed to exercise a high level of responsibility over it when it could not be found at the end of the school year.

6. It is within this Hearing Panel's authority to order that the Chief Certification Officer

(a) place a letter of reprimand in Mr. Curry's file, and

(b) require Mr. Curry to take a three-credit ethics course that will not count toward renewal of his certificate for the violation State Board of Education Rules described in Conclusion of Law 6. These are reasonable conditions to place upon Mr. Curry's certificate.

FINAL ORDER

IT IS THE FINAL ORDER of this Hearing Panel that the Chief Certification Officer

- (a) place a letter of reprimand in Mr. Curry's file, and
- (b) require Mr. Curry to take a three-credit ethics course that will not count toward renewal of his certificate.

Dated this 3 of ^{April}~~March~~, 2017.



Anne Ritter, Hearing Panel Chair

Review of Final Order

THIS IS A FINAL ORDER OF THE HEARING PANEL. Any party may file a Petition for Reconsideration of this Final Order within fourteen (14) days of its service date. The Hearing Panel is required by law to dispose of a Petition for Reconsideration within twenty-one (21) days of its filing or the Petition for Reconsideration will be considered to be denied by operation of law. See Idaho Code § 67-5243(3).

Petitions for Reconsideration of this Final Order may be filed by mail addressed to the Professional Standards Commission, Department of Education, Statehouse, Boise, ID 83720-0027, or may be delivered to the Department of Education, Len B. Jordan Building, Room 200, 650 West State Street, Boise, Idaho, and must be received within fourteen (14) days of the service date of this Final Order.

Judicial Review

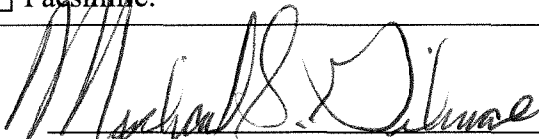
Pursuant to Idaho Code §§ 33-1209(8), 67-5270, and 67-5272, any party aggrieved by this Final Order or by another Order previously entered in this Contested Case may obtain Judicial Review of this Final Order and of all previously issued Orders in this Contested Case by filing a Petition for Judicial Review in the District Court as provided by those sections.

A Petition for Judicial Review must be filed within twenty-eight (28) days of the service date of this Final Order, or, if a Petition for Reconsideration is timely filed, within twenty-eight (28) days of the service date of a decision on the Petition for Reconsideration or denial of the Petition for Reconsideration by operation of law. See Idaho Code §§ 67-5246 and 67-5283.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of ~~March~~ ^{April}, 2017, I caused to be served a copy of the preceding FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER OF THE HEARING PANEL by the method(s) indicated below and addressed to the following:

James M. Piotrowski Herzfeld & Piotrowski 824 W. Franklin Street P.O. Box 2864 Boise, ID 83701	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail, Return Receipt Requested <input checked="" type="checkbox"/> E-mail: jpiotrowski@idunionlaw.com <input type="checkbox"/> Facsimile: (208) 331-9201
Brian Church, Deputy Attorney General Office of the Attorney General Statehouse Boise, ID 83720-0010	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail, Return Receipt Requested <input checked="" type="checkbox"/> E-mail: brian.church@ag.idaho.gov
Jennette Clark Clerk of the Boise School Board 8169 W. Victory Road Boise, ID 83709	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail, Return Receipt Requested <input checked="" type="checkbox"/> E-mail: jennette.clark@boiseschools.org <input type="checkbox"/> Facsimile:
Rob Sauer, Superintendent Homedale School District 116 E. Owyhee Avenue Homedale, ID 83628	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail, Return Receipt Requested <input checked="" type="checkbox"/> E-mail: rsauer@homedaleschools.org <input type="checkbox"/> Facsimile:



 Michael S. Gilmore
 Deputy Attorney General