

Toppenish School District No. 202

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TOPPENISH WA 98948-1644
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January 20, 2022

Via Hand-Delivery

Mr. Johnny Cerna

RCW 42.56.250/Protected Personal Information of A Current or Former
Public Employee (Residential Address)

Re: Notice of Probable Cause for Discharge Pursuant to RCW 28A.405.300; and
Notice of Probable Cause for Nonrenewal Pursuant to RCW 28A.405.210

Dear Mr. Cerna:

As you know, Toppenish School District staff and an investigator retained by the School District have conducted an investigation into allegations of unprofessional conduct by you during your employment with the School District. The allegations and related evidence have been shared with you, and you have been given the opportunity to provide your responses and explanations as to each of those allegations.

Based upon my careful and deliberate review of all of the material and probative evidence, I find that you have indeed engaged in the unprofessional conduct and behavior that underlies each separate one of the allegations that has been made against you, as listed in this Notice below. Therefore I further wish to advise you that, in setting forth each of those allegations below, I now consider each of them, as stated below, to be constitute an actual finding by me that each of them is now a statement of established, true fact.

1. You engaged in inappropriately intimate texting and snap-chatting with a student that crossed appropriate school administrator/student boundaries.
2. You engaged in grooming activities intended to accomplish an inappropriate physical relationship with that student.
3. You solicited sex from that student.
4. Aside from whether you did or did not engage in inappropriate texting or snap-chatting with that student, or whether you did or did not groom that student for an inappropriate physical relationship with that student or solicit sex from her, you nevertheless encouraged and maintained a relationship with her outside of school that

was an inappropriately personal and unprofessional relationship for a School District administrator to have with a student.

5. You purchased tobacco products from that student.
6. When that student was at your house over Spring Break of last year, you offered alcohol to that student.
7. On the same occasion when that student was at your house over Spring Break of last year, you were present when your wife offered marijuana to that student and you did not protect that student by intervening to say it was inappropriate.
8. On or about February 26, 2021, as part of your professional duties, you attended a safety training session on School District premises, and you were intoxicated by alcohol while in attendance.
9. You participated in the posting on the internet photographs of your wife in graphic and sexually provocative poses, in which she was partially nude in some of them and entirely nude and showing her genitals in others of them, giving an inappropriate level of regard to the fact your wife was a teacher in our School District and the photographs would be seen by students and thereby would cause a substantial disruption to our School District's ability to provide effective instruction to our students.
10. That even if you did not intentionally participate in the posting of those photographs online, you failed to exercise appropriate care to protect against them being disclosed by other persons on the internet, giving an inappropriate level of regard to the fact that your wife was a teacher in our School District and they might be seen by students and parents and thereby cause a substantial disruption to the School District's ability to provide effective instruction to our students.

As you are aware, the School District's investigator, Sarah Wixson, found each of the foregoing to be true within the Report she prepared of her investigation of you, and a copy of which I provided to you. I adopt each of the findings she made. I further have determined that each of the foregoing is established as true by consideration of all of the material and probative evidence within the physical and electronic evidence received and generated both by School District staff and by Ms. Wixson, all of which has been shared with you, to additionally include the statements of percipient witnesses as referenced in those materials. I further find the foregoing is true based on the substance of the meeting I had with you yesterday. In that regard, I determined you were not credible, forthcoming, or truthful in the course of presenting your denial of the truth of these matters, and that you therefore did not provide reasonable cooperation with the School District's investigation, despite my directive you provide complete and truthful information to the best of your ability information during the investigation. Your conduct in that regard was therefore insubordinate, and separately and independently comprises support for the action communicated to you by this Notice.

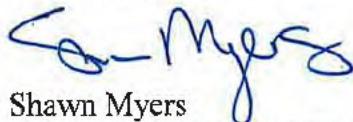
Based on all of the above, it is my conclusion that the above-referenced instances of misconduct, cumulatively, but also each, separately and individually: (1) Is/Are unprofessional, inappropriate, flagrant, egregious, based on substantial poor judgment, and a flagrant disregard of generally recognized professional standards; (2) Lack/s any positive educational aspect or legitimate professional purpose; (3) Has/Have a material and substantial adverse affect on your ability to deal with students, parents, and other staff members; and/or (4) Actually impaired/impairs your performance as an educator/administrator and does not constitute remediable teaching/educator deficiency.

With the statutory authority vested in me by action of the School District's Board of Directors ("our School Board"), I therefore conclude that probable cause exists for your discharge and for your contract non-renewal, each, separately and independently, from employment with the Toppenish School District.

Pursuant to RCW 28A.405.210, 28A.405.300 and RCW 28A.405.310, (copies of which are enclosed), you are entitled to due process rights and a hearing to review my determinations. According to the above-referenced laws, you must file an appeal. That appeal must be in writing and timely filed with either the chair or president of our School Board, or with me per statutory authority vested in me by the School Board to receive such a filing by you. If you do not appeal in that manner, my decision will become final, binding and non-appealable. A copy of the appeal provisions of the laws I've cited are enclosed.

If you do not understand this Notice or have any other questions, please do not hesitate to contact me.

Sincerely yours,



Shawn Myers
For Toppenish School District

Encls. (as stated)

cc: Personnel File (with encls.)

Conversation & delivery
of this notice on 1/20/22
@ 9:00 am.
Shawn Myers
E. Cerna

RCW 28A.405.210

Conditions and contracts of employment Determination of probable cause for nonrenewal of contracts Nonrenewal due to enrollment decline or revenue loss Notice—Opportunity for hearing.

No teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with a school district, hereinafter referred to as "employee", shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof, nor unless he or she is the holder of an effective teacher's certificate or other certificate required by law or the Washington professional educator standards board for the position for which the employee is employed.

The board shall make with each employee employed by it a written contract, which shall be in conformity with the laws of this state, and except as otherwise provided by law, limited to a term of not more than one year. Every such contract shall be made in duplicate, one copy to be retained by the school district superintendent or secretary and one copy to be delivered to the employee. No contract shall be offered by any board for the employment of any employee who has previously signed an employment contract for that same term in another school district of the state of Washington unless such employee shall have been released from his or her obligations under such previous contract by the board of directors of the school district to which he or she was obligated. Any contract signed in violation of this provision shall be void.

In the event it is determined that there is probable cause or causes that the employment contract of an employee should not be renewed by the district for the next ensuing term such employee shall be notified in writing on or before May 15th preceding the commencement of such term of that determination, or if the omnibus appropriation act has not passed the legislature by the end of the regular legislative session for that year, then notification shall be no later than June 15th, which notification shall specify the cause or causes for nonrenewal of contract. Such determination of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notice shall be served upon the employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing pursuant to RCW 28A.405.310 to determine whether there is sufficient cause or causes for nonrenewal of contract: PROVIDED, That any employee receiving notice of nonrenewal of contract due to an enrollment decline or loss of revenue may, in his or her request for a hearing, stipulate that initiation of the arrangements for a hearing officer as provided for by RCW 28A.405.310(4) shall occur within ten days following July 15 rather than the day that the employee submits the request for a hearing. If any such notification or opportunity for hearing is not timely given, the employee entitled thereto shall be conclusively presumed to have been reemployed by the district for the next ensuing term upon contractual terms identical with those which would have prevailed if his or her employment had actually been renewed by the board of directors for such ensuing term.

This section shall not be applicable to "provisional employees" as so designated in RCW 28A.405.220; transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.405.230 or 28A.405.245 shall not be construed as a nonrenewal of contract for the purposes of this section.

RCW 28A.405.300

Adverse change in contract status of certificated employee Determination of probable cause Notice Opportunity for hearing.

In the event it is determined that there is probable cause or causes for a teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with the school district, hereinafter referred to as "employee", to be discharged or otherwise adversely affected in his or her contract status, such employee shall be notified in writing of that decision, which notification shall specify the probable cause or causes for such action. Such determinations of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notice shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair of the board or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for a hearing pursuant to RCW **28A.405.310** to determine whether or not there is sufficient cause or causes for his or her discharge or other adverse action against his or her contract status.

In the event any such notice or opportunity for hearing is not timely given, or in the event cause for discharge or other adverse action is not established by a preponderance of the evidence at the hearing, such employee shall not be discharged or otherwise adversely affected in his or her contract status for the causes stated in the original notice for the duration of his or her contract.

If such employee does not request a hearing as provided herein, such employee may be discharged or otherwise adversely affected as provided in the notice served upon the employee.

Transfer to a subordinate certificated position and that procedure set forth in RCW **28A.405.230** or **28A.405.245** shall not be construed as a discharge or other adverse action against contract status for the purposes of this section.

RCW 28A.405.310

Adverse change in contract status of certificated employee, including nonrenewal of contract—Hearings—Procedure.

(1) Any employee receiving a notice of probable cause for discharge or adverse effect in contract pursuant to RCW 28A.405.300, or any employee, with the exception of provisional employee as defined in RCW 28A.405.220, receiving a notice of probable cause for nonrenewal of contract pursuant to RCW 28A.405.210, shall be granted the opportunity for a hearing pursuant to this section.

(2) In any request for a hearing pursuant to RCW 28A.405.300 or 28A.405.210, the employee may request either an open or closed hearing. The hearing shall be open or closed as requested by the employee, but if the employee fails to make such a request, the hearing officer may determine whether the hearing shall be open or closed.

(3) The employee may engage counsel who shall be entitled to represent the employee at the prehearing conference held pursuant to subsection (5) of this section and at all subsequent proceedings pursuant to this section. At the hearing provided for by this section, the employee may produce such witnesses as he or she may desire.

(4) In the event that an employee requests a hearing pursuant to RCW 28A.405.300 or 28A.405.210, a hearing officer shall be appointed in the following manner: Within fifteen days following the receipt of any such request the board of directors of the district or its designee and the employee or employee's designee shall each appoint one nominee. The two nominees shall jointly appoint a hearing officer who shall be a member in good standing of the Washington state bar association or a person adhering to the arbitration standards established by the public employment relations commission and listed on its current roster of arbitrators. Should said nominee fail to agree as to who should be appointed as the hearing officer, either the board of directors or the employee, upon appropriate notice to the other party, may apply to the presiding judge of the superior court for the county in which the district is located for the appointment of such hearing officer, whereupon such presiding judge shall have the duty to appoint a hearing officer who shall, in the judgment of such presiding judge, be qualified to fairly and impartially discharge his or her duties. Nothing herein shall preclude the board of directors and the employee from stipulating as to the identity of the hearing officer in which event the foregoing procedures for the selection of the hearing officer shall be inapplicable. The district shall pay all fees and expenses of any hearing officer selected pursuant to this subsection.

(5) Within five days following the selection of a hearing officer pursuant to subsection (4) of this section, the hearing officer shall schedule a prehearing conference to be held within such five day period, unless the board of directors and employee agree on another date convenient with the hearing officer. The employee shall be given written notice of the date, time, and place of such prehearing conference at least three days prior to the date established for such conference.

(6) The hearing officer shall preside at any prehearing conference scheduled pursuant to subsection (5) of this section and in connection therewith shall:

(a) Issue such subpoena or subpoena duces tecum as either party may request at that time or thereafter; and

(b) Authorize the taking of prehearing depositions at the request of either party at that time or thereafter; and

(c) Provide for such additional methods of discovery as may be authorized by the civil rules applicable in the superior court of the state of Washington; and

(d) Establish the date for the commencement of the hearing, to be within ten days following the date of the prehearing conference, unless the employee requests a continuance, in which event the hearing officer shall give due consideration to such request.

(7) The hearing officer shall preside at any hearing and in connection therewith shall

(a) Make rulings as to the admissibility of evidence pursuant to the rules of evidence applicable in the superior court of the state of Washington.

(b) Make other appropriate ruling of law and procedure

(c) Within ten days following the conclusion of the hearing transmit in writing to the board and to the employee, findings of fact and conclusions of law and final decision. If the final decision is in favor of the employee, the employee shall be restored to his or her employment position and shall be awarded reasonable attorney's fee

(8) Any final decision by the hearing officer to nonrenew the employment contract of the employee, or to discharge the employee, or to take other action adverse to the employee's contract status, as the case may be, shall be based solely upon the cause or causes specified in the notice of probable cause to the employee and shall be established by a preponderance of the evidence at the hearing to be sufficient cause or causes for such action.

(9) All subpoenas and prehearing discovery orders shall be enforceable by and subject to the contempt and other equity powers of the superior court of the county in which the school district is located upon petition of any aggrieved party.

(10) A complete record shall be made of the hearing and all orders and rulings of the hearing officer and school board.