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*IN THE MATTER OF A PROCEEDING  
PURSUANT TO 8 NYCRR PART 83 TO  
DETERMINE WHETHER*

**DENNIS I. TAVE**

**HEARING OFFICER'S  
RECOMMENDATION**

*HAS THE REQUISITE GOOD MORAL  
CHARACTER TO TEACH IN THE PUBLIC SCHOOLS  
OF THE STATE OF NEW YORK*

Hearing Officer: Diane J. Exoo, Esq.

Counsel: Daniel Harder, Esq.  
Office of School Personnel Review and Accountability  
New York State Education Department

Stephen Santoro, Sr., Esq. & Sarah Scigliano, Esq.  
Stephen M. Santoro, Sr., P.C.  
Attorneys for Respondent

**NYSED**

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**PROCEDURAL HISTORY**

On November 14, 2006, Commissioner of Education Richard Mills issued a Notice of Substantial Question as to Moral Character in the above entitled matter. (Department's Exhibit 1)

On November 17, 2006, NYSED served a copy of the Notice of Substantial Question of Moral Character with a summary and a copy of the Part 83 Regulations by certified mail, return receipt requested, which was received at the Respondent's residence, as indicated by the signature of the Respondent's spouse, Linda Tave, on November 20, 2006. (Department's Exhibits 2 & 3)

Pursuant to 8 NYCRR 83, subd. 83.4, Respondent's counsel, Stephen M. Santoro, Sr., Esq., by letter dated November 21, 2006, requested that a hearing be held in this matter. (Department's Exhibit 6) On December 29, 2006, Commissioner Richard Mills issued an Order Designating Hearing Officer and Setting Venue in Albany County. (Hearing Officer's Exhibit A)

Respondent's counsel, Steven Santoro, acknowledged that he had received written notice of the date, time, and location of the hearing by letter dated January 5, 2007, pursuant to Part 83.4(a). (Transcript: p. 19, lines 1-18) Hearings in this matter were held on April 4 & 5, May 31, August 15, and September 14, 2007. In accordance with the Commissioner's order regarding venue, the hearings took place at the New York State Education Building, 89 Washington Ave., Albany, New York, except for the September 14, 2007, hearing, which by consent of all parties, was held at the Putnam Valley Library, Putnam Valley, New York, for the convenience of the witnesses.

Daniel Harder, attorney for NYSED, presented twelve witnesses and entered fifty-seven exhibits. Through his counsel, Stephen Santoro, Sr., Esq. and Sarah Scigliano, Esq., the respondent teacher, Dennis I. Tave, presented four witnesses and entered five exhibits.

#### **MOTION TO AMEND THE CHARGES**

The first issue that must be decided is a motion by Attorney Harder to amend the original charges. The Notice of Substantial Question of Moral Character alleges that Dennis I. Tave engaged in inappropriate behavior with a 7<sup>th</sup> grade student that included improper physical, intimate and/or sexual contact and improper communications. (Department's Exhibit 1) In response to a Demand for a Bill of Particulars from Respondent's counsel, Attorney Harder, in compliance with the State Administrative Procedure Act §401(4), by letter dated March 26, 2007, (overnight delivery) provided more specific information regarding the original charges. (Hearing Officer's Exhibit B)

The March 26, 2007, letter from NYSED contains the name of the student, L.B., the approximate date; e.g., February, 2001, the time, and the location of the incident, which was the Respondent's classroom at Putnam Valley Middle School. Further, the letter describes the

incident and alleges that the Respondent engaged in inappropriate behavior with L.B. that included physical, intimate and/or sexual contact. (Hearing Officer's Exhibit B, p. 3)

The letter also includes allegations that the Respondent from October of 2000 to June of 2003 engaged in inappropriate comments about L. B.'s clothes and underwear and/or touched the student's underwear while on school property.

In the March 26, 2007, letter from NYSED to Respondent's counsel, Attorney Harder indicated that he intended to amend the charges to include the specific information provided in the letter. (Hearing Officer's Exhibit B, p. 3-4) At the first day of the hearing on April 4, 2007, Attorney Harder again indicated that he would seek to amend the charges. (Transcript: p.25, line 19-p. 26, line 7. In his opening statement at the hearing, Attorney Harder placed on the record the charges that the Department intended to prove which included the information provided in the letter dated March 26, 2007. (Transcript: p. 27, line 17- p. 32, line 4) On September 14, 2007, Attorney Harder made an oral motion to amend the charges and Attorney Scigliano opposed. (Transcript, p. 811, line 17-p. 812, line.21) Further, both parties addressed the motion to amend in their written summations. (Department's Exhibit 58 and Respondent's Exhibit G)

The first consideration when determining a motion to amend pleadings is whether a party will be prejudiced and legitimately surprised by the occurrence or event out of which the charge arose. On behalf of the Respondent, Attorney Scigliano objects to any additional charges resulting from any witness testimony outside the allegations concerning the student L.B. and requested that the charges be limited to the "Bill of Particulars" provided by the Department, which is a reference to the Department's letter dated March 26, 2007. (Transcript p. 807, line 2-809, line 9)

The charges will be limited to the events concerning the student L.B. as described in the Notice of Substantial Question as to Moral Character (Dept's Exhibit 1), as supplemented by the March 26, 2007, letter from NYSED, and as described in the opening statement of Attorney Harder. (Transcript: p. 27, line 17- p. 32, line 4) Those charges are summarized as follows:

1. That on or about February, 2001, Respondent engaged in inappropriate behavior with a twelve year old female student, L.B., that included physical, intimate and/or sexual contact in the Respondent's classroom at Putnam Valley Middle School
2. That the Respondent from October of 2000 to June of 2003 engaged in inappropriate comments about L. B.'s clothes and underwear and/or touched the student's underwear while on school property.

Respondent's counsel cannot claim any surprise regarding the occurrence or events of these two charges. Not only was the information provided to counsel prior to the start of the hearing in the March 26, 2007, letter from NYSED, the record indicates that there was also a police investigation in May of 2003 after L.B. disclosed the alleged incidents to her parents. (Transcript: p.384-p:420 and Respondent's Exhibit D) and that Mr. Tave was subsequently interviewed by Detective Donald Killarney, Putnam Valley Sheriff's Department, on June 2, 2003, about the allegations. Further, these incidents were the subject of a school investigation by the Putnam Valley Central School District and the records contain a detailed description of the charge. (Respondent's Exhibit D) There was also a reference in the record by Respondent's counsel indicating that a 50-h hearing was conducted on July 30, 2004, and that the student L.B. testified at that hearing. (Transcript : p. 345, line 10-p. 346, line 9) Respondent cannot claim any legitimate surprise concerning these two charges since he knew about the allegations in June

of 2003 through a criminal and school investigation and received additional information about the specific charges by the Department by letter dated March 26, 2007.

In **Climent v. Bd. of Educ. of Comm. Sch. Dist. No 22, et. al.**, 732 N.Y. S. 2d 892, the Appellate Division held that in a proceeding which will affect a teacher's license, due process dictates the following: (1) that the teacher be provided with specific charges ; (2) a reasonable time to prepare a defense to the charges; (3) allow the teacher the right to counsel; (4) allow the teacher to present witnesses; and (5) allow the teacher to cross examine witnesses.

Applying the rule of law as stated in **Climent v. Bd. of Educ. of Comm. Sch. Dist. No 22, et. al., Id.**, the requirements of due process have been met: (1) the Respondent had knowledge of the two specific charges ; (2) Respondent's counsel had a reasonable time to prepare a defense to the charges; (3) Respondent was represented by competent counsel throughout the hearing; (4) Respondent presented witnesses and submitted affidavits on his behalf; and (5) Respondent's counsel vigorously cross examined witnesses.

There was testimony on both direct and rebuttal from other female students concerning separate incidents involving Mr. Tave, but the allegations were not included in the original charges, so their testimony will only be considered for the purpose of assessing the credibility of the witnesses, and the Department is free to pursue further charges based on the testimony of those students if it deems necessary.

#### **FINDINGS OF FACT**

The Notice of Substantial Question of Moral Character as supplemented by the Department's SAPA response dated March 26, 2007, alleges that the Respondent, Dennis I. Tave, on or about February, 2001, engaged in inappropriate behavior with a twelve year old female student, L.B., that included physical, intimate and/or sexual contact in the Respondent's

classroom at Putnam Valley Middle School, and that the Respondent from October of 2000 to June of 2003 engaged in inappropriate comments about L. B.'s clothes and underwear and/or touched the student's underwear while on school property.

Having carefully reviewed the entire record, I have determined that the New York State Education Department has established by a preponderance of the evidence the following findings of fact supported by substantial evidence and testimony in the record:

1. Dennis I. Tave, dob: 3/18/46, currently holds a permanent New York State certificate to teach Social Studies, grades 7-12, effective February 1, 1972, bearing the number 053364530.

2. From January of 1968 through June of 2004, the Respondent was employed at the Putnam Valley School District where he taught Social Studies and participated in extracurricular activities such as homework detention, intramural sports, and basketball.

3. On or about February 8 or 9, 2001, Respondent asked a 7<sup>th</sup> grade female student named L.B. to come to his classroom after school to make-up a test. The student fainted in his classroom, and the Respondent failed to seek any medical assistance for her.

4. That from October of 2000 to June of 2003 engaged in inappropriate comments about L. B.'s clothes and on one occasion pulled a belt loop on her jeans and looked at the student's underwear while on school property.

5. That on or about June 3, 2003, Respondent was placed on leave by the Putnam Valley School District pending a criminal investigation after a former student, L.B., reported that she has been sexually molested in his classroom when she fainted on or about February 8 or 9, 2001.

6. The criminal investigation was closed in July of 2003 with no charges filed against Respondent.

7. Respondent was on paid leave until June of 2004 when he retired from Putnam Valley Central School District in lieu of the school district filing 3020-a charges against him.

### **DISCUSSION OF THE CASE**

The first charge in this case is shocking, and the facts are sharply disputed. L.B., who was a 12 year old seventh grade student during the 2000-2001 school year, testified that in February of 2001, she went to Mr. Tave's classroom after school to make up a test that she missed, that she drank some water that he gave her, that she felt dizzy and lost consciousness, and that when she regained consciousness she found herself on the floor of the classroom with her pants and underwear down to her thighs. (Department's Exhibit 36) According to her testimony, Mr. Tave told her to get up and leave the classroom. She felt physically ill and went to the nearest girls' bathroom in the school and when she wiped herself, she noticed a "sprinkle of blood" on her underwear and felt cramping sensations. She did not disclose this to anyone until she told a friend, Susie B., on May 19, 2003, who convinced her to tell her parents.

From May and through July of 2003, the Putnam County Sheriff's Department conducted a criminal investigation of a possible rape of a student and the matter was subsequently presented to the Putnam County Grand Jury, which did not return an indictment. (Transcript p. 409, lines 3-8) Det. Donald Killarney, the lead investigator, testified that after the Grand Jury did not indict Dennis Tave, the criminal investigation was closed on July 13, 2003, pending further leads. (Transcript: p. 408, line 18-p. 410, line Respondent's Exhibit D)

The Respondent, Dennis I. Tave, denies that the incident occurred. He testified that the student, L.B., never came to his classroom after school to complete a test and that her allegations are false. He cooperated with the criminal investigation and was interviewed by Det. Donald Killarney on June 2, 2003, and denied the allegation that he sexually assaulted L. B. After he

was questioned by the police, he contacted Edward Hallisey, who was the principal at Putnam Valley Middle School, on June 3, 2003, and informed him that he was the subject of a police investigation. Mr. Tave was suspended on June 3, 2003, from his teaching duties, and subsequently reached a settlement with the Putnam Valley Central School District, whereby Respondent retired from teaching to avoid a 3020-a hearing. (Transcript: p. 583, line 1-p. 585, line 23)

Clearly, when facts are so sharply disputed a determination of credibility must be made based on a preponderance of the evidence supported by substantial evidence in the record. When determining the credibility of witnesses I took into consideration the interest or lack of interest in the outcome of the case, the possible bias or prejudice of a witness, the age, the appearance, conduct, and manner in which the witness gave testimony when viewed in the light of all the other evidence in the case. Further, I took into consideration any discrepancies in the evidence and whether the discrepancy could be reconciled by fitting all of the stories together, or whether it may have been an accidental misstatement due to the anxiety of testifying or the passage of time affecting memory. Further, I considered whether any disputed facts were supported by the evidence and the testimony of other witnesses.

There was testimony from Dennis I. Tave and Det. Donald Killarney regarding the results of two voice stress analysis tests that the Respondent failed during a police interview at the Putnam County Sheriff's Department on June 2, 2003. Although there was no objection by counsel to this testimony, I have not considered the results when determining the credibility of witnesses. The Court of Appeals held in **People v. Tarsia, 50 N.Y.2d 1 (1980)**, that the accuracy of the voice stress test, which relies on emotional and physical reactions to questions, has not been established to any scientific certainty.



## CHARGE 1

There are certainly problems of proof when considering whether or not an alleged sexual molestation of the student occurred. Although L.B. described the incident in detail (prior to losing consciousness) and appeared to be sincere in her testimony, there were no witnesses to the alleged event, and there is no doubt that the passage of time adversely affected any investigation. Although it is not uncommon for a sexual assault victim to delay the reporting of an assault due to trauma, that is not the case here. L. B. did not report the incident, because she did not know what happened and did not "put two and two together" until two years later. (Transcript: 279, Lines 8-18). According to her testimony, L.B. felt dizzy and fainted, so she was unconscious during the alleged assault and cannot testify as to what actually occurred. (Transcript: p 354, line 21-p.356, line 11) When L.B. was asked by Attorney Harder whether she knew if Mr. Tave touched her after she fainted, she testified, "I do not know." (Transcript: p. 265, lines 19-23) There is no expert testimony from a medical or a mental health professional to validate suspected sexual abuse. The clothes that she wore on that day have been thrown out or donated (Transcript 279, lines 19-p.280, line 5), so it is not possible to conduct any forensic testing.

The only medical evidence offered by the Department is a record of a doctor's office visit dated February 12, 2001, three days after the alleged incident. (Department's Exhibit 24B) L.B.'s mother took her to a pediatrician on that date, because L.B. was experiencing discomfort and complained that her vagina was "very itchy." (Transcript: p. 280, line 6-p. 281, line 7) According to the testimony of L. B.'s mother, the nurse practitioner who examined her daughter asked her if she had changed laundry detergent, if her daughter had been masturbating or washing herself excessively, and asked her if there was a chance that L.B. had had sexual contact with anyone. (Transcript: p. 170, lines 3-10). L. B.'s mother told her that she hadn't

switched laundry detergents and would speak to L. B. about the other questions. (Transcript: p. 17, lines 9-15). When they returned home, L.B.'s mother did speak with her daughter who denied that anyone had touched her. (Transcript: p. 171, lines 1-16)

There is no indication in the medical record to support a finding of sexual abuse. (Department's Exhibit 24B). The medical record does not contain any reference to questions about possible sexual abuse although it does note that the mother was asked about soap and laundry detergent. L.B. was diagnosed with "vaginal candidiasis," which is a yeast infection and an over the counter medication called Monistat was prescribed. (Department's Exhibit 24B, Transcript: p. 234, lines 14-21 ). A yeast infection would explain the burning and itchy sensations experienced by L. B., and the medical record notes a white discharge, which would also explain the white discharge that L.B. noticed in the bathroom after she left Mr. Tave's classroom. (Transcript: p. 271, lines 2-8 and Department's Exhibit 24B). Significantly, L.B.'s mother testified that L.B. had been diagnosed with Lyme Disease several months earlier and had recently undergone a 30 day treatment of antibiotics, which could have caused the yeast infection. (Transcript p. 193, lines 8-p. 195, line 22)

There is nothing in the testimony or exhibits presented to indicate that a yeast infection is a sexually transmitted disease or a condition that is associated with sexual abuse. Further, a medical professional is mandated by Social Services Law §413 (1)(a) to file a report if he or she has reasonable cause to suspect the sexual abuse of a child, and there is no indication in the record that such a report was made. L. B.'s mother testified that she was never contacted by a governmental agency or police department after the doctor's visit on February 12, 2001, so it is not likely that the doctor's office filed a report of suspected abuse. (Transcript: p. 207, lines 10-21)

L.B.'s mother testified that after L.B. disclosed the alleged assault on May 19, 2003, L.B. had a gynecological exam and that the gynecologist did not find any physical evidence of trauma indicating that L.B. had been sexually assaulted. (Transcript: p. 232, lines 21-23) When asked if the gynecologist had indicated whether L. B.'s hymen was intact, L.B.'s mother testified:

**“She wasn’t...she couldn’t be completely sure, if I remember correctly.”**

(Transcript: p. 235, lines 3-7) The medical records of the gynecological exam were not offered as evidence in this proceeding.

Due to the lack of any corroborating testimony or forensic evidence, the Department, which has the burden of proof in this matter, cannot show by a preponderance of evidence based on substantial evidence in the record that the Respondent sexually assaulted L.B. Dennis Tave, who has a 36 year teaching record, has consistently denied the allegation, and there is no corroborating testimony or evidence that could support a finding that he sexually molested the child.

Although the circumstances as described by L.B., who is sincere in her belief that she was sexually assaulted by the Respondent, may create “reasonable suspicion” as noted in the school’s investigation (Respondent’s Exhibit D), the testimony and evidence do not prove by a preponderance of the evidence that the sexual assault actually occurred.

Any window of opportunity to conduct a thorough investigation of this extremely serious allegation has passed. It has been almost seven years since the alleged assault occurred, and there is not any independent evidence, such as a witness who saw L.B. leave the Respondent’s room on that day who could describe her physical condition, forensic testing of the clothing that L.B. wore, or a medical examination for sexual assault including a rape kit, that can support L. B.’s suspicion that she was sexually assaulted. The medical record that was entered into evidence

shows that L. B. was diagnosed with a yeast infection on February 12, 2001, several days after the alleged incident, which would be consistent with the symptoms she described experiencing in the school bathroom after she left Mr. Tave's classroom.

There is, however, substantial evidence in the record to support L.B.'s testimony that she fainted in the Respondent's classroom after school and that the Respondent failed to provide any medical assistance to the child. L.B. testified that in February of 2001, the Respondent told her to come by his room after school to make up a test on a day that she stayed after school to watch a basketball game. (Transcript: p. 251, line 4-12). She came to his room around 3:30 p.m. on that day and left at approximately 4:00 p.m. ( Department's Exhibit 36)

L.B.'s testimony about the date and timing of the alleged incident is corroborated by testimony and evidence in the record. According to the testimony of Edward Hallisey, the Putnam Valley Middle School Principal, Dennis Tave participated in after school activities during the during the 2000-2001 school year; i.e., Mr. Tave was a homework detention monitor, supervised the boys' intramural sports program, and was the timekeeper for the boy's basketball games. (Transcript: p. 106, line 4- p.113, line 14). Putnam Valley Central School District records indicate that Dennis Tave was appointed and compensated for his after school duties during the 2000-2001 school year. (Department's Exhibits 13, 14, 15, and 16) William Conroy, former Putnam Valley Schools Athletic Director, stated that intramurals ended at 3:05 p.m. and that the basketball games usually started at 4:15 p.m. (Transcript: p. 504, lines 4-13) Mr. Hallisey, the middle school principal, testified that homework detention supervision and boys' intramurals took place from 2:45 p.m. until 3:15 p.m. and that the basketball games started at 4:15 p.m. (Transcript 106, lines 7-23), which means that a teacher who supervised these after school activities would have an hour of free time from at least 3:15 p.m. until 4:15 p.m.. During

this hour long free period , a teacher would be free to help a student if he wished (Transcript: p. 107, lines 1-17), which corresponds with the timeline established by L.B.'s statement to the Putnam Valley Sheriff's Department. (Department's Exhibit 36)

L.B. testified that the incident occurred in early February of 2001 on a day that she stayed after school to watch a basketball game. (Transcript: p. 317, lines 11-23) A schedule of the Putnam Valley School Basketball games from November 1, 2000- March 31, 2001, indicates that there were home games on February 8 and 9, 2001. (Department's Exhibit 17) Principal Edward Hallisey testified that neither of those dates were snow days. (Transcript: Department's Exhibit 18). L.B. testified that she had a doctor's appointment "a couple of days" after the incident because she was experiencing vaginal discomfort. (Transcript: p.280, line 6-p. 281, line 7) These dates would correspond with the testimony of L. B.'s mother that she took her daughter to the doctor on February 12, 2001. (Transcript: p. 161, line 14- p. 164, line 7) It would appear based on the record that the testimony and exhibits corroborate L. B.'s testimony regarding the date and time of the incident and Mr. Tave's availability during the hour of free time that he had prior to the start of the basketball game.

L.B.'s testimony that she became dizzy and lost consciousness on the date in question is consistent with the testimony and evidence. L.B.'s mother confirmed that her daughter has previously complained of dizziness and that she has fainted on another occasion. (Transcript: p. 235, lines 8- p. 236, line 8) According to L.B.'s mother, her daughter suffers from an eating disorder (Transcript: p. 237, line 1-20), which would explain her fainting spell, and the medical records from Dr. Deepak Kapur indicate that on January 18, 2001, less than a month before the incident in question, L.B.'s father took her to the doctor because he was

concerned about her eating habits; i.e., she would not eat breakfast or lunch . (Department's Exhibit 24C)

I am deeply disturbed by L.B.'s testimony that as she was lying on the floor prior to losing consciousness, she observed Mr. Tave unbuckling his belt and that as she regained consciousness she found her underwear and pants down around her thighs (Transcript: p. 260, line 15-p. 262, line 8); however, although I do not doubt the sincerity of her testimony, her recollection must be considered in the light of the fact that she was not fully conscious at the time of each one of these observations, which may have affected her ability to perceive or accurately remember what happened at that point during the incident. Without independent verification, her observations alone given her state of mind at the time, may rise to the level of reasonable suspicion, but not a preponderance of the evidence.

Although Dennis Tave testified that L.B. never came to his room after school and that he never observed her fainting at any time (Transcript: p. 541, line 17- p. 542, line 18), his testimony conflicts with the testimony of Detective Donald Killarney. According to Det. Killarney, he interviewed Mr. Tave on June 2, 2003, at the Putnam County Sheriff's Department. At that time he advised Mr. Tave of his Miranda rights, and then read aloud a statement signed by L.B. (Department's Exhibit 36) containing allegations against Dennis Tave, alleging that she had gone to his room after school in January or February of 2001 around 3:30 p.m., felt dizzy and blacked out, and that when she woke up her pants and underwear were pulled down around her thighs. (Department's Exhibit 36) She further alleged that Mr. Tave told her that it was 4:00 p.m. and that she had to leave. (Department's Exhibit 36)

According to Det. Killarney's testimony, Mr. Tave acknowledged during the police interview that L.B. came to his classroom after school and fainted:

**“At which time he [Dennis Tave] stated he knew nothing about it. The only thing he recalled about the incident was that he knew that she [L.B.] had had Lyme Disease and that she had missed quite a period of time of school, and he had suggested to her that if she wanted some extra help, he would be willing to give that to her.**

**At which time, he said she came into the room one night for some extra work, and he had written something on the blackboard, and she was standing up at the blackboard when he noticed that she started to pass out like she was fainting. He grabbed her and laid her down on the floor so she wouldn't fall and got her some water. And when she came around he said, come on, you got to get out of here, Laura, it's late. And that was it.”** (Transcript: 397, lines 1-15)

Mr. Tave's statements to Det. Killarney during the police interview corroborate much of L.B.'s testimony about the incident. He admitted that she came to his room after school, that she had fainted, and based on his statement to Det. Killarney, he let her leave the classroom without rendering any further aid, such as calling 911 to seek medical assistance or at least contacting her parents to pick her up or assisting her in any way to make sure that she arrived home safely.

At the hearing Mr. Tave denied that he ever said this to Det. Killarney. (Transcript: p. 542, lines 16-21), but his testimony regarding his police interview is simply not credible. First, his explanation of how he was contacted by Det. Killarney and actually agreed to an interview at the police station defies credulity. According to Mr. Tave's testimony, Det. Killarney contacted him by telephone on a Sunday evening:

**“Just, he called me up, he said, I would like you to come up tonight. I said, anything important? He said, yeah. I said, could I come tomorrow? It was Sunday**

**night, we were just about to go to bed, my wife and I. He said, yeah, I would really like you to come down tonight. And I said, okay. And that's the extent of the conversation"** (Transcript: p. 560, lines 1-10)

Mr. Tave further testified that Det. Killarney did not tell him why he wanted to speak with him at the police station. (Transcript: p. 561, lines 7-10) Also, he testified that his wife, Linda Tave, didn't ask him what was going on and that he did not have a discussion with her about why he was being called in for questioning as they drove twenty (20) minutes to the police station. (Transcript: p. 564, line 1-p. 567, line 18).

I do not find it credible that Dennis Tave did not ask Det. Killarney why the police wanted to speak with him and did not have a discussion with his spouse on the way to the police station . He testified that he has two adult children (Transcript: p. 536, lines 1-4), and I find it highly unlikely that he did not at least inquire whether a family member was hurt or in an accident. His testimony only makes sense if he had been informed by Det. Killarney about why he was being asked to come down to the police station for questioning. In fact, later in the proceeding Dennis Tave contradicted his earlier testimony that he didn't know why he was being called in for questioning by stating that Det. Killarney did tell him during the telephone conversation that a student had filed a complaint against him. (Transcript: p. 555, lines 1-6)

Second, although Mr. Tave testified that he only had one telephone conversation with Det. Killarney (Transcript: p. 560 , lines 14-21 ) on June 9, 2003, the police officer testified that he had two telephone conversations:

**"I called him at his residence on the telephone, identified myself, and I told him that there was a complaint made against him in reference to a student in his class at Putnam Valley Middle School, and I asked him if he would be willing to**



come up and talk to me about it. And at which time he didn't want to come up and talk to me. And he asked me what was going to happen, and I said right now nothing is going to happen, but I said, if enough evidence is developed, then what is going to happen is I am going to get a warrant for your arrest and I am not going to give the courtesy of a phone call, I am just going to come over and arrest you.... He said, okay, that's fine and he hung up the phone. That was the end of the conversation.

About maybe within ten minutes I get a call from my switchboard, and they said: Were you talking to a Dennis Tave? And I said yes. And they said, well, he is back on the phone. So I said, well, put him back into my extension. Which the switchboard did, they put him to my phone and he said: Is it alright if I come up? Am I going to get arrested? I said, no, you are not going to get arrested. I said if you want to come up, that's fine, it's up to you. He said, I will be up with my wife in a few minutes." (Transcript: p. 394, line 6- p. 395, line 15)

Third, Mr. Tave's answers during cross-examination about the telephone conversations with Det. Killarney were evasive and non-responsive. For example,

Q. Did your wife say: Dennis, what's going on?

A. No, because both of us don't know. We had no clue what was going on, so there was no reason to ask what was going on.

Q. Did your wife ask you in any fashion: Dennis, what reason would the police be calling you such that they wanted us to come down to the station?

A. That's the reason we were thinking about it, as to what could be the reason.

Q. So you did have a discussion about it, is that what you are saying?

**A. No, we were just wondering ourselves while we are driving up there.**

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Q. I am just asking what, if anything, did you discuss with your wife as to why we are getting in the car in the middle of the night and driving to the sheriff's station?

**A. We have no idea.**

(Transcript: p. 564, lines 6-p.566, line 2)

Overall, I find Det. Killareny's testimony to be much more credible than Dennis Tave's account of the same interview. He is a retired police officer who worked for the Putnam County Sheriff's Department for forty (40) years until he retired in April of 2005. (Transcript: P. 385, line 10-16) At the time he interviewed Dennis Tave in June of 2003, he held the title of Senior Investigator and was responsible for the assignment of cases, monitored the progress of investigations, and supervised the other investigators in the Sheriff's Department of Putnam County. (Transcript: p. 387 lines 3-10) This was an experienced investigator at the time of the interview, and he does not appear to have any motivation or bias which might affect his testimony. The criminal case was closed in July of 2003, and Det. Killarney has since retired from the Sheriff's Department, so he has no interest in the outcome of this proceeding.

Although as Respondent's counsel pointed out during cross-examination, Det. Killarney did not take notes during the interview and his brief notes written afterwards regarding his interview only contained the statement that Mr. Tave "...denied any wrongdoing with possible rape victim" (Respondent's Exhibit D), I do not find this to be inconsistent with Det. Killarney's testimony that Mr. Tave admitted that L.B. had fainted in the classroom. The notes were not a verbatim transcription of the interview and, as Det. Killarney testified, he wouldn't necessarily

write down everything Mr. Tave said unless he implicated himself in a crime. (Transcript: p. 404, line 1-p.405, line 9)

I also find that the testimony of L.B. regarding the incident in the Respondent's room to be more credible than the Respondent's blanket denials (Transcript, p. 545, line 10-p.547, line 10), because her testimony about fainting in the classroom after school was supported by the evidence and the testimony of other witnesses. Her testimony was supported by the testimony of Det. Killarney, who appears to be without any bias in this matter or have interest in the outcome. The evidence and testimony support the date and time of the incident, which may be circumstantial, but it adds to the credibility of L.B. According to the testimony of L.B., the incident occurred in February of 2001 on a date when there was a home basketball game, and the evidence submitted indicates that there were home basketball games on February 8 & 9, 2001, which would have occurred several days before the doctor's visit on February 12, 2001. The testimony of the middle school principal, Edward Hallisey, and the former athletic director, William Conroy, established the fact that a teacher participating in detention and intramurals and boys' basketball, as Respondent did during the 2000-01 school year, would have been free from 3:15-4:15 p.m., which is the time period when L.B. testified she went to Mr. Tave's room.

Mr. Tave's testimony not only conflicted with the testimony of L.B. and Det. Killarney, but also conflicted with several other witnesses as well. Mr. Tave was unequivocal in his testimony that he was not available to help a student after school and that he never asked students to stay after school for extra help. (Transcript: p. 541, lines 5-15 and p. 589, line 22-p. 590, line 5) When asked during cross-examination if he had ever asked a student named Judiann R. to stay after school, Mr. Tave stated that he couldn't remember (Transcript: 590, line 10-p. 591, line 16), which is logically incompatible with his earlier testimony that he was not

available after school and never asked students to stay after for extra help. During rebuttal testimony, Judiann R. testified that she was asked to stay after school by Mr. Tave to work on test corrections, but when she realized that she would be alone with him in his classroom, she felt uncomfortable and didn't go to his classroom after school (Transcript: p. 783, line 25-p.784, line 21) Further, she testified that on past occasions she had stayed after school in his classroom with other students to work on tests. (Transcript: p. 785, lines 10-13) According to a written statement from a student named Katelyn S., Mr. Tave told her that she could come to his classroom to review whenever she wanted to. (Department's Exhibit 51)

Mr. Tave testified that he had never touched a student's hair (Transcript: p. 609, lines 11-13) or ever made any inappropriate comments to students. (Transcript: p. 553, line 23- p. 554, line 3; p. 609, lines 11-13) The record is replete with testimony and evidence from former 7<sup>th</sup> grade female students about inappropriate comments and actions by Mr. Tave that made the students feel uncomfortable. Judiann R. testified that Mr. Tave touched her hair. (Transcript: p. 786, line 18- p. 787, line 8) The Department submitted written statements from other former 7<sup>th</sup> grade students, Kerry C. and Carly H., which contained statements that Mr. Tave touched their hair and told them it looked nice. (Department's Exhibits 45 and 52) Kari V. reported that Mr. Tave twirled her hair in his fingers and complimented her. (Department's Exhibit 43) A former 7<sup>th</sup> grade student, Carly H., testified on rebuttal that Mr. Tave often stated to students that he liked their hair "down and dirty rather than up and clean." (Transcript: 737, lines 12-22) Mr. Tave's explanation was that he never made that comment to a student but acknowledged that he teases his wife by telling her that he likes her hair "down and dirty rather than up and clean." (Transcript: p. 608, p. 17-22) First, if he had never made that comment to a student, how would Carly H. be able to testify to a very specific phrase that Mr. Tave coincidentally says to his

spouse? Second, the fact that Mr. Tave denies making this comment to a student indicates that he is aware that it is an inappropriate remark to make to a student.

Judiann R. also testified that Mr. Tave commented on her appearance by telling her she looked pretty, (Transcript: p. 783, line 19-24) and on one occasion, when she wore a pair of pants that had "football" written on the back, Mr. Tave embarrassed her in front of classmates her by bending over low to read what was written on the back of her pants and asking her what it said. (Transcript: p. 782, line 24 – p. 783, line 15) Carly H., a former 7<sup>th</sup> grade student, testified that Mr. Tave gave her a birthday present in 7<sup>th</sup> grade consisting of a fake cell phone, fake nails, and a piece of cake. (Transcript: p. 729, line 3-18) She also testified that Mr. Tave did not give birthday presents to all the students in his classroom, but only her group of friends, including a beauty kit to her friend, Michelle T., on her thirteenth birthday. (Transcript: p. 740, line 12- p. 741, line 14)

This testimony is supported by written statements from other former 7<sup>th</sup> grade female students submitted by the Department reporting similar incidents. Katie M. wrote that Mr. Tave was always making "flirty remarks." (Department's Exhibit 38) Kelli V. reported that Mr. Tave would tell her she has "nice clothes and all the guys" and that on one occasion he placed a sign on the classroom door that said "Kelli is in here." (Department's Exhibit 41). Further, her statement says that she was a cheerleader and that Mr. Tave would tell the cheerleaders that they were "cute" or "pretty." (Department's Exhibit 41) On one occasion Mr. Tave put his arm around her and told her that her jeans were "cute." (Department's Exhibit 41) Another student, Andrea G., signed a statement that on her birthday, April 19<sup>th</sup>, when she was in 7<sup>th</sup> Grade, Mr. Tave told her that now that she was thirteen years old, she could "make out" with guys. (Department's Exhibit 47) According to her statement he told her that he was going to allow the

other girls to leave the classroom, turn out the lights, and make her stay in the classroom with the boys so that she could make out. (Department's Exhibit 47) Another student, Heather W., who witnessed the incident wrote a corroborating statement which was submitted by the Department. (Department's Exhibit 42)

During April of 2001 there was another complaint by a student, Daria S., against Mr. Tave, which was not included as a charge in the Notice of Substantial Question of Moral Character or in the March 26<sup>th</sup>, 2007, supplemental letter, so it will only be used to further assess Mr. Tave's credibility. The incident occurred in April of 2001 during a gym class at the Putnam Valley Middle School, where Mr. Tave approached a group of female 7th grade students practicing karate in the gym, grabbed one of the students, Daria S., spun her around, pinned her arms across her chest, wrapped his leg around her body, and pressed the back of her body against him. (Transcript: p. 746, line 2-p. 774, line 17) The student, Daria S., was shocked and embarrassed and, at the urging of her friends, spoke with the school counselor several days later. (Transcript: p. 753, line 17-p. 758, line 6) A school investigation ensued but no disciplinary charges were pursued. (Transcript: p. 120, line 18- p. 123, line 10) After L.B. went to the police in May of 2003, Daria S. was also interviewed by the police and gave a written statement of the incident at that time, but no criminal charges were filed. (Department's Exhibit 37)

Mr. Tave's explanation about the incident changed during his testimony. On direct examination Dennis Tave's explanation of the incident with Daria S. was as follows:

**"....And I went behind her and I pretended I was giving her a karate chop, and I walked away."** (Transcript: p. 549, line 15-p. 550, line 2)

When asked by his attorney if he had touched her inappropriately, Mr. Tave added to his previous answer:

**"I never...I inadvertently, when I went in back of her to give her a karate chop, she felt I moved my body parts near her, but other than that, I didn't touch her in any way. I didn't deliberately touch her in any way."** (Transcript: p. 550, lines 5-11)

During cross-examination he conceded that he it could have been more than a karate chop. He might have touched her neck with his hand or grabbed her head with his hand, but was adamant that it was nothing more:

**"There is a possibility I might have put my hand, teasing her by the neck, but not, you know, not with any extra force of anything, just pretending that I am doing karate....Maybe just grabbing her head with a hand. I think with the hand.** (Transcript: p. 599, line 10-p. 601, line 2)

His testimony about the incident differs sharply from the witnesses. Daria S. testified that he grabbed her, spun her around, criss-crossed her arms across her chest and held them by wrapping his arms around her, and then wrapped his leg around her legs, holding the back of her body against the front of his body. (Transcript: p. 749, line 1- p. 753, line 25) This was witnessed by two other 7<sup>th</sup> grade students, Katie M. and Kelly S., who were in the gym standing next to Daria S. when this incident occurred. Katie M. testified that that Mr. Tave wrapped his arms and one leg around Daria S. so that she couldn't move. (Transcript: p. 635, line 4- p. 636, line 19) The Department submitted a written statement from Kelly S. dated 6/9/03 describing the same incident, which corroborates the testimony of D.S. and K.M., and states that Mr. Tave "humped" Daria S. (Department's Exhibit 46) The middle school principal, Edward Hallisey, testified that he investigated the incident after the girls reported it to a counselor and interviewed the girls and Mr. Tave separately. According to his investigation, Mr. Tave's version of the incident was the same as the students' described it. (Transcript: p. 122, lines 1-22)

This is confirmed in a document that Mr. Hallisey wrote on 6/9/03 in which he described the incident as recounted by the students and then, after speaking with Mr. Tave, he wrote, "I asked him [Mr. Tave] to describe what he did. It was the same as the girls described." (Department's Exhibit 23)

When determining the credibility of witnesses I have taken into consideration the interest or lack of interest in the outcome of the case, the possible bias or prejudice of a witness, the age, the appearance, conduct, and manner in which the witness gave testimony when viewed in the light of all the other evidence in the case. Further, I took into consideration any discrepancies in the evidence and whether the discrepancy could be reconciled by fitting all of the stories together, or whether it may have been an accidental misstatement due to the anxiety of testifying or the passage of time affecting memory. There is no question that the passage of time has taken its toll in this matter. The most recent incidents, dates, and conversations testified to by the witnesses occurred almost five years ago and the incidents included in the charges allegedly occurred over seven years ago. Some of the inconsistencies in the testimony of the witnesses concerning the facts, including those of L.B. and other Department witnesses, such as an exact date in February of 2001 or the exact words uttered by L.B.'s mother when her daughter disclosed to her, are due to the passage of time affecting memory or the anxiety of testifying; however, some of the testimony offered by Dennis Tave is so contradictory that it cannot be reconciled. In order to find Mr. Tave's testimony credible, I would have to discredit the testimony of seven other witnesses; i.e., not only L.B., but also Det. Killarney, Edward Hallisey, Daria S., Katie M., Judiann R. and Carley H. and discard eighteen written statements from former students entered as Department's Exhibits 38, 41-57, which are hearsay and weighted accordingly, but nonetheless support the testimony given by the Department's witnesses at the



hearing. It is well settled as a matter of law that a finding of fact may be supported by substantial evidence despite conflicting testimony as to the charges. **Matter of Stein v. Board of Regents of Univ. of State of New York**, 169 A.D. 2d 858 (1991). Based on the record, it appears that Mr. Tave has a significant credibility issue.

Mr. Tave knew that L.B. had been ill during the 2000-2001 school year. In October of 2000, L.B. had been diagnosed with Lyme Disease and Fifth Disease resulting in some absences from school. (Transcript: p. 194, line 5- 195, line 23) L. B.'s mother testified that she attended a team meeting at the middle school in October of 2000 to discuss L.B.'s school performance and that Mr. Tave was present at the meeting. (Transcript: p. 188, line 17- p. 189, line 6) Mr. Tave testified that he remembered that L.B. was sick a lot and had a learning disability. (Transcript: p. 568, line 19- p. 570, line 12) Despite the fact that, by his own admission, Mr. Tave knew about L.B.'s fragile state of health, he failed to seek medical attention for a student who fainted in his classroom.

## CHARGE II

L.B. testified that starting on or about December of 2000 throughout the 2000-2001 school year, Mr. Tave would do the following which caused her to feel uncomfortable:

**“He, to me personally, would do this checklist thing, where he would ask me almost on a few-days-a-week basis if I was wearing pants, shoes, shirt.”** (Transcript, P. 243, Lines 16-20)

On one occasion she testified that while doing the “checklist” he hooked the belt loop of her jeans and pulled them to see if she was wearing underwear:

**Q. At the time that he pulled your pants away from your body, did he say anything specific?**

**A. Yes, he said: You're wearing underwear. And he pretended to check it off.**

(Transcript: p. 245, lines 6-9)

Although L.B. testified that the incident occurred in between periods as students changed classes and she could recall other students being around, she didn't remember specifically who might have been present. She also testified that she didn't report this behavior to any school officials at the time, because, being a 7<sup>th</sup> grader at the time, she was afraid to tell anyone about her teacher. (Transcript: p. 246, lines 10-18)

Mr. Tave's response to this charge is again a complete denial. He denied that he ever engaged in any "checklist" behavior with L.B. or said anything inappropriate to L. B. or to any other student, although he did admit to Det. Killarney that he often teased students in the school gym. (Transcript: p. 545, line 10 - p. 546; p. 554 lines 8-20; Transcript: p. 557, lines 3-8)

The Respondent's propensity for inappropriate comments and behavior directed toward female students is well documented in the record and support the testimony of L.B. The "karate chop" incident with D.S. is certainly an example of inappropriate behavior with a student. As previously discussed in this recommendation, other female students, Judiann R., Carly H., and Daria S. testified on rebuttal regarding inappropriate comments by Mr. Tave about their clothes and hair, touching their hair, and buying birthday gifts, such as beauty kits, fake nails, and fake cell phones, for a select few female students. His comments and actions made the students feel uncomfortable. This testimony was supported by the written statements entered as Department's Exhibit 38, 41-57:

Department's Exhibit 41: Kelli.V. wrote that Mr. Tave would hover over her and try to flirt with her. He would tell her to stay after class or come in early before school. He commented on her clothes and told her that she would get all the guys. She was uncomfortable in the gym

because Mr. Tave would flirt with her and the other cheerleaders by telling them how "cute" and "pretty" they were.

Department's Exhibit 42: Heather, W. wrote that she witnessed Mr. Tave telling Andrea G., a female 7<sup>th</sup> grader, that since she was now thirteen, she could make out with guys. Mr. Tave dismissed all the girls from the classroom and told Andrea G. that she should stay in the classroom and make out with the boys. He turned out the lights and shut the door, but Andrea G. managed to get out of the classroom. She also witnessed Mr. Tave wrapping his leg around D.S. in gym class.

Department's Exhibit 47: Andrea G. wrote that on her thirteenth birthday Mr. Tave told her that she could start making out with boys now. He told her that he was going to dismiss the other girls, turn out the lights, and let her remain in the classroom alone with the boys, so she could make out. When the bell rang, he tried to block her from leaving.

Department's Exhibit 49: Michelle T. wrote that Mr. Tave asked her why all the boys liked her. He commented on how tall and developed she was, followed her down the hallway and bumped into her from behind, told her that he liked her hair down and dirty rather than up and clean. He showed her a picture of him dressed up as a priest and said, "Tell me all your sins."

Department's Exhibit 50-Nicole R. wrote that Mr. Tave would say that he told his wife that he liked her hair down and dirty rather than up and clean. She also wrote that she had been warned not to be alone with him.

Department's Exhibit 51-Katelyn S. wrote that Mr. Tave told her how beautiful she was and that she looked nice. He asked her personal questions about her family and offered to review with her anytime she wanted.

Department's Exhibit 52-Kerry C. wrote that Mr. Tave asked her if she kissed her sister good night and that he always commented on her hair, often touching it.

Department's Exhibit 53- Maggie C. wrote that Mr. Tave made sexist remarks like, "You can cheer for the boys or you can do my laundry, but you can't play football."

Department's Exhibit 54-Amanda D. corroborated the testimony of Judiann R. by writing about the incident where Mr. Tave made an inappropriate comment about Judiann R.'s pants, which had the word "football" on the seat of the pants. She also wrote about how she has seen him wrap his arms around female students.

Department's Exhibit 56-Lia C. wrote that Mr. Tave looked into the girls' bathroom and made comments about a white shirt she was wearing which had sparkles across the chest.

Many of these examples cross the boundaries of professional interaction between a teacher and student. True, teachers do adopt language and explore topics of interest to teenagers in an attempt to relate to their students, but the actions described in the testimony, which are supported by the written statements, are so immature that it raises legitimate concerns about Mr. Tave's judgment regarding what is considered appropriate behavior with students. The female students who testified were genuinely uncomfortable around Mr. Tave, and his actions certainly raise a level of concern. The testimony and the evidence indicate a pattern of inappropriate comments and impulsive behaviors which made 7<sup>th</sup> grade female students feel uncomfortable, which supports L.B.'s testimony about her interactions with Mr. Tave and contradicts Mr. Tave testimony that he has never said anything inappropriate to a student or engaged in any inappropriate act with a student.

These behaviors indicate an immature and very impulsive nature, which is consistent with the description of Dennis Tave from one of his colleagues, Maureen Silvestrini. She is now

retired from Putnam Valley Middle School and taught with the Respondent for many years.

While testifying on his behalf as a character witness, she described him as follows:

**“Mr. Tave, the way I would describe him, was the original ADHD child. He was super hyperactive. He would come into a classroom bubbling over. He would open the door, and we could have a meeting going on, and he would burst in. And he livened thing up....He had a tremendous amount of energy. He was just always...he stood. I don't remember him sitting during his review sessions or even the meeting with us for very long.”**

(Transcript: p. 433, lines 8-19)

This observation was confirmed by Mr. Tave during his testimony:

**“....I am too hyper. I want to get it over with. I am a hyper person.”** (Transcript: p. 579, line 23- p. 580, line 1)

Although the “checklist” behavior described by L. B., which made her feel uncomfortable, is certainly on the edge of crossing professional boundaries, it does not rise to the level of creating a moral character issue; however, there is no question that Mr. Tave did cross a professional boundary when he pulled L.B.'s jeans by the belt loop and peeked at her underwear.

Any recommendation regarding Dennis Tave's teaching certificate must be weighed against the fact that Dennis Tave had a thirty six year teaching career without any complaints from students until the spring of 2001. At that time two students brought complaints about him to Leighann Natale Bale, LCSW, who was the social worker at Putnam Valley Middle School. The first was the “karate chop” incident involving a 7<sup>th</sup> grade female student named Daria S., and the second, was a complaint from another 7<sup>th</sup> grade female student named Heather W., who felt uncomfortable around Mr. Tave because he made personal comments to her. (Transcript: p. 676, line 2- p. 677, line 21; Department's Exhibit 40) Further, Heather W. reported to Ms. Bale that

Mr. Tave told a student in the class that she could "make out" when she turned thirteen.

(Department's Exhibit 40) As a result of these student complaints, Mr. Tave received a verbal instruction from his principal, Edward Hallisey, about the "karate chop" incident. No further action was taken by the Putnam Valley School District.

According to the testimony and evidence, Dennis Tave was by all accounts a very energetic, involved, popular teacher not only with the students but also with the teaching staff. In addition to his teaching duties, he participated in several other extracurricular activities including intramural sports. He was a valued member of his teaching team. Maureen Silvestrini, a retired teacher and friend of Mr. Tave's, testified that Dennis Tave would frequently hold review sessions in her classroom, which were popular with the students, and that his review sessions were very lively; e.g., he would toss candy to children who answered correctly.

(Transcript: p. 424, line 12- p. 433, line 19) She believes Dennis Tave has an "extremely high moral standard" and that he is innocent. (Transcript: p. 433, line 22-p. 434, line 3)

William Conroy also testified as a character witness on behalf of Dennis Tave. He is presently retired but was previously the athletic director at Putnam Valley School District. He observed Mr. Tave interact with students on many occasions and reported that the students liked him, because he had a very good rapport with students and "did the little extras" that kept students in the sports programs. For example, he would make morning announcements over the school's intercom system about the results of the games, mention each student's name, and post signs the next morning at school to encourage the participants in the sports program. (Transcript: p. 487, line 2-20) He testified that he considers Dennis Tave to possess "very high moral character." (Transcript: p. 491, line 8-9) He is also a good friend of Dennis Tave and reported that on the day that Mr. Tave was suspended from his teaching duties pending an investigation,

he went to Mr. Tave's residence and stayed with him offering to help him in any way.

(Transcript: p. 494, line 10- p. 496, line 8)

Nancy Witt is another teacher who previously taught with Mr. Tave at Putnam Valley Middle School until she retired in 1998. She observed him on many occasions with students and testified that she often heard students talking about teachers and that Mr. Tave was well liked by the children. (Transcript: P. 524, line 17-p. 525, line. 4) In her opinion his behavior was always very professional, and she feels that he would never harm a child. (Transcript: p. 526, line 4-16)

Respondent's counsel, Steven Santoro, entered two affidavits attesting to the moral character of Dennis Tave. Christine McDermott taught with Dennis Tave at Putnam Valley Middle School for almost ten years and often observed his interaction with students. She also had experience as a parent of one of Mr. Tave's students, since her son took 7<sup>th</sup> grade Social Studies with him. In her affidavit she lists the positive attributes that Mr. Tave displayed as an educator and believes that these are indicative of his moral character: diligent teacher, concern for the students, and instilling values by teaching the children to be honest, moral, and hardworking individuals. (Respondent's Exhibit A)

The other affidavit attesting to the moral character of Dennis Tave is from Nancy Sapir, who taught with him at Putnam Valley Middle School from 1984 through 2001. She observed his interaction with students and supervised numerous class trips with Mr. Tave. She believes him to be a dedicated and conscientious teacher who volunteered his own time to provide extra help to students. Her children were friends with Mr. Tave's children, so she has observed him in his parental role as well as his teaching role. In her opinion Mr. Tave is a very effective, creative teacher who is also a kind and compassionate man genuinely interested in the well-being of his students, the faculty, and staff. (Respondent's Exhibit C)

## CONCLUSION

The Respondent seeks to retain his certificate to teach in the public schools of the State of New York, which requires him, in addition to his teaching responsibilities, to supervise children *in loco parentis*, to exercise sound judgment when children are in his care, to practice good impulse control, to provide a safe learning environment for children, to recognize appropriate social boundaries at all times, and to serve as a positive role model for the students placed in his care. If a teacher lacks these qualities or skills, it can place students at risk, both physically and emotionally, and create an unsafe learning environment.

The position of a school teacher requires extreme trust, personal integrity, and the ability to practice good judgment. This requires a teacher to recognize professional boundaries at all times. If a teacher crosses those boundaries, it is a betrayal of trust and places the student at risk, both physically and emotionally.

Mr. Tave's failure to come to the aid of this student not only placed her in physical danger at the time of the incident, but also has had a psychologically devastating effect on the student to the present day. She believes that she was sexually assaulted and has been receiving therapy, in part due to her belief that her 7<sup>th</sup> grade teacher touched her inappropriately.

(Transcript: p. 173, line 10-p. 176, line 20) L.B. went through the trauma of disclosing this to her parents and participating in a police investigation, including testifying before a grand jury. Had Mr. Tave reported her collapse in his classroom, she could have received emergency medical aid immediately, and any physical symptoms that she was experiencing could have been diagnosed and treated at that time, and any if any physical sign of sexual assault were present, it could have been evaluated and addressed by medical professionals.



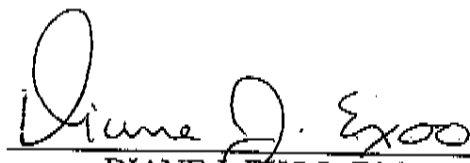
Mr. Tave's actions illustrate a serious lack of judgment and poor impulse control. Pulling jeans away from a child's body to peek at her underwear is not appropriate behavior. Failing to obtain medical aid for a child who faints in the classroom poses an unreasonable risk to the safety or welfare of the children under his supervision. This not only calls into question his moral character, but also indicates that he poses a safety risk to the children in his care

Although Mr. Tave appears to be a talented, energetic educator, he should not continue to teach children until he has undergone a forensic psychological evaluation by a New York State licensed psychologist and complied with any recommended treatment. I recommend that Dennis I. Tave's license be suspended until he completes the following conditions:

1. Dennis Tave shall obtain a forensic psychological evaluation at his own expense from a New York State licensed psychologist mutually agreed to by Dennis I. Tave and the OSPRA Legal and Investigative Unit/ New York State Education Department, with such approval not to be unreasonably withheld, and
2. Dennis Tave shall request that the OSPRA Legal and Investigative Unit/ New York State Education Department provide a copy of the Hearing Officer's Recommendation in this matter to the psychologist prior to the evaluation, and
3. Dennis Tave shall sign any and all necessary HIPAA compliant releases to the OSPRA Legal and Investigative Unit/ New York State Education Department to allow the agency to obtain a copy of the psychological evaluation, and
4. Dennis Tave shall successfully complete any recommended mental health treatment at his own expense, and
5. Dennis Tave shall provide the OSPRA Legal and Investigative Unit/ New York State Education Department with a letter from the psychologist who conducted the

psychological evaluation which shall indicate whether Dennis I. Tave has successfully completed any recommended mental health treatment, whether in his or her professional opinion Dennis I. Tave is capable of maintaining professional boundaries with students and that in his or her professional opinion Dennis I. Tave does not pose a safety threat to students.

Date: March 18, 2008

  
DIANE J. EXOO, ESQ.  
HEARING OFFICER

*IN THE MATTER OF A PROCEEDING  
PURSUANT TO 8 NYCRR PART 83 TO  
DETERMINE WHETHER*

**DENNIS I. TAVE**

**AFFIRMATION OF SERVICE  
BY MAIL**

*HAS THE REQUISITE GOOD MORAL  
CHARACTER TO TEACH IN THE PUBLIC SCHOOLS  
OF THE STATE OF NEW YORK*

STATE OF NEW YORK            )  
COUNTY OF ST. LAWRENCE) ss.:

Diane J. Exoo, being duly sworn, hereby affirms the following under penalty of perjury:

I am not a party to the action, am over eighteen (18) years of age and reside in Canton, County of St. Lawrence, State of New York, and hereby affirm the following under penalty of perjury:

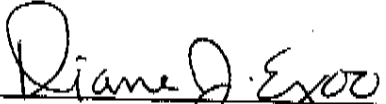
On March 19, 2008, I served a copy of the hearing officer's recommendation in the above-referenced matter, addressed to the following individual(s), by depositing a copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, specifically, Canton, New York 13617, at the last known address set forth below:

Richard P. Mills, Commissioner, New York State Education Department, Education Building  
89 Washington Avenue, Room 111, Albany, NY 12234

Daniel Harder, Esq., OSPRA , Legal and Investigative Unit, NYS Education Department, 89  
Washington Ave, Albany, NY 12234

Steven Santoro, Sr. Esq. & Sarah Scigliano, Esq. , Levy & Santoro, Attorneys at Law, 105  
Gleneida Avenue, Carmel, New York 10512

Date: March 19, 2008

  
\_\_\_\_\_  
DIANE J. EXOO, ESQ.