

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
OCEANSIDE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

DAVID STELMACH,

A Permanent Certificated Employee,

Respondent.

OAH No. 2014061028

DECISION

On December 17, 18 and 19, 2014, and January 20 and 21, 2015, a Commission on Professional Competence (Commission) heard this matter in Oceanside, California. The Commission consisted of the following members: Abraham M. Levy, Administrative Law Judge; Haywood Finder, selected by respondent; and Rebeca Bravo, selected by the Oceanside Unified School District.

Daniel R. Shinoff, and Amir Azimzadeh, Attorneys at Law, Stutz Artiano Shinoff & Holtz, represented Shelly Morr, Ed.D., Complainant, the District's Associate Superintendent of Human Resources.

Fern M. Steiner, Attorney at Law, Smith, Steiner, Vanderpool & Wax, represented David Stelmach, Respondent.

On January 21, 2015, the matter was submitted.

ISSUES

Do grounds exist to terminate Mr. Stelmach's employment with the Oceanside Unified School District?

If so, is dismissal an appropriate discipline under all the circumstances?

SUMMARY

David Stelmach, a high school English teacher, is a permanent certificated employee of the Oceanside Unified School District. Complainant seeks to terminate Mr. Stelmach's employment due to Mr. Stelmach's alleged evident unfitness for service and alleged persistent violation of the District's directives, rules and regulations.

A preponderance of the evidence established that between October 24, 2012, and March 12, 2014, Mr. Stelmach behaved in a manner unbecoming an educator, persistently violated District policies and applicable rules, and demonstrated evident unfitness to serve as a teacher in the District.

After applying relevant *Morrison* criteria, the Commission on Professional Competence concluded that Mr. Stelmach's employment with the District must be terminated.

FACTUAL FINDINGS

Jurisdictional Findings

1. On April 22, 2014, the District notified respondent of its intent to dismiss him from employment under Education Code sections 44934 and 44938.

2. On June 20, 2014, Complainant signed the accusation in her capacity as the District's Associate Superintendent of Human Resources.

3. The accusation and other jurisdictional documents were served on Mr. Stelmach, who timely filed a notice of defense and requested a hearing.

4. On December 17, 2014, the record in the administrative action was opened. The parties argued motions in limine, and the administrative law judge decided the motions in limine outside the presence of the other Commission members. After the administrative law judge ruled on the motions in limine, the Commission heard the parties' opening statements. Sworn testimony and documentary evidence were received. Closing arguments were heard. On January 22, 2015, the record was closed and the matter was submitted.

Motions in Limine

5. Mr. Stelmach's motion in limine to exclude all evidence, pursuant to Education Code section 44944, subdivision (a)(5), to exclude all evidence pertaining to matters occurring more than four years prior to the District's filing of the notice of intent to

dismiss, was granted in part and denied in part.¹ Proposed Exhibits 61, 62, and 62, which involved purported incidents in 1998, were deemed time barred and excluded. Exhibit 24, which involved an incident on August 26, 2012, was admitted for impeachment purposes only.²

David Stelmach's Background and Employment

6. Mr. Stelmach possesses single subject credential in English. Since 2010, Mr. Stelmach has taught English at El Camino High School (ECHS).

7. While at ECHS, Mr. Stelmach was supervised by Principal Robert Rowe and by Vice Principals Freddie Chavarria, Oscar Felix, Stephanie Locasio, and Kevin Thompson.

Disciplinary Action and Relevant Board Policies

8. Pursuant to Education Code section 44932, subdivision (a)(5), complainant alleged that Mr. Stelmach is unfit to serve as a teacher and that he persistently violated District policies and applicable rules and regulations in violation of Education Code section 44932, subdivision (a)(7). Specifically, the accusation details numerous alleged instances where Mr. Stelmach exhibited poor judgment and behavior and violated applicable District policies and rules. The accusation alleges that Mr. Stelmach failed to refer a male student to administration for possible discipline after the student handcuffed a female student during class, that he returned the handcuffs to the student, and that he made inappropriate comments to the female student after the incident. The accusation alleges that Mr. Stelmach allowed a non-student to remain in his class for an extended period of time and the non-student disrupted the class and upset a female student. The accusation also alleges that Mr. Stelmach ignited incense in his classroom; smoked e-cigarettes during class; failed to report absences; and left his class unattended.

9. During Mr. Stelmach's employment at OUSD, the following District policies were in effect.

- OUSD/BP 1120 "Visitors/Students" stated in relevant part:

To ensure the safety of students and staff and avoid potential disruptions, all visitors shall register immediately upon entering any school building or grounds when school is in session.

¹ Pursuant to AB 215, effective January 1, 2015, this section of the Education Code was reorganized and renumbered. The Education Code section cited here was in effect when the Notice of Charges was served on Mr. Stelmach.

² Government Code section 11513, subdivision (b), permits parties to impeach any witness. A witness's credibility may be impeached by "(t)he existence or nonexistence of any fact testified to by him." (Evid. Code § 780, subd. (i).)

- OUSD/BP 1313 “Civility” stated in relevant part:

It is the intent of the Board of Education to provide an orderly and safe learning environment in which students and adults feel comfortable, share the responsibility for maintaining a positive school climate and take pride in their school, its achievements, and its environment.

This policy promotes mutual respect, civility, and orderly conduct among members of the school community including all employees, parents/guardians, students, and the public at all schools, district facilities

The basic purpose of this policy is three-fold:

1. To promote a work and learning environment that is safe, productive, and nurturing for all staff and students and to encourage the free flow of ideas without fear of intimidation.
2. To provide our students with appropriate models for respectful problem-solving and conflict resolution, and
3. To reduce the potential triggers for violent conduct, such as fear, anger, frustration, and alienation, especially by making problem-solving procedures and alternatives to violence readily accessible to both students and adults.

- OUSD/BP 4119.21 Professional Standards stated:

The Board of Education expects district employees to maintain the highest ethical standards, exhibit professional behavior, follow district policies and regulations, and abide by state and federal laws. Employee conduct should enhance the integrity of the district and advance the goals of the district’s educational programs. Each employee should make a commitment to acquire the knowledge and skills necessary to fulfill his/her responsibilities and should focus on his/her contribution to the learning and achievement of district students.

[¶] . . . [¶]

The Educator strives to help each student realize his/her potential as a worthy and effective member of society. The educator therefore works to stimulate the spirit of inquiry, the

acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals.

In fulfillment of the obligation to the student, the educator:

[] Shall make reasonable efforts to protect the student from conditions harmful to learning or to health and safety. . . .

[] Shall not intentionally expose the student to embarrassment or disparagement

- OUSD/BP 3513.3 “Tobacco Free Schools” stated:

The Board of Education recognizes the health hazards associated with smoking and the use of tobacco products, including the breathing of second-hand smoke, and desires to provide a healthy environment for students and staff.

- OUSD/ BP 5114 “Attendance Records/Registers/Legal Surnames Attendance Records/Registers” stated:

Attendance in all schools and classes shall be recorded and kept according to pertinent state laws and regulations of the State Board of Education.

Teachers are required to take attendance in classes taught by them and shall do so personally. Attendance taking and recording shall not be delegated to students.

- OUSD/BP 5131.62 “Tobacco” stated:

The Board of Education recognizes that tobacco use presents serious health risks and desires to provide support and assistance in reducing the number of students who begin or continue to use tobacco. The Superintendent or designee shall establish a comprehensive program that includes consistent enforcement of laws prohibiting tobacco possession and use by students, tobacco-use prevention education, and intervention and cessation activities and/or referrals.

- OUSD/BP 5142 “Safety” stated:

The Board of Education recognizes the importance of providing a safe school environment that is conducive to learning and

helps ensure student safety and the prevention of student-injury. The Superintendent or designee shall implement appropriate practices to minimize the risk of harm to students including, but not limited to, practices relative to school facilities and equipment, the outdoor environment, educational programs, and school-sponsored activities.

- Education Code section 48901 provides as follows;
 - (a) No school shall permit the smoking or use of tobacco, or any product containing tobacco or nicotine products, by pupils of the school while the pupils are on campus, or while attending school-sponsored activities or while under the supervision and control of school district employees.
 - (b) The governing board of any school district maintaining a high school shall take all steps it deems appropriate to discourage high school students from smoking.
- California Code of Regulations, title 19, section 3.25, provides as follows:
 - (a) Open flame devices shall be prohibited in every Group A, E, I, R-2, R-3.1 and R-4 Occupancy.

[¶] . . . [¶]
 - (b) Under no circumstances shall hand held open flame devices such as exposed candles be permitted for any purpose in any occupancy within the scope of these regulations.

The District's Evidence

TESTIMONY OF FREDDIE CHAVARRIA AND DOCUMENTARY EVIDENCE

10. Freddie Chavarria has been an Assistant Principal at ECHS since 2012. His duties include responding to parents' concerns, evaluating teachers, and monitoring attendance. At one point, he was responsible for security at the school. In 2007 he was named San Diego County teacher of the year and was named administrator of the year by the Chamber of Commerce in 2012.

Bonnie Nicosia, the administrative assistant to the school's principal, Mr. Rowe, told Mr. Chavarria that Mr. Stelmach was not attending to students in his class due to excessive absences. As a result of Mr. Stelmach's absences, security staff was required to supervise students until a substitute teacher could be found. Based on the information he received from

Ms. Nicosia, Mr. Chavarria became concerned that Mr. Stelmach's absences were becoming a pattern of conduct that might compromise student safety and learning and be inconsistent with District policy.

Mr. Chavarria met with Mr. Stelmach in Mr. Chavarria's office on an unspecified date in 2012 to discuss his concerns about Mr. Stelmach's absences. Mr. Chavarria believed that a teacher with Mr. Stelmach's experience should understand the importance of having his classes covered when he was absent. It was a given that a teacher would know to contact the school's office when he or she was going to be absent on short notice.

In the meeting, Mr. Chavarria expressed concern about Mr. Stelmach leaving his class unattended. While Mr. Chavarria understood that Mr. Stelmach needed to leave school early due to his and his wife's health issues and other personal problems, he stressed to Mr. Stelmach that he was required to notify Ms. Nicosia when he was going to leave early. He also discussed with Mr. Stelmach that it was important for Mr. Stelmach to utilize the AESOP program (a program teachers accessed to arrange for substitutes to cover classes in their absence) and to utilize his calendar effectively to ensure that there was coverage for his classes. Mr. Chavarria commented that it was frustrating that Mr. Stelmach didn't know how to utilize AESOP effectively. But, Mr. Chavarria felt that, overall, the meeting with Mr. Stelmach was positive.

11. On April 17, 2013, Mr. Chavarria visited Mr. Stelmach's class after he encountered a student in the hall with a pass directing him to go to on-campus suspension. The student should have been in Mr. Stelmach's class. Mr. Chavarria testified that teachers do not have the authority to send students to OCS; only school administrators possess that authority. OCS is not a study hall. Mr. Chavarria summarized what he observed in an email he wrote the next day.

In his email, Ms. Chavarria noted that, before he attended Mr. Stelmach's class, he encountered a student with the OCS pass. The student said he wanted to go to OCS to get work done instead of attending Mr. Stelmach's class. This student told Mr. Chavarria that "all they have been doing is watching a movie (the Odyssey) for the last 4 days, and he wasn't learning much from it." Mr. Chavarria escorted the student back to Mr. Stelmach's class. He decided to stay in his classroom and observe the class for about 20 minutes. In his email, he summarized his concerns as follows: Students were given about 15 minutes to copy and respond in their journals. But the students completed the assignment in 5 minutes, and there was no follow through with the journal exercise. Mr. Stelmach read pages from the Odyssey. Some of the students were not following the classroom exercise, and Mr. Stelmach was not checking whether the students understood the materials.

Mr. Chavarria also noted that one of Mr. Stelmach's two teaching assistants was in his class when she should have been in Spanish class. In addition, he learned that Mr. Stelmach sent two students to OCS on April 18, 2013. Mr. Chavarria suggested to Mr. Stelmach that they meet to go over Mr. Chavarria's concerns.

12. Mr. Stelmach forcefully responded to Mr. Chavarria's email on April 19, 2013. Mr. Stelmach questioned why Mr. Chavarria would "put any stock into what [the student Mr. Chavarria met in the hallway] says is going on in a class" because that student "HAS A 0.00 CUMULATIVE GPA." Mr. Stelmach explained that he sent two students to OCS because those students arrived at his class after the bell rang. With reference to the two students in his class who were not enrolled in his class, Mr. Stelmach admitted these students were in his class. Mr. Stelmach advised Mr. Chavarria that Mr. Drago, a Spanish language teacher, had issued passes authorizing these students to be in the classroom.

Mr. Stelmach added the following comment regarding the issuance of passes by other teachers:

I have his pass allowing them into my class with his signature. Some teachers, and you know this as well, as I do (but I'm not about to snitch them off), send students out with passes to my class and others every single day.

Mr. Stelmach's email dismissed Mr. Chavarria's other concerns, particularly regarding the quality of classroom instruction.

13. Principal Rowe and Mr. Stelmach exchanged a series of emails dated April 19th, April 20th, and April 23rd. Mr. Stelmach copied Mr. Chavarria on each of these emails. Initially, Principal Rowe contacted Mr. Stelmach to arrange a meeting based on Mr. Chavarria's concerns. He was specifically concerned that students who were not enrolled in Mr. Chavarria's class were in his classroom.

In his two emails to Mr. Rowe, Mr. Stelmach conveyed irritation because Principal Rowe scrutinized his classroom teaching methods, expressed concern about students in his class who were not enrolled in his class, and expressed concern about his sending students to OCS. In his email dated April 20, 2013, Mr. Stelmach insisted that he had the right to send students to OCS. He wrote the following:

As far as sending kids to OCS (study hall) b/c they are wandering campus. Well for goodness sakes, isn't keeping them in detention or even the library for that matter, better than allowing them to wander around campus? One again [sic], this is a security question . . . If you knew how many times I have called security on wandering students, and there have been no consequences.

Mr. Stelmach attempted to explain why he should be allowed to send students to OCS, stating:

I'm from the "Old School" regime. I suffered plenty of consequences and was held accountable for the things I did

wrong in my formative years. It just seems that the “coddling and pampering” of students nowadays is getting out of hand

On April 23, 2013, Mr. Stelmach sent another email to Principal Rowe. Again, Mr. Stelmach copied Mr. Chavarria. In this email, Mr. Stelmach questioned why Principal Rowe faulted him for issuing OCS passes when other teachers did so. Mr. Stelmach wrote the following to Principal Rowe:

Obviously, I’m tired of this, and do not wish to be questioned anymore about students “hanging out” in my class. NO PASS NOT ALLOWED IN MY CLASS. No student is ever allowed into my class without a pass. I don’t think I can make that any clearer.

[¶] . . . [¶]

But when you feel like you are being “slung through the mud” as I do, well I guess it’s time for others to get dirty too. I’d rather be judicious and professional myself, but what can you do when you are getting blamed for the actions of others?

TESTIMONY OF BONNIE NICOSIA AND DOCUMENTARY EVIDENCE

14. Bonnie Nicosia is an administrative assistant at ECHS and secretary to the school principal. She has been at ECHS since 2012. Her duties include arranging for substitute teachers.

Ms. Nicosia learned that Mr. Stelmach had a number of same-day absences where he left school before lunch or after lunch. She told Mr. Chavarria about her concerns. On two occasions that she could recall, security notified her that students were waiting unattended outside Mr. Stelmach’s classroom when Mr. Stelmach was absent. She checked to see if Mr. Stelmach notified administration of his absences and determined he had not. She contacted administrators to find out why Mr. Stelmach was not in the classroom and to get someone to fill in for him.

Ms. Nicosia had advised all teachers that they were required to input any planned absence into the AESOP system. In the event a teacher needed to leave early, it was imperative that the teacher contact Ms. Nicosia or the administration to arrange for a substitute. It was the teacher’s responsibility to do this. Ms. Nicosia stressed that a teacher was permitted to input an absence into AESOP as little as one hour before the intended absence; however, if it were less than an hour before the absence, the teacher was required to contact Ms. Nicosia directly to enable her to arrange for a substitute. If Ms. Nicosia could not locate a substitute to supervise a class, Ms. Nicosia would attempt to find an administrator or a teacher who was on his or her preparation time to supervise the absent teacher’s class.

15. A print out from the AESOP system was received in evidence. It showed that from January 1, 2014, to April 4, 2014, Mr. Stelmach had seven absences, six of which required a substitute. From January 1, 2013, to December 31, 2013, Mr. Stelmach had 24 absences; 22 of those absences required a substitute; and five of those absences were not filled. From January 3, 2012, to December 31, 2012, Mr. Stelmach had 22 absences, 21 of which required a substitute. Seven of those absences were not filled.

TESTIMONY OF STEPHANIE LOCASIO AND DOCUMENTARY EVIDENCE

16. Stephanie Locasio has been an Assistant Principal at ECHS for two years. She supervises the special education program and is involved in discipline.

On March 25, 2013, as part of a school-wide sweep, Assistant Principal Locasio visited Mr. Stelmach's class with a drug sniffing dog. She immediately noticed that Mr. Stelmach was burning incense in the classroom. Assistant Principal Locasio spoke with Mr. Stelmach about that activity. Mr. Stelmach told her that he needed to burn incense to cover a dead animal odor in the classroom. Assistant Principal Locasio confirmed that Mr. Stelmach was not authorized to burn incense in the classroom. She learned that applicable fire codes prohibited open flames in the classroom. In an email Assistant Principal Locasio sent to Mr. Stelmach on March 25, 2013, she documented the fact that he was burning incense in his classroom, that she had asked him to refrain from doing so, and that doing so violated fire codes. She copied Principal Rowe in this communication.

17. Assistant Principal Locasio was aware of issues involving Mr. Stelmach's absences from school and children being left unsupervised as a result. Assistant Principal Locasio observed unsupervised students from Mr. Stelmach's class in the hallway due to his classroom absences. She explained that unsupervised high school students pose a particular problem because they will wander from their classrooms and cause trouble. To have a teacher cover Mr. Stelmach's class, she tried to persuade teachers on their preparation time to supervise students in his classroom. She noted that it was difficult because teachers always feel their preparation time is important. Assistant Principal Locasio spent considerable effort to get teachers to cover Mr. Stelmach's classes.

TESTIMONY OF KL AND DOCUMENTARY EVIDENCE

18. KL is the mother of CL, who was a junior in Mr. Stelmach's English class in 2013. KL was concerned because her daughter was getting unexcused absences. She was also concerned about her daughter's education in Mr. Stelmach's class. CL told her that there were students in her class who shouldn't be there. KL talked to administrative assistant Sue Degraft about her concerns, and Ms. Degraft suggested that she sent an email to Principal. Rowe. KL elected not to send her concerns directly to Mr. Stelmach. On May 16, 2013, she sent an email that documented her concerns to Principal Rowe. The document reads as follows:

Bob,

I have a few concerns concerning (CL's) English teacher, Mr. Stelmach

-In the past two months I have received tel-a-parent call from attendance stating that (CL) wasn't in class, when in fact she was. Last semester she also had to [sic] unexcused [sic] that were do [sic] to early release for her water-polo games with EC. Those are still showing unexcused.

-My daughter informed me that there are numerous times that the teacher is doing his own things instead of teaching . . . doing his taxes or working on personal things.

-In my opinion movies are watched way too often in this class.

-also it has been observed there are students in his class do not belong in the class and passes are issued to students when they are not Mr. Stelmach's students.

As always thank you for caring about all the EC kids and pushing them to do their absolute best in school.

19. KL was surprised when Mr. Stelmach replied directly to her in an email dated May 28, 2013, because she thought she was expressing her concerns confidentially to Principal Rowe. Mr. Stelmach's email made her upset and angry because he appeared to criticize and punish CL. She found the email rude. Mr. Stelmach's e-mail contained the following:

Thanks for calling out your concerns to Mr. Rowe, after all he is in charge of ECHS, and that's fine. As for concerns about your daughter, who transferred into my class mid semester, it is always a fine idea to consult that adult, per the notion that we, as consenting adults, have a more direct communication as to what is transpiring. To address your concerns we will start with (CL's) attendance. If she does not check in and goes into Mary Noble's room . . . if she doesn't check in with me then (CL) will most likely be marked absent. (I have no problem with Mrs. Noble, who emails me quite frequently about [CL]; and [CL's] desire to see her boyfriend who is also in that class). . . .

The bottom line is that (CL) is rarely in my class to observe much, much less comment much on what is taking place. There are no students allowed in my class without a pass, and the one

boy . . . who tries to sneak in gets removed under duress of punitive action by security.

The end result is that (CL) will not be allowed out of period 6 anymore . . . She will report on time, take a seat, hopefully not argue or challenge me on this. (The original includes a digital happy face.)

. . . .

20. Subsequent to sending the email to Principal Rowe, KL learned that her daughter had been handcuffed in the classroom by another student and that Mr. Stelmach had accused CL of plagiarism soon after KL sent the email to Principal Rowe. KL felt that Mr. Stelmach had retaliated against her daughter for the email KL sent to Principal Rowe. KL further discovered that Mr. Stelmach shared the email she sent to Principal Rowe with CL's class. At that point she felt that her daughter was no longer safe in Mr. Stelmach's classroom. As a result, KL had CL transferred to another classroom.

TESTIMONY OF CL AND DOCUMENTARY EVIDENCE

21. CL attended Mr. Stelmach's Junior English class the second semester in 2013. CL graduated in 2014.

In February 2013, during Mr. Stelmach's class, a male student, D, brought handcuffs to the class. D, tried to handcuff CL to a bar in the class. Other male students held her down so D could place the handcuffs on her. The handcuffs were tight on her wrist, and several times, CL told D to stop. CL broke free "from them" and asked D to give her the key so that she could unlock the handcuffs.

CL was upset and left the classroom. There were bruises up and down her arm, and the skin was broken. Mr. Stelmach followed CL as she left the class room. Mr. Stelmach asked her if she was ok. He then told her "not to worry about it because boys will be boys." CL did not return to class that day.

22. To CL's surprise, a few days after the incident, D came to class with the handcuffs and proudly displayed them so that the class could see them. Mr. Stelmach told the class, "Don't handcuff (CL) again or she'll cry and tell on you again." CL testified that D attempted to handcuff other students. In his hearing testimony, Mr. Stelmach admitted that he returned the handcuffs to D. The handcuffing incident came to Principal Rowe's attention several months after it occurred, when Principal Rowe spoke with CL after her mother sent him the email. CL completed a statement for Principal Rowe. CL adopted her statement in her hearing testimony.

CL testified that because of the handcuffing incident, she didn't want to attend Mr. Stelmach's class. She then went, at times, to another teacher's class, Ms. Noble's class, before she transferred to Mr. Miller's class.

23. After her mother sent the email to Principal Rowe, CL went to class and saw that Mr. Stelmach was typing on the computer. Her mother's email was projected on the class screen so that the entire class could see it. Mr. Stelmach told the class, "No one is leaving because a parent called and complained, and there will be no more movies being watched." Mr. Stelmach then told the class, "I'm going to read the email, but keep it anonymous."

24. In the statement CL wrote for Principal Rowe, CL described a number of incidents that took place in Mr. Stelmach's classroom. CL also testified about these incidents. According to CL, when Mr. Stelmach had his computer on in class, whatever was on his computer was displayed on a screen for the entire class to see. This included emails from parents, student grades, and Google searches.

CL also testified that Mr. Stelmach smoked "Blu" brand e-cigarettes in the classroom and that he permitted students to smoke e-cigarettes. She was familiar with "Blu" brand e-cigarettes because her brother smoked that brand. CL observed that Mr. Stelmach burned incense in class, and she saw students playing with the incense sticks in the classroom.

CL described Mr. Stelmach as a teacher who was not focused on teaching or the students. She testified that Mr. Stelmach showed a lot of movies in class and talked about his personal problems. Specifically, he told the class about the problems he was having with his wife and why they were having marital problems. Mr. Stelmach also used classroom time to prepare his taxes. When he was preparing his taxes, he told the students that they could do whatever assignments they had.

CL said that student D, the student involved in the handcuffing incident, brought three laser pointers to class and flashed one of them at her during testing. This incident appears to be the incident that Assistant Principal Felix witnessed. When CL complained about D using the laser pointer, CL said other students took it from him to "save" him from discipline.

CL did not believe that she plagiarized her essay. CL testified that, when Mr. Stelmach assigned the essay, he said students were permitted to use outside sources. CL believed that Mr. Stelmach accused her of plagiarizing the essay and lowered her grade in retaliation for her mother's email to Principal Rowe.

25. The Commission found CL fully credible.

TESTIMONY OF OSCAR FELIX AND DOCUMENTARY EVIDENCE

26. Oscar Felix has been an Assistant Principal at ECHS for three years. He has credentials as a counselor and administrator.

On April 24, 2013, Assistant Principal Felix walked into Mr. Stelmach's classroom when students were taking the California Standard Test (STAR). Mr. Stelmach was on the phone and didn't notice Assistant Principal Felix until he was one foot from his desk. Assistant Principal Felix noticed a student using a laser pointer to distract other students who were taking the test. After the class, the student admitted to Assistant Principal Felix that he was using a laser pointer to distract other students. Assistant Principal Felix sent Mr. Stelmach an email summarizing his concerns. It stated:

On Wednesday it was brought to my attention that there was a student using a laser pointer during testing to distract students while testing was going on. It is very important that we monitor students throughout the entire testing period. These are high stakes and may be compromised rather easily by our students.

When I walked in to your classroom, to take the student to my office, I found it concerning that you were sitting at your desk on your phone and it took for me to be a foot from your desk for you to look up. During this time a student could have walked out of class or engaged in cheating or other behaviors that are inappropriate during testing

27. Mr. Stelmach responded to Assistant Principal Felix's email a few minutes later. He began with the comment, "And the hits keep coming." Mr. Stelmach added that he didn't need "to be questioned on whether I can have my phone out looking at calendar dates during testing." He said he had "no idea" that a student had a laser pointer. He said he hoped that the student who used the laser pointer would be suspended.

Mr. Stelmach, then, a few minutes after this email, sent a second email to Assistant Principal Felix that stated:

You have afforded me no respect in your last email . . . Please don't sign "Respectfully." BTW-I love the Emerson and Twain quotes at the end of your email. Those are cool. And that is an example showing a sign of respect. You have shown me none.

Assistant Principal Felix testified that he was surprised by the hostile tone of Mr. Stelmach's email.

28. Assistant Principal Felix had contact with one of Mr. Stelmach's students, EH, on March 12, 2014. EH was referred by administrative assistant Maile Lombard, who found EH crying in the hall and was concerned about her safety. EH told Assistant Principal Felix that she was upset because, while she was in Mr. Stelmach's classroom, EQ, who was a visitor at ECHS, displayed images of Satan on the class projector screen and talked about satanic worship. This greatly upset EH. EQ was a former student, whom Mr. Stelmach allowed in the class.

29. After speaking to EH, Assistant Principal Felix sent a confidential email to staff regarding EQ. In this email, Mr. Felix advised staff, “Former student EQ has been seen coming on campus and being disruptive. It is important that we inform security or an administrator if EQ is seen on campus.” Assistant Principal Felix later learned that Mr. Stelmach displayed this email to his class. Assistant Principal Felix commented that Mr. Stelmach should not have displayed the email for security reasons. Assistant Principal Felix also said he was concerned that Mr. Stelmach was unable to provide a safe environment for EH to learn and be productive.

30. Mr. Stelmach replied to Assistant Principal Felix in an email dated March 12, 2014. Mr. Stelmach acknowledged that he had allowed EQ to be in his class, but he blamed security for allowing him to be in his class in the first place, claiming, EQ “slip(ped) by security.” Mr. Stelmach also confirmed that EQ was engaging in troubling behavior in his class. He wrote that EQ likes “to shock people with his Satanist philosophies” and added that “it is better that he stays at home and keeps it to himself.”

TESTIMONY OF EH AND DOCUMENTARY EVIDENCE

31. EH was Mr. Stelmach’s student during the 2013/2014 school year.

32. On March 12, 2014, EH became upset because EQ, the former student, was present in Mr. Stelmach’s classroom and often talked about the devil. On March 12, 2014, EQ displayed to the class on Mr. Stelmach’s computer the satanic “image of how to sacrifice a goat”. EH asked EQ to take down the image. She left the classroom upset and went to Ms. Lombard’s office. Ms. Lombard asked that EH speak with Assistant Principal Felix. Assistant Principal Felix asked that EH complete a witness statement detailing the incident.

33. In her statement, EH said that EQ had been coming into Mr. Stelmach’s class every day for over a month, and he always talked to Mr. Stelmach about Satan. EQ claimed that Satan means “truth” and “the history of Satan should be respected and seen as he should be-our lord not God.” As Mr. Stelmach started to teach the class, EQ sat down at Mr. Stelmach’s desk. He accessed a website that had a “star on it and Satan written in red letters.” Others students yelled, “You’re a Satanist?” EH asked EQ to please take the website off the projector. EQ replied, “Why, do you have a problem with it?” EQ removed the image.

In her statement, EH added that EQ made her uncomfortable, “like the sinking in your stomach.” She described herself as a “strong believer in God.” EH commented that she didn’t think a student who had already graduated should be allowed to come into a class and make people feel unsafe.

34. In response to EH’s concerns, Assistant Principal Felix sent the confidential email mentioned above to teachers and classified staff at ECHS. The following day, before class started, Mr. Stelmach displayed Mr. Felix’s email on the classroom projector screen “for a couple of minutes.”

35. Shortly afterwards, on March 17, 2014, EH met with Principal Rowe about the incident. Principal Rowe wrote a note summarizing EH's statement. According to the note, EH told Principal Rowe that Mr. Stelmach asked EH, after he displayed Assistant Principal Felix's email regarding EQ to the class, "Were you the one that told the office about (EQ)?" She said that she felt Mr. Stelmach blamed her for getting EQ kicked out. EH also stated that Mr. Stelmach said, "You made it sound like he is a fugitive" and "It was not his fault because the office gave (EQ) a pass." EH acknowledged at the hearing that she made these statements.

EH said she didn't want to get Mr. Stelmach in trouble and that she didn't want her concerns to go this far. She felt that Mr. Stelmach was a good teacher.

36. The Commission found EH's testimony fully credible.

TESTIMONY OF ROBERT ROWE AND DOCUMENTARY EVIDENCE

37. Robert Rowe was principal at ECHS during the relevant period in this matter. He has worked at the District for 34 years. He has served as principal at four schools within the District. He holds a multi-subject teaching credential and an administrator's credential.

ECHS has over 3000 students, 115 teachers and a staff of around 50 persons. The physical plant of the school is large, approximately 50 acres.

38. Principal Rowe described the primary duty of a principal as being to help create a safe and challenging work environment for students and teachers. To achieve the goal of a safe and challenging learning environment for all students and staff, Principal Rowe stressed that teachers must effectively utilize every minute of class time. He emphasized that teachers may refer disruptive students to administrators, but it is a long-standing policy that teachers do not have the authority to refer students to OCS. Only administrators have that authority. For safety and security reasons, a teacher may not issue a pass to a disruptive student. A teacher's lack of authority to issue a pass also applies to a student who is not achieving in a teacher's class. A teacher cannot issue a pass to an underachieving student that permits the student to attend another class. Principal Rowe emphasized that the teacher has the responsibility to continue to work with an underachieving student. Similarly, for safety and security reasons, a teacher may not have students in the classroom who are not enrolled in the class.

39. Principal Rowe is familiar with Mr. Stelmach through two letters of reprimand he issued to Mr. Stelmach and through his work with Mr. Stelmach to improve Mr. Stelmach's teaching aptitude.

40. Principal Rowe issued a first letter of reprimand to Mr. Stelmach on May 2, 2013, for these reasons: On October 24, 2012 (although the letter incorrectly references October 24, 2013) Mr. Stelmach left school after the 3rd period without notifying anyone on the staff as he had been previously instructed to do. On March 25, 2013, he lit incense in his

classroom; on several occasions, Mr. Stelmach had students in his classroom who were not on his roster. On April 16, 2013, Mr. Stelmach issued a pass during the third period for two students who were enrolled in other classes. In an email he sent to Mr. Stelmach on April 19, 2013, Principal Rowe noted that he received a “note/pass on April 16, 2013 with Mr. Stelmach’s signature sending two students to the library at 9:42 a.m. when one of them was supposed to be in Algebra I.” On April 23, 2013, Mr. Stelmach sent two students outside his classroom with State STAR CST (California Standards Tests) testing material while they waited for security to pick them up.

41. In the letter of reprimand, Principal Rowe advised Mr. Stelmach that he was not to have non-roster students present in his classroom unless he has an agreement with the teachers and administrators. He instructed Mr. Stelmach to stop burning incense. Principal Rowe directed Mr. Stelmach to use the AESOP system in a timely manner and to notify administration if an emergency arises that causes him to need to leave school early.

42. In his testimony, Principal Rowe noted that Mr. Stelmach empowered students to ditch classes they did not want to attend, allowed non-roster students into his classroom, and issued passes for students to leave his class. Mr. Stelmach’s practices in this regard created anger and concern among high school staff. Principal Rowe found such behavior very unprofessional. He commented that Mr. Stelmach, in his response to the reprimand, did not deny that he had issued the passes to students.

43. Principal Rowe was also concerned about Mr. Stelmach’s excessive absences and his failure to notify staff when he left school despite being counseled to notify staff when he left school early.

44. Principal Rowe said that Mr. Stelmach violated the STAR testing protocols by allowing students to leave the classroom with the testing materials. All teachers receive extensive training concerning how to proctor the tests. Teachers also sign affidavits wherein they acknowledge the testing protocols. Due to Mr. Stelmach’s protocol breach, Principal Rowe notified the State Department of Education.

45. With respect to Mr. Stelmach burning incense in his class, Principal Rowe said that Mr. Stelmach told him that he had been using the incense for one and one-half years to cover up a dead animal odor in the classroom.

46. In his response to this reprimand dated May 31, 2013, Mr. Stelmach did not deny that he committed the violations Principal Rowe documented. He attributed the violations to “human error” and acknowledged that “there have been a few minor incidents.” At the same time, he accused Principal Rowe of embellishing the infractions he committed. Mr. Stelmach’s response was noteworthy for its flippant tone. He wrote:

On 10/24/13 I certainly intend to follow these expectations
(oops, but you have to admit this sarcasm evokes a slight grin.)
That’s about it. No more incense. No more unexpected

stairwell plunges. No more writing library passes to late students or students not in my class that period. And no more CST “slip ups.” One more thing, if the CST violation was so egregious and unprofessional, then why wasn’t I removed as a proctor? After all, the incident in question did happen on day 1 of CST testing.

Mr. Rowe reprimanded Mr. Stelmach again on June 3, 2013, following his investigation into CL’s mother’s concerns. Principal Rowe reprimanded Mr. Stelmach for these reasons: Mr. Stelmach failed to refer the student who handcuffed CL to administration for discipline; Mr. Stelmach smoked “Blu” brand e-cigarettes, a nicotine based product, in the classroom; and Mr. Stelmach had used all his allotted sick time and had gone into a 50% pay status for every year since 1999/2000. Mr. Rowe noted CL’s mother’s concern that Mr. Stelmach had punished CL because of the email her mother sent on May 8th.

Mr. Rowe emphasized that Mr. Stelmach should have reported the student who handcuffed CL to administration because the handcuffing incident involved “an egregious act of violence.” He cited numerous Education Code sections³ in support of this conclusion. He advised Mr. Stelmach to notify administration in the future of any similar misconduct. He also directed Mr. Stelmach to refrain from smoking e-cigarettes in class.

47. Mr. Rowe learned about the handcuffing incident after he interviewed CL on May 29, 2013. Mr. Rowe interviewed students JF and LG on June 12, 2013. During those interviews, he discovered other conduct of concern. Both students reported that Mr. Stelmach smoked e-cigarettes in class. In particular, JF heard Mr. Stelmach tell a student, “I’m 43 years old, and I can do what I want.” LG said that she saw Mr. Stelmach smoke an e-cigarette when students were taking a test.

48. Mr. Stelmach responded to the letter of reprimand in a letter dated June 24, 2013. In his response, Mr. Stelmach minimized the handcuffing incident and portrayed himself as the victim of Principal Rowe’s investigation. He wrote:

Yes, I took care of the situation with security present (February 2013). The boy in question was reprimanded and presented with a mini-restraining order. My mini-restraining order, of course, and the boy was not to have any more contact or be within 20 ft of (C.L.), for the rest of the semester. I spoke with (C.L.) outside at the end of class, and explained this to her. She seemed relieved and grateful. Little did I know that this issue would be brought up four months later, as a result of a

³ Pursuant to Education Code sections 48900, subdivision (a)(1), 48900a.2, 48900, subdivision (a)(2), 48900, subdivision (k), 48900, subdivision (o), a superintendent or principal may suspend or discipline a student who engages in acts or threats of violence, intimidation, or harassment.

plagiarized paper as the catalyst for Bob Rowe's investigation. If it was so "egregious" as Mr. Rowe stated, then why did it take four months to be initially raised by either parent or student? And why wasn't it included in the original May 8, 2013 email concern from (C.L.'s mother) to Mr. Rowe?

49. In this letter, Mr. Stelmach also said that he did not understand why Mr. Rowe even investigated CL's mother's concerns. He insisted that she should have contacted him, instead of going to administration, about her concerns about her daughter's instruction in the classroom. He wrote, in part:

Why perform an investigation because of one parent's claim of retaliation? What about "keys to excellence" and OWNERSHIP? Did (CL and her mother) want to become accountable for her plagiarized essay, or just shift the focus of the blame my way with the bogus claim of retaliation? . . . Mr. Stelmach becomes the third teacher for (C.L.) in less than 6 months??? . . . Once again, out of 2500 students, why send out preferential treatment to this student? And is there a pattern here? Should there be an investigation based on her situation rather than on a parent complaint? I maintain my belief that the parent . . . should have contacted me directly about her daughter.

50. Mr. Stelmach did not deny that he smoked e-cigarettes in class. But Mr. Stelmach was puzzled as to why he should be reprimanded for this because the e-cigarettes contained only water vapor. He also disagreed that he should be reprimanded for his absences.

51. In his testimony, Principal Rowe elaborated on the June 3, 2013, letter of reprimand. He stressed that Mr. Stelmach did not have the right to take care of the handcuffing incident on his own with a "mini-restraining order." He described the handcuffing incident as involving an "egregious" lack of supervision. Because the incident involved violence, Mr. Stelmach was required to refer the offending student to administration, who would determine the appropriate level of discipline. Principal Rowe added that, as a role model for students, it was not appropriate for Mr. Stelmach to smoke e-cigarettes at school, whether or not the product contained nicotine, and it also was not appropriate for him to allow students to smoke e-cigarettes. Principal Rowe said the District expected teachers to model good behavior and that smoking anything in the classroom conflicted with good behavior.

52. Principal Rowe believed that though CL had plagiarized the essay, Mr. Stelmach's response still involved his retaliation against CL because her mother complained. Principal Rowe found the following noteworthy: within 20 minutes after Principal Rowe sent the email to Mr. Stelmach, Mr. Stelmach contacted him to tell him that CL had

plagiarized the essay; Mr. Stelmach never approached Mr. Rowe before about plagiarism; and soon after CL's mother complained about Mr. Stelmach, Mr. Stelmach changed CL's class grade from an A to C.

53. An email Mr. Stelmach sent to Principal Rowe on May 29, 2013 substantiates Principal Rowe's concern that Mr. Stelmach targeted CL.⁴ At the beginning of this email Mr. Stelmach stated, "Our dear (CL) has turned in a plagiarized essay." Mr. Stelmach then included a link and copied the material from the link into the email he sent to Mr. Rowe. With evident anger, Mr. Stelmach wrote the following:

The majority of her essay has been copied from the internet. This was a huge portion of their recent grade. She turned in her Controversial Historical topic essay on time but it is entirely someone else's work. I will immediately bring this to the attention to her mom, the district, and governing authorities who copyrighted the website.

The Moral of this parable is: **People who live in glass houses shouldn't throw stones.** Biblical version: "Let he who is without sin cast the first stone."

54. After Mr. Rowe issued the reprimand to Mr. Stelmach, Mr. Rowe learned that, as CL testified, Mr. Stelmach read CL's mother's email for the whole class and he told the class, "No one is leaving because a parent called and complained, and there will be no more movies being watched." Mr. Rowe described that conduct as very unprofessional. He noted that it was inappropriate to share the concerns of a parent with the entire class. The email embarrassed CL, and it made her feel awkward among her peers. Mr. Rowe said, "It was like saying we are not going to have fun anymore."

55. Principal Rowe also testified about the incident involving former student EQ. On March 13, 2014, Principal Rowe sent Mr. Stelmach an email that stated:

I learned yesterday that a past student (EQ) who graduated last year has been in your class for the past couple of months without authorization. EQ did have permission to work in the AARC under Mr. Vince Daughtery's supervision. However, EQ did not have permission to be in your room.

I am especially concerned because in a formal Letter of Reprimand dated May 2, 2013, you were specifically instructed to not have students who are not in your classroom without pre-

⁴ An hour before Mr. Stelmach sent the email to Mr. Rowe, he sent an email to CL's mother that criticized CL for matters unrelated to plagiarism. CL's mother was bothered by the email and found it "rude." This email is quoted above.

arrangement with administration. I realize (EQ) graduated last June and may or may not be a student, but the intent is not to have anyone in your room without pre-arrangement with administration. I would think it is common sense.

She also reported in a written statement . . . that EQ was allowed to get on your teacher computer. Subsequently, EQ projected on the class big screen images from a “Satanist” website for the entire class to see while you were moving to the front of the class to begin reading. She said, the class saw a “red star on a black background and the word “Satan” [sic] written in red letters next to it.” She states that she asked you take down the offense pictures and you told her “why do you have a problem with it.”

She went on to write about how the entire situation made her uncomfortable and how it “makes people feel unsafe.”

To compound the issues, you created a hostile and intimidating situation on the following day, March 13, 2014 by displaying a “confidential” email from Mr. Oscar Felix dated March 12, 2014, which notified all staff to contact security or an administrator if they saw (EQ) on campus. She informed me that she felt you blamed her for EQ being kicked out of the class and the school.

56. Mr. Stelmach sent two emails to Mr. Rowe on March 17th. Mr. Stelmach sent the first email at 8:03 a.m. It stated that EQ was never a “disruption.” Mr. Stelmach wrote that he was “mentoring” EQ because he saw EQ as “a confused young adult.” The email added that, because EQ had a visitor’s pass, EQ had a right to be in his class. He suggested that Mr. Rowe “demeaned,” “vilified,” and slandered him by the way he described the incident. Mr. Stelmach, in particular, disputed discussions he purportedly had with EQ regarding Satan. He requested that Principal Rowe interview the majority of the students in his class to determine whether these students felt unsafe.

Mr. Stelmach sent his second email to Mr. Rowe at 9:48 a.m. This email stated:

If she feels so “UNSAFE” then why is was [sic] attending my class on Friday? And today? And why does she get to wear earbuds in class? She is the only one with them on. Is she exempt from the rules? I asked her on Friday not to wear them. Should I write her a referral for breaking rule #8 on the Teacher to Student to Parent Contract? Or is that considered “retaliation?” Please let me know ASAP b/c I WANT TO DO THE RIGHT THING by your standards.

57. Another allegation involved the claim of a substitute teacher, Mike Heinz, who complained about the state of Mr. Stelmach's class on February 11, 2014. In his note, Mr. Heinz described Mr. Stelmach's class as "total chaos." He said he could not find any lesson plans until late in the class period because the plan was at the bottom of a stack of papers. He said there were no seating charts for the class, and he was unable to take class attendance. He said the class phone was not operable.

In response, Principal Rowe sent Mr. Stelmach an email directing him to have a seating chart and lesson plans readily available for substitute teachers.

58. In addition, Principal Rowe testified that Mr. Stelmach failed to timely turn in weekly classroom attendance reports. Principal Rowe received an email from Jill Rizzuto, Attendance Clerk at ECHS, dated June 3, 2013, concerning that matter. In her email, Ms. Rizzuto noted that for the 2012/2013 school year, Mr. Stelmach did not return any of his weekly attendance reports.

59. On cross-examination, Principal Rowe acknowledged that, in an email dated December 12, 2011, he had described Mr. Stelmach as "not being the strongest teacher." At the hearing, Mr. Rowe admitted he made a mistake when he sent the email containing this characterization.

TESTIMONY OF SHELLY MORR AND DOCUMENTARY EVIDENCE

60. Shelly Morr, Ed.D., is currently the Superintendent of the Santa Rita School District in Monterey, California. She has held this position since 2014. Between 2000 and 2014, Ms. Morr was the District's Associate Superintendent and Director of Human Resources. Previously, she was Principal at two different district schools. In her capacity as Associate Superintendent, Dr. Morr was familiar with the District's collective bargaining agreement, employee due process rights relating to discipline, and Board Policies.

61. Dr. Morr was familiar with Mr. Stelmach. She transferred him to Ocean Shores High School, where he taught English before he transferred to ECHS. On September 8, 2009, Dr. Morr reviewed a "Warning of Unsatisfactory Performance" that Principal Duane Legg issued to Mr. Stelmach when Mr. Stelmach was working at Ocean Shores. The warning was issued because Mr. Stelmach failed to report to work until 12:45 p.m. on August 26, 2009. This conduct violated the policy of working required contract time and reporting absences to his supervisor.

In this letter, Mr. Stelmach was advised to contact AESOP to record all absences prior to the absence and contact the principal regarding his need to balance personal and professional responsibilities during difficult times.

62. Since September 2009, Mr. Stelmach had attendance issues that caused him to go into 50% pay status. That meant that he had used up all his sick leave. Dr. Morr was

concerned that these absences might cause students to be left unsupervised. These absences were hard on staff because someone had to fill in for Mr. Stelmach.

63. Dr. Morr also became concerned about Mr. Stelmach's teaching performance. In this regard, Principal Rowe was working with Mr. Stelmach on an assistance plan to improve his instruction. If Mr. Stelmach did not receive satisfactory marks as part of this assistance plan, the District would move for his dismissal, Ms. Morr noted. She told Mr. Stelmach that the District would do this if he didn't receive satisfactory marks.

64. Dr. Morr was concerned about Mr. Stelmach's professionalism. She testified that teachers are provided with Board Policies regarding the professional standards teachers are expected to meet each year. Dr. Morr commented that unsatisfactory performance and unprofessionalism are two sides of the same coin. Specially, she received reports from Principal Rowe and Assistant Principal Chavarria that Mr. Stelmach smoked e-cigarettes in class and allowed students to smoke e-cigarettes in class; that Mr. Stelmach had non-roster students in his classroom; and that one non-roster person in particular posted materials on the board that were not part of the instruction.

65. Dr. Morr emphasized that non-roster students, in general, distract students from instruction because classes are full. She noted that non-roster students weren't on task because they were not in their assigned classes.

66. Dr. Morr reiterated that Mr. Stelmach did not have authority to send students to OCS. Dr. Morr stressed that a teacher must work to engage and involve every student, including a student with a 0 grade point average. A school district and teacher's goal, she added, is for every student to be successful.

67. To Dr. Morr, Mr. Stelmach's judgment was "off." In the two conversations she had with him, Mr. Stelmach didn't believe the incidents involving his conduct were as serious as she believed they were. In these conversations, Mr. Stelmach blamed administration.

Mr. Stelmach's Evidence

TESTIMONY OF DAVID STELMACH AND DOCUMENTARY EVIDENCE

68. Mr. Stelmach has taught at several schools within the District since the 1997-1998 school year. He came to ECHS in the 2010 school year. He has taught mostly English, but he has also taught expository reading and writing and a reading intervention course for struggling students.

69. Mr. Stelmach felt that Principal Rowe unfairly targeted him. He noted that Mr. Rowe sent an email in which he claimed that Mr. Stelmach "was not the strongest teacher." As a result, Mr. Stelmach felt frustrated, demoralized, and angry towards Principal Rowe which, in turn, he extended toward other administrators. In numerous email

communications, Mr. Stelmach expressed this hostility and anger towards administration. Mr. Stelmach testified that he now regrets his “belligerent” posture, as these emails evidence.

70. Mr. Stelmach had a number of medical issues that required attention, including heart problems while he was at ECHS. Due to these problems, he needed to take time off for medical appointments. But, he testified, he “always reported” his absences in the AESOP system. With this said, he acknowledged that he did not report an absence on one occasion, October 24, 2012, due to an emergency involving his wife. Mr. Stelmach explained that he contacted Vicki Barnett at the District, instead of Ms. Nicosia at ECHS, because he saw Ms. Barnett as a more direct pipeline. He added that he “always” contacted Ms. Nicosia when he had to leave early.

71. Regarding the incident involving former student EQ and student EH, Mr. Stelmach saw EQ as a troubled kid who had problems at home. Mr. Stelmach said he was trying to steer EQ in the right direction. EQ helped Mr. Stelmach grade quizzes. EQ also participated in classroom discussions. While Mr. Stelmach spoke with EQ while students were present, he did not discuss EQ’s religion. Mr. Stelmach “could tell” that a student in his class had issues with EQ’s religious beliefs based on her dealings with him the prior year.

72. EQ was in his class, he recalled, for about two weeks before the incident. He didn’t check with administration to determine whether that was be permissible. Mr. Stelmach asked school security whether it would be okay if EQ to help him grade quizzes and copy documents. He said he asked security, as opposed to administration, for “clarification.” Mr. Stelmach didn’t think he violated Principal Rowe’s prohibition against having non-roster students in his class because EQ was a college student who had already graduated from high school. Mr. Stelmach believed EQ was entitled to be present in his class because he had a visitor’s pass. At the same time, he now wishes he checked with administration on the issue.

73. As Mr. Stelmach recalled the incident, something was displayed on the classroom screen; EH gasped at the “Satan website” and left the classroom; Mr. Stelmach had the image taken down; and EQ took his backpack and left. When EQ came back after lunch, Mr. Stelmach told EQ that he couldn’t return. Mr. Stelmach agreed that the incident was egregious.

74. Mr. Stelmach said EH was “happy” that EQ would not return to his class and continued to remain in his class. Mr. Stelmach complained that no one in administration gave him the opportunity to explain his side of the story. He wanted to explain to Principal Rowe why EQ was in his class room, but he was never given the opportunity.

75. Mr. Stelmach specifically denied that he intentionally posted Assistant Principal Felix’s email regarding EQ for the class to see. He said he accidentally displayed that email. The email, he said, was on the class screen for no more than a second.

76. Regarding the handcuffing incident involving CL, Mr. Stelmach said his desk was on the other side of the classroom when CL was handcuffed and he did not see the incident occur. Mr. Stelmach confirmed that CL was upset and that he had to put the class on hold to deal with the incident. Mr. Stelmach did not observe any injuries. Mr. Stelmach said he did not report the incident to administration because he did not trust administration. If he had a stronger administration backing him or garnering his trust, Mr. Stelmach said he would have handled the handcuffing incident differently. Mr. Stelmach also said that he wanted to give M the benefit of the doubt because he was 17 years old.⁵ Mr. Stelmach had M sign a paper to stay 25 feet from CL and confiscated M's handcuffs. He returned the handcuffs to M. He admitted that he should have, at the minimum, contacted M's parents and told them of it.

77. Mr. Stelmach conceded that he referred to CL as "a little girl" in an email he sent to Principal Rowe after the handcuffing incident. When asked whether it was appropriate to refer to a 17-year-old female student as "a little girl," Mr. Stelmach said at first that he had been called worse. He then agreed that it was not appropriate. Mr. Stelmach recognized that he wasn't respectful when he referred to CL as "Our dear (CL)" in the email he sent to Principal Rowe that accused her of plagiarism. Mr. Stelmach explained that he said this "sardonically."

78. Mr. Stelmach denied that he told the class, "Don't handcuff (CL) again or she'll cry and tell on you again." He denied telling her, "Boys will be boys." He also denied that he read CL's mother's email to the class. The Commission members find that Mr. Stelmach's testimony was not credible and in conflict with CL's more credible testimony.

79. Mr. Stelmach testified that that he did not retaliate against CL. He said that he was grading CL's essay when Mr. Rowe sent him CL's mother's email and, as proof that he didn't retaliate against CL, he said he determined that two other students had plagiarized their essays. Mr. Stelmach added that those students were disciplined more harshly than CL. He further noted that he lowered CL's class grade to D from A because of the plagiarism.⁶

80. Mr. Stelmach disputed a number of the district's other allegations. He said he smoked e-cigarettes only in "passing period" and that he only did so in front of a few students. At the same time, Mr. Stelmach agreed that part of a teacher's job was to serve as a role model for students.

81. Mr. Stelmach denied that he attended to personal matters during class. His discussion of his personal problems with his wife occurred within the context of a class

⁵ Mr. Stelmach referred to the student who handcuffed CL as "M" while CL referred to the student as D. D was M's nickname.

⁶ Principal Rowe testified that Mr. Stelmach lowered CL's grade to a C.

discussion on a controversial subject, divorce. His testimony in this regard conflicted with the more credible evidence to the contrary, including CL's testimony.

82. Mr. Stelmach agreed that he did not timely turn in the majority of his weekly reports, although he turned them in a day after the end of the school year.

83. Mr. Stelmach stopped the conduct that concerned administration. He never lit incense after he received Mr. Rowe's email; he contacted Ms. Nicosia when he needed to leave early and used the AESOP system; he stopped issuing passes to students; and he didn't allow non-roster students to attend his class.

84. Mr. Stelmach presented evidence that Principal Rowe commended him for his classroom instruction. In note dated November 22, 2013, Principal Rowe effusively complimented Mr. Stelmach on a class lesson he taught. In that note Principal Rowe thanked Mr. Stelmach for his hard work in implementing close reading through an instructional activity. Mr. Rowe documented his observations in a professional growth system report dated December 6, 2013. Ms. Nicosia sent Mr. Stelmach an email that congratulated Mr. Stelmach on his lesson with the comment: "Bob was very impressed and wished that he would have taped it to show everyone!"

85. Mr. Stelmach received similar positive feedback from Quantum Learning, a professional development program for teachers. Mr. Stelmach was described as funny, cool, and engaging in that feedback.

86. Mr. Stelmach received praise from a substitute who replaced him at ECHS. Shawna Admire, the substitute, said Mr. Stelmach had an impact on the students and the students loved and missed him.

87. The Commission found Mr. Stelmach's testimony not entirely credible because it conflicted with the more credible testimony of students CL and EH and other evidence of record.

THE TESTIMONY OF FORMER STUDENTS

Four former students testified on Mr. Stelmach's behalf.

88. Adam Sohayda, who works for the Department of Homeland Security, was Mr. Stelmach's student from 2000 to 2002. Mr. Sohayda described Mr. Stelmach as a caring individual. He said Mr. Stelmach checks up on him from time to time to see how he is doing.

Adam Joseph Crawley, who is an officer candidate with the National Guard and is employed as a security guard, was Mr. Stelmach's student from 1999 to 2003. Mr. Stelmach helped him proof read his college papers and obtain employment as a security guard.

Ricardo Vasquez was Mr. Stelmach's student in 2002. He described Mr. Stelmach as a caring individual who helped him develop a sense of self-worth and confidence.

Jessica Morales also testified. Ms. Morales was Mr. Stelmach's student in 2013 to 2014. Mr. Stelmach listened to students and went out of his way to help them. Mr. Stelmach encouraged her to participate in soccer.

Assessment of the Evidence

89. The Commission members unanimously agreed that Mr. Stelmach exhibited poor judgment and inappropriate behavior on numerous occasions sufficient to establish that he lacks the good judgment and temperament required of a teacher. The Commission members also unanimously agreed that Mr. Stelmach persistently violated District policy directives and applicable rule and regulations.

90. Two serious incidents highlight these conclusions. In both incidents, which involved two female students, Mr. Stelmach allowed his frustration and conflicts with school administration to affect his professional judgment. Most glaringly, Mr. Stelmach did not refer the student who handcuffed CL to administration for discipline because he didn't trust administration. Instead, he handled the matter, ineffectively, on his own. He told an upset CL, "Boys will be boys"; and he told the class after he returned handcuffs to the offending student, "Don't handcuff (CL) again or she'll cry and tell on you again." By his actions and comments, Mr. Stelmach dismissed the extremely serious nature of the incident and caused CL to feel unsafe and unprotected in his classroom.

Mr. Stelmach sought to punish CL by intentionally demeaning her in front of her classmates because her mother had complained to Principal Rowe about the quality of his classroom instruction. Mr. Stelmach said as much when he told the class, "No one is leaving because a parent called and complained, and there will be no more movies being watched," and he displayed CL's mother's email to the class. In communications with Principal Rowe, Mr. Stelmach angrily referred to CL as "a little girl" and called her "our dear (CL)" when he reported that she had plagiarized an essay. Mr. Stelmach accused her of being entitled. In his email response to her mother's complaint about his teaching methods, for no apparent reason, he said that CL visited her boyfriend in another class.

Mr. Stelmach, further, retaliated against CL when he told Principal Rowe that he would "immediately bring (CL's plagiarism) to the attention to her mom, the district, and governing authorities who copyrighted the website."⁷ This uncompromising attitude exists in sharp contrast with the compassion Mr. Stelmach showed the student who handcuffed CL. Aside from not reporting that student to administration, Mr. Stelmach chose to not even call this student's parents. Given the anger he displayed towards CL and her mother, the fact that CL plagiarized the essay is no defense to the strong evidence of retaliation.

⁷ The Commission reached this conclusion by a majority vote. Commission Member Finder did not agree that Mr. Stelmach retaliated against CL.

Similarly, a year later, in March 2014, Mr. Stelmach elected not to contact administration when EQ wanted to visit his class and help him grade quizzes. Mr. Stelmach admitted that was a mistake. He said he told security, as opposed to administration, for “confirmation,” but the meaning of this statement was unclear and appears to be a belated effort to justify his error. In the May 2, 2013, letter of reprimand he received, Mr. Stelmach was advised not to have non-roster students in his classroom unless administration had given approval.

Mr. Stelmach showed both poor judgment and insubordination by ignoring Mr. Rowe’s May 2, 2013, advisement when he allowed EQ to remain in his class and when he failed to inform administration that EQ was in his class. His defense that EQ was not a student ignores the purpose of Principal Rowe’s advisement: Mr. Stelmach was required to inform administration when non-roster persons were in the classroom. EQ acted as a student according to Mr. Stelmach. EQ actively participated in class discussions for an extended period of time. To the students in the classroom, EQ appeared as a student.

By allowing a troubled young man who liked to shock people to be in his classroom for an extended time, Mr. Stelmach compromised the learning environment for EH and other students. According to EH, EQ was in the classroom for a month before the final incident on March 12, 2014, occurred. When he was there, he talked about his satanic beliefs. EQ’s presence in the classroom was unsettling to EH, “like the sinking in your stomach.” EQ’s presence in the classroom made EH feel unsafe and uncomfortable.

As happened with CL, Mr. Stelmach shared a confidential or sensitive email with his class. It is questionable that Mr. Stelmach accidentally showed this email to the class when one considers that he displayed CL’s mother’s email to his class the previous year. Mr. Stelmach showed his class Assistant Principal Felix’s email to ECHS teachers and staff that security was to be notified if EQ was seen on campus. It reasonably made EH feel that she caused EQ to be banned from Mr. Stelmach’s classroom. This was a further reason that EH felt uncomfortable and unsafe in Mr. Stelmach’s class, as she told Principal Rowe.

Despite the egregiousness of this incident, when Principal Rowe asked Mr. Stelmach about EQ, Mr. Stelmach attacked EH and dismissed her concerns as being illegitimate. His attack on EH was similar to his attack on CL (a fact he ironically noted) and was a sharp contrast to the understanding he showed towards EQ, whom he wanted to mentor. He wrote:

If she feels so “UNSAFE” then why is was [sic] attending my class on Friday? And why does she get to wear earbuds in class? She is the only one with them on. Is she exempt from the rules? I asked her on Friday not to wear them. Should I write her a referral for breaking rule #8 on the Teacher to Student to Parent Contract? Or is that considered “retaliation?” Please let me know ASAP. . . .

91. While these two incidents are the most serious examples of Mr. Stelmach's poor judgment and lack of professional temperament, Mr. Stelmach exhibited poor judgment and immature and unpredictable behavior on many other occasions. Mr. Stelmach allowed two students to walk out of his class with STAR testing materials, a serious violation of testing protocols; he lit incense in his classroom for a year, a violation of fire codes; he smoked e-cigarettes in his classroom in front of students and permitted students to smoke e-cigarettes in the classroom; he issued passes to students who were not enrolled in his class when he did not have authority to do so; he failed to notify administration when he left school early and left his class unattended; he allowed non-roster students in his class who should have been present in other classrooms; he failed to supervise his class adequately, as was evident when a student used a laser pointer to distract students during testing; and he used class time to take care of personal affairs.

92. In addition to repeatedly displaying poor judgment and troubling behavior, Mr. Stelmach persistently violated District policies and applicable rules and regulations. Specifically, Mr. Stelmach violated District Directives Nos. 1313 and 5142 when he failed to provide a safe learning environment for CL and EH; he violated District Directives No. 4119.21 when he intentionally exposed CL to disparagement and embarrassment when he told the class, "Don't handcuff (CL) again or she'll cry and tell on you again" and, "No one is leaving because a parent called and complained, and there will be no more movies being watched"; he violated District Directive 4119.21 when he failed to make reasonable efforts to protect EH from conditions harmful to learning or to health and safety when he allowed EQ to attend his class for a month; he violated District Directive No. 4119.21 when he intentionally embarrassed EH when he displayed Assistant Principal Felix's confidential email to the classroom; he violated District Directive No. 4119.21 when he smoked e-cigarettes in his classroom, when he allowed students to smoke e-cigarettes in his classroom, and when he burned incense sticks in his classroom; he violated District Directive No. 3513.3 when he smoked "Blu" brand cigarettes, a nicotine based product, in his classroom; and he violated California Code of Regulations, title 19, section 3.25, when he burned incense sticks for a year in his classroom.

93. When confronted with these matters, including the incidents involving CL and EH, Mr. Stelmach belligerently challenged administration and refused to take responsibility. He claimed Assistant Principal Felix showed him no respect; he claimed Principal Rowe slandered him when he raised the EQ incident, and he threatened legal action; he said EQ slipped by security; and he attacked both EH and CL. In other emails, he was sarcastic, flippant, and insistent that he had behaved correctly. He represented that EQ was never a disruption when that was not the case; he questioned why anyone would take seriously what an underachieving student said; he said he would not "snitch" on other teachers; he questioned why Principal Rowe took the handcuffing incident seriously; and he insisted that CL's mother should have contacted him to express her concerns and that it was inappropriate for her to contact administrators with her concerns.

94. Based on all the evidence, considered as a whole, and consistent with the *Morrison* criteria, the Commission unanimously agreed that the preponderance of the

evidence demonstrated that Mr. Stelmach is evidently unfit to serve as a teacher in the District.⁸

LEGAL CONCLUSIONS

Due Process under the Education Code

1. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.)

Under Education Code section 44944, subdivision (b), the dismissal hearing must be conducted by a three-member Commission on Professional Competence. Two members of the Commission must be non-district teachers, one chosen by the teacher and one chosen by the district. The third member of the Commission must be an administrative law judge from the Office of Administrative Hearings.

When a school board seeks dismissal for cause, the Commission may vote only for or against dismissal. The Commission may not dispose of a charge seeking dismissal by imposing probation or some other alternative sanction. (Ed. Code, § 44944, subd. (c)(1)-(3).)

Burden and Standard of Proof

2. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) This standard requires a party to convince the trier of fact that the existence of a fact is more probable than its nonexistence. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1128.)

Relevant Statutory and Constitutional Authority

3. Education Code section 44932 provides in part:

(a) No permanent employee shall be dismissed except for one or more of the following causes:

[¶] . . . [¶]

(5) Evident unfitness for service.

[¶] . . . [¶]

⁸ The Commission did not find that the fact that Mr. Stelmach was in 50% pay status; or that he submitted class attendance reports late; or that he left his classroom as Mr. Heinz stated, as bases to conclude that he is unfit to serve as a teacher or that he persistently violated District directives or applicable rules.

(7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her . . .

4. Under the California Constitution, students and employees “have the inalienable right to attend campuses which are safe, secure and peaceful.” (Const. art. 1, §28.) It is an explicit duty of teachers to reasonably control the conduct of students to maintain a safe and healthy learning environment. (Ed. Code, § 44807).

Relevant Judicial Authority

5. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235, the Supreme Court held that “an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher.” The court delineated the following criteria to determine whether a teacher’s conduct indicates that he or she is not fit to teach: (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the conduct in question; and (8) the extent to which disciplinary action may inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.*, at pp. 229-230.)

Evident Unfitness for Service

6. Evident unfitness for service under Education Code section 44932, subdivision (a)(5), is established by conduct demonstrating that the teacher is “clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) As a threshold matter, the *Morrison* criteria must be examined to ascertain whether the conduct in question indicates unfitness for service. “If the *Morrison* criteria are satisfied, the next step is to determine whether the ‘unfitness’ is ‘evident,’ i.e., whether the offensive conduct is caused by a defect in temperament.” (*Id.*, at 1445.) A Commission has broad discretion to determine what constitutes unfitness to teach, and in deciding whether the teacher should be sanctioned. (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327, 343.)

7. In *Board of Education v. Jack M.* (1970) 19 Cal.3d 691, the Supreme Court detailed the process to be considered in determining fitness to teach. This opinion upheld the standard established in *Morrison* that a discharged teacher is entitled to a fitness hearing in which not only his conduct but also these factors are analyzed: (1) likelihood of recurrence

of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers' and students' relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct. (*Id.*, at f.n. 5.)

Persistent Violation or Refusal to Obey School Laws or Regulations

8. The word "persistent" is defined by lexicographers as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated." And, in judicial decisions, the word has been interpreted to mean "continuing or constant." (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 82.) The *Morrison* factors should be applied in determining whether a permanent certificated employee's persistent violation or refusal to obey laws and regulations supports the employee's termination. (*San Dieguito Union High School Dist. v. Commission On Professional Competence* (1985) 174 Cal.App.3d 1176, 1182.)

9. A violation of Education Code section 44932, subdivision (a)(7), must also be established by reference to the *Morrison* factors. If unfitness to teach is shown, then the District must further establish that the employee's refusal to follow the laws or regulations was "persistent," i.e., "stubborn and continuing." (*San Dieguito Union High School Dist.* (1985) 174 Cal.App.3d at 1183.) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered "persistent." (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317, 320.)

Cause Exists to Dismiss David Stelmach

10. Cause was established under Education Code section 44932, subdivision (a)(5), to dismiss David Stelmach from his teaching position with the Oceanside Unified School District. As the Commission detailed in the Factual Findings, the preponderance of the evidence established that Mr. Stelmach repeatedly exhibited poor judgment and immature and unpredictable behavior in the classroom and in his interaction with students and staff due to a defect in his temperament that is inconsistent with the demands of effective teaching.

11. Cause was established under Education Code section 44932, subdivision (a)(7), to dismiss David Stelmach from his teaching position with the Oceanside Unified School District. As the Commission detailed in the Factual Findings, the preponderance of the evidence established that Mr. Stelmach persistently violated or refused to obey the school laws of the state or the regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing David Stelmach.

12. The Commission has considered the *Morrison* factors in light of the record as a whole. When these factors are analyzed, Mr. Stelmach's conduct negatively impacted his ability to function in the District as a teacher; his conduct negatively impacted his ability to act as a role model for students; Mr. Stelmach failed to properly teach and hold students

accountable for their actions; he failed to effectively work with students; he failed to effectively work with administration; he failed to maintain credibility with parents and faculty; and due to his conduct as a whole, Mr. Stelmach's ability to teach effectively has been irreparably compromised within the District. Moreover, Mr. Stelmach repeatedly made the task of supervising him very difficult to accomplish; he resisted and refused the District's reasonable efforts to have him change his behavior. Mr. Stelmach thus is either unable or unwilling to comport himself to the behavior reasonably expected of a teacher, and his negative conduct would likely reoccur if he were to remain a teacher in the District.

Based on the facts and circumstances, the District established that respondent is "unfit" to teach and that his conduct amounted to a persistent violation of or refusal to obey school laws or reasonable regulations. The misconduct, which is supported by a preponderance of the evidence, establishes Mr. Stelmach's unfitness, and is serious enough to support his dismissal from employment. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 219.)

13. The District sustained its burden of proving, by a preponderance of the evidence, the allegations set forth in the Accusation and Notice of Charges. Mr. Stelmach shall be dismissed as a teacher from the Oceanside Unified School District, pursuant to Education Code section 44932, subdivisions (a)(5), and (a)(7).

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ORDER

The Accusation and Notice of Charges are affirmed. David Stelmach is dismissed as a permanent certificated employee of the Oceanside Unified School District.

DATED: 2/25/2015

_____/s/_____
REBECCA BRAVO
Certificated English Teacher/Administrator
Sweetwater Union High School District

DATED: 3/7/2015

_____/s/_____
HAYWOOD FINDER
Certificated English Teacher
Anaheim Union High School District

DATED: 3/20/2015

_____/s/_____
ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings