

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2011060013

JOSEPH SALEMI

A Permanent Certificated Employee,

Respondent.

DECISION

This matter was heard by the Commission on Professional Competence (Commission) at Los Angeles, California, on May 30, 31, June 1, 11, 12, 13, 14, 15, July 11, 24 and 25, 2012. The Commission consists of the following members: Jason Branham, Principal, Conejo Valley Unified School District; Susan Mercer, Teacher, Santa Ana Unified School District; and Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings.

The Los Angeles Unified School District (District) was represented by Liebert Cassidy Whitmore, by Pilar Morin and Alex Wong, attorneys at law. Respondent Joseph Salemi (Respondent) was present and was represented by Lawrence Trygstadt, Esq., of Trygstadt, Schwab & Trygstadt.

Rulings on motions were made on the record during the proceedings. Oral and documentary evidence was received. The record was closed and the matter was submitted for decision. The Commission considered the matter in executive session. After due consideration of the record, the Commission makes the following factual findings, conclusions of law, and order:

FACTUAL FINDINGS

1. The Accusation and Statement of Charges were brought by Vivian K. Ekchian in her official capacity as Chief Human Resources Officer for the District.

2. Respondent Joseph Salemi (Respondent or Salemi) has been employed by the District as a permanent certificated employee since July 1, 2003. At all relevant times, he was a seventh grade math teacher at Wilmington Middle School.

3. The Statement of Charges and Accusation is dated June 2, 2011 and recommended the dismissal of Respondent from the District for the following legal causes under Education Code¹ sections 44932 and 44939: (1) unprofessional conduct; (2) unsatisfactory performance; (3) evident unfitness for service; (4) 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 Respondent and (5) willful refusal to perform regular assignment without reasonable cause, as prescribed by reasonable rules and regulations of the school district.

4. Respondent was given written notice of the District's intention to dismiss Respondent unless he demanded a hearing. On June 15, 2012, Respondent submitted a Notice of Defense including his demand for a hearing.

5. All pre-hearing jurisdictional requirements have been met by the parties and jurisdiction exists for these proceedings.

6. District contends that Respondent is subject to dismissal based upon deficiencies observed and documented in a series of classroom observations made by Wilmington Middle School administrators during the period of October 13, 2009 to April 12, 2011.

7. Respondent contends that he followed the instructions of his supervisors, improved his performance and provided appropriate instruction including the use of PowerPoint presentations based upon state standards. Respondent further contends that District failed to accommodate his disabilities, and held him to a different and higher standard for performance than that of other employees and consequently, he should not be dismissed.

Background Information

8. Respondent received a Bachelor of Science degree in Business from California State University, Long Beach in 1986. He received a single subject mathematics teaching credential and a Cross Cultural Language and Development (CLAD) certificate from California State University, Dominguez Hills in 2002. Respondent taught public school on an emergency credential, a preliminary credential and as a substitute at various times during the five year period before he received his clear teaching credential in 2002. Respondent has 10 years of experience as a fully credentialed mathematics teacher.

9. Respondent suffers from Dyslexia and Severe Photophobia. These conditions effect the way Respondent sees printed material and how he processes visual

1 All statutory references are to the Education Code, unless otherwise noted.

input. Respondent fatigues easily and suffers headaches when using fluorescent lighting. Natural lighting makes it less difficult for Respondent to receive and process visual input. Respondent's conditions make it difficult for him to accurately perceive letters and numbers and has made it difficult for him to accurately calculate the answers to mathematical equations and to recognize typographical errors in his work. On September 13, 2009, Respondent requested, and was granted accommodations from the District, including larger font on printed materials, extra time for submission of documents and natural lighting in his classroom.²

10. Respondent uses PowerPoint presentations for all of his math classes. He uses a series of PowerPoint slides to present all classroom instruction. He spends a significant amount of time preparing the detailed PowerPoint slides. Some of the slides have contained typographical errors and mathematical miscalculations.

11. Respondent is well liked by many of his colleagues and is considered to be friendly, generous and helpful. He has volunteered to construct furniture for the special education department to meet the special needs of some students. He volunteers a significant amount of time as a minister and counselor to young men incarcerated at Los Padrinos Juvenile Hall.

Prior Disciplinary History

12. On May 22, 2008, District issued a Below Standard Evaluation to Respondent. This below standard evaluation was based upon classroom observations made by Assistant Principal Leonora Howard³ during the 2007-2008 school year and approved by Principal Veronica Aragon (Principal Aragon), a 33 year employee of the District and now the Director of Secondary Education for District 8 within District. She was the principal of Wilmington Middle School during the period of 2006 to 2010. She was also a teacher at the school from 1979 to 1986. Principal Aragon has experience teaching middle school mathematics.

13. On May 21, 2009, District issued a Below Standard Evaluation to Respondent. This below standard evaluation was based upon classroom observations

2 On January 24, 2010, Respondent filed a compliant with the District alleging that Wilmington Middle School Principal Aragon discriminated against him because of his disabilities. On May 5, 2010, Cheryl Broussard, the District's equal employment opportunity investigator issued a closure letter in which she concluded that Respondent's complaint was meritless. Respondent did not appeal Broussard's determination.

3 There was no evidence at hearing regarding Ms. Howard's educational background, credentials or experience.

made by Assistant Principal Melinda Azpetitita⁴ during the 2008-2009 school year and approved by Principal Aragon.

14. On May 5, 2010⁵, District issued a Below Standard Evaluation to Respondent. This below standard evaluation was issued based upon observations made by Assistant Principal Bette Caldwell (Assistant Principal Caldwell) on September 17, 2009, October 5, 2009, October 19, 2009, October 28, 2009, December 8, 2009, January 13, 2010, March 8, 2010, March 22, 2010, April 6, 2010 and April 23, 2010, and approved by Principal Aragon.

15. Assistant Principal Caldwell has a bachelor's degree in English from the University of California at Los Angeles and a master's degree in Administration from Loyola Marymount University. She holds a general secondary education and counseling credential. She was an English teacher for 14 years and was an assistant principal at Wilmington for five years. She was responsible for the master schedule, counseling and observation of 10 to 12 teachers each year for evaluation purposes during the 2009-2010 school year.

16. On October 25, 2010, District issued a Notice of Unsatisfactory Service (Notice) to Respondent based upon specific instances from Assistant Principal Caldwell's observations of October 13, 2009, October 28, 2009, December 8, 2009, January 13, 2010, March 8, 2010, March 22, 2010, April 6, 2010, April 23, 2010, and June 8, 2010, as well as Principal Aragon's observation of March 15, 2010, and details alleged deficiencies on each of those dates.

17. Principal Myrna Brutti approved the Notice, but did not conduct any independent investigation of the charges nor did she have personal knowledge of Respondent's performance. She signed the Notice which was prepared by the Human Resources Department, and provided it to Respondent and his union representative Maryke Carter in an office conference on October 25, 2010. Respondent accepted a copy of the Notice, but specifically wrote in his disagreement on the notice.

18. On April 25, 2011, District issued a Below Standard Evaluation to Respondent. This below standard evaluation was issued based upon observations made by Assistant Principal Lesley B. Anderson (Assistant Principal Anderson) on October 4, 2010, October 28, 2010, and December 3, 2010. January 24, 2011, February 8, 2011, March 30, 2011 and April 12, 2011. The evaluation was signed by Assistant Principal Anderson and approved by Principal Brutti.

4 There was no evidence at hearing regarding Ms. Azpetitita's educational background, credentials or experience.

5 Although the Accusation refers to a May 6, 2010 the evaluation, the evaluation is dated May 5, 2010 and Respondent's signature on the evaluation is dated May 5, 2010.

19. Assistant Principal Anderson has been employed by District for 20 years. She has been an assistant principal for four years. Assistant Principal Anderson received her Bachelor of Arts degree in Liberal Studies from California State University, Long Beach. She received her teaching credential from California State University, Dominguez Hills. She also received a master's degree from Pepperdine University. She taught middle school math for 10 years and has supervised the math department for two years.

20. On May 2, 2011, District issued a Notice of Suspension to Respondent setting forth a 15 day suspension without pay. The Notice was based upon information, causes and observations identical to that contained in the May 2, 2011 Notice. Principal Brutti also signed the Notice of Suspension. It was given to Respondent in a brief conference held on May 2, 2011. Assistant Principal Caldwell, Principal Brutti, Respondent and union representative Paul Betterfield attended the conference. Respondent accepted the copy and specifically wrote in his disagreement with its contents next to his signature.

Findings Regarding the Allegations

21. On October 13, 2009, Assistant Principal Caldwell observed Respondent's second period, seventh grade math class for the purpose of evaluating Respondent's teaching performance. Assistant Principal Caldwell conducted an observation of Respondent for the first time on October 13, 2009, and had no prior knowledge of Respondent's classroom performance. Respondent was the only math teacher that Assistant Principal Caldwell observed in the 2009-2010 school year. Assistant Principal Caldwell held an office conference with Respondent on October 19, 2009, and provided Respondent with a written conference memorandum memorializing her observations and recommendations. Respondent prepared a written response on October 21, 2009. Assistant Principal Caldwell read the response, but did not reply to Respondent because District policy prohibited her from responding.⁶

22. Paragraph 1 on the Accusation is based upon deficiencies that Assistant Principal Caldwell identified in her October 13, 2009 observation.

a. It was not established that Respondent failed to provide differentiated instruction for students that were learning the English language⁷ and students with special needs to provide access to curriculum.

6 Caldwell did not respond to any of Respondent's responses because District policy prohibited her from responding.

7 These students were referred to as English Language Learners, English as a Second Language (ESL) and newcomers.

b. It was not established that Respondent failed to use multiple assessments. In fact, Respondent used an integers quiz and called on students during class time.

c. It was established that Respondent failed to utilize teacher problem solving and critical thinking techniques. Respondent attempted to implement the strategies by using the “pair share” technique in which two students work together as suggested by Assistant Principal Caldwell. Although Respondent attempted the activity, he did not facilitate the final interval of the activity to have the students engage in critical thinking.

d. It was established that Respondent was not aware of the number of instructional minutes left in the instructional day when the Physical Education (PE) shower bell rang. Respondent thought that the PE shower bell was the passing bell signaling the end of the class period and stopped instruction early.

23. On October 28, 2009, Assistant Principal Caldwell conducted an observation of Respondent's class. She also held an office conference with Respondent and provided Respondent with a written conference memorandum memorializing her observations and recommendations. Respondent prepared a written response on November 6, 2009.

24. Paragraph 2 on the Accusation is based upon deficiencies that Assistant Principal Caldwell identified in her October 28, 2009 observation.

a. It was established that Respondent failed to use instructional time effectively when he spent 13 minutes of instructional time with students having nothing to do and no direct instruction was given.

b. It was not established that Respondent failed to use problem solving and critical thinking skills when he gave middle school students the multiplication tables to answer in order for the 9s; a third grade standard. Although Respondent did give the 9s multiplication tables to his students, it was a drill for them to complete while he fixed the problem he was having with the projector that he was using for his PowerPoint presentation.

25. On December 8, 2009, Assistant Principal Caldwell conducted an observation of Respondent's class. Assistant Principal Caldwell held an office conference with Respondent on December 11, 2009, and provided Respondent with a written conference memorandum memorializing her observations and recommendations. Respondent prepared a written response to the memorandum on December 16, 2009.

26. Paragraph 3 on the Accusation is based upon deficiencies that Assistant Principal Caldwell identified in her December 8, 2009 observation.

a. It was not established that Respondent failed to maintain appropriate discipline and order or that he allowed students to talk, laugh, and giggle instead of attending to the math lesson without intervening for several minutes.

b. It was established that Respondent failed to use instructional time effectively when he told students to begin working on their homework at 10:17 a.m. when there was still 12 minutes of instructional time left.

c. It was not established that Respondent failed to use instructional time effectively when the PE shower bell rang and he told the students: "Put your pencils down. Focus guys; look up her." In fact, there were eight minutes left before the end of the period.

d. It was not established that Respondent failed to maintain order in the classroom.

e. It was established that Respondent failed to use instructional time effectively when he told students: "Finish your worksheets until the bell rings." Contrary to these instructions, students instead were placing their notebooks into their backpacks and preparing to leave three minutes before the bell rang.

f. It was established that Respondent failed to properly plan his lesson when he miscalculated a math problem in front of students rather than checking ahead of time to make sure that he had the correct answer.

27. On January 13, 2010, Assistant Principal Caldwell observed Respondent's fifth period math class. Assistant Principal Caldwell held an office conference with Respondent on January 26, 2010, and provided Respondent with a written conference memorandum memorializing her observations and recommendations. Also present for the conference were Assistant Principal Adrian Magee and union representative Maryke Carter. Respondent prepared a written response to the memorandum.⁸

28. Paragraph 4 on the Accusation is based upon deficiencies that Assistant Principal Caldwell identified in her January 13, 2010 observation.

a. It was not established that Respondent failed to have students demonstrate understanding of the lesson and master of standards being taught.

b. It was established that Respondent failed to review material not understood by students.

⁸ Respondent erroneously dated the memorandum December 16, 2009. The evidence did not establish the actual date that the response was prepared. It was established that the response was prepared sometime after January 26, 2010.

c. It was not established that Respondent failed to effectively use instructional time by having materials collected haphazardly and wasting instructional time.

d. It was established that Respondent failed to use instructional time effectively when he ended instruction when the PE shower bell rang with eight minutes of instructional time remaining in the period.

e. It was established that Respondent failed to follow an administrative directive when he failed to teach “from bell to bell.”

29. On March 8, 2010, Assistant Principal Caldwell observed one of Respondent’s classes. Assistant Principal Caldwell held an office conference with Respondent on March 17, 2010, and provided Respondent with a written conference memorandum memorializing her observations and recommendations. Respondent prepared a written response to the memorandum.

30. Paragraphs 5 and 6 of the Accusation are based upon deficiencies that Caldwell identified in her March 8, 2010 observation. On March 8, 2010, Respondent failed to maintain appropriate order in the classroom when he:

a. Allowed approximately 50 percent of the students to ignore his warm up assignment even when he verbally reminded them to start working for the first 5 or 10 minutes of class time.

b. Allowed a student to roll up paper and peer through it saying, “I see you Mr. Salemi,” and then said, “Mr. Salemi please report to the main office” which he repeated several times while the Respondent said nothing.

31. It was not established that Respondent failed to maintain appropriate discipline in the classroom on March 8, 2010. While Respondent's classroom was not orderly, he did not have discipline problems with his students.

32. It was not established that Respondent failed to follow school and District policy on March 8, 2010, nor was it established that he sent an unruly student out of the class without writing a referral note to the Dean’s Office and instead said, “just go to the Dean’s Office.” There was not a requirement that students have a note with them if sent to the Dean’s office. It was established that it was acceptable policy to send a referral or follow up email after the fact. Additionally, it was established that Respondent used a “buddy system” with another math teacher. Through the “buddy system,” Respondent and a colleague would accept students from each other’s classes when needed.

33. On March 11, 2010, Principal Aragon observed Respondent’s classroom. Principal Aragon held an office conference with Respondent on March

15, 2012, and provided Respondent with a memorandum memorializing her observations and recommendations. Also present at the conference were Assistant Principal Caldwell and union representative Maryke Carter. Respondent prepared a written response to the memorandum on March 16, 2010. In his response, Respondent disputed Principal Aragon's observations and asserted that she was discriminating against him because of his disabilities. Principal Aragon read, but did not reply to Respondent's response because District policy prohibited her from responding.

34. Principal Aragon subsequently made arrangements for Respondent to observe two other math teachers at Wilmington on March 22, 2010. Respondent was accompanied by Assistant Principal Caldwell on the observations.

35. Paragraph 7 of the Accusation is based upon deficiencies that Principal Aragon identified in her March 11, 2010 observation.

a. It was established that Respondent failed to differentiate instruction to meet the needs of diverse students when he did not circulate the room to monitor what students were having difficulty with and did not respond when a student said "I don't get it."

b. It was not established that Respondent failed to provide direct standards-based instruction when he did not clarify the math problems and procedures when students expressed confusion during a test.

c. It was established that Respondent failed to model appropriate written English grammar, punctuation, and spelling when he provided students with a handwritten test Form A which had 11 errors and Form B which had errors in punctuation, grammar, and spelling.

d. It was established that Respondent failed to provide a safe and clean environment for students when he blocked the emergency window exit with a computer and a box of computer parts on a table.

e. It was not established that Respondent failed to provide a safe and clean environment for students by leaving graffiti on the table. Although it was established that there was graffiti on a table, Respondent had unsuccessfully attempted to clean the graffiti from the table. It was not established that Respondent was responsible for cleaning graffiti from the table or that the existence of the graffiti on the table constituted an unsafe or unclean environment.

f. It was established that Respondent displayed a bulletin board of student work that was dated January 2010, left papers, books and posters on the classroom floor under his desk, left broken down box lids stacked behind a computer, left "MULTI L C ON" as a heading above the multiplication table and left torn papers on

the agenda board heading. However, it was not established that these things resulted in a failure by Respondent to establish an effective environment for students.

g. It was established that there was a soiled mop in the corner of Respondent's classroom. Respondent used the mop to clean his classroom. It was not established that the existence of the mop resulted in an ineffective environment for students.

h. It was not established that Respondent failed to adhere to the District Board Rule Reaffirming Respectful Treatment for All Persons. The Commission did not find Principal Aragon's testimony credible with respect to the allegation that Respondent publicly or repeatedly chastised a student that was trying to explain he had been given an incomplete form for his homework stamps. This was inconsistent with all other testimony about Respondent's demeanor and treatment of students and inconsistent with Respondent's version of the events.

36. On April 6, 2010, Assistant Principal Caldwell observed Respondent's second period Math class. Assistant Principal Caldwell held an office conference with Respondent on April 13, 2012, and provided a written memorandum memorializing her observations and recommendations. Respondent prepared a written response to the memorandum.

37. Paragraphs 8 and 9 of the Accusation are based upon deficiencies that Assistant Principal Caldwell identified in her April 6, 2010 observation.

a. It was not established that Respondent failed to maintain discipline in his classroom on April 6, 2010.

b. It was established that Respondent failed to maintain order in his classroom when 21 of his 24 students were not engaged in the lesson enough to answer the question "Do you agree?" or "Do you disagree?"

c. It was established that Respondent failed to maintain order in his classroom when 80 percent of the students talked to each other rather than work on the homework assignment.

d. It was not established that Respondent failed to plan appropriately for instruction, when he told students to work independently and then changed the directions and instructed the students to work with a partner.

e. It was not established that Respondent said "I'm going to wait" in an attempt to quiet students, and then shouted over them.

f. It was not established that Respondent failed to plan appropriately for instruction when he told the students that there were "three more minutes" left to

complete an assignment, but only gave them 30 seconds before instructing them to “put your pencils down.”

38. Assistant Principal Caldwell observed Respondent’s second period math class on April 23, 2010. Assistant Principal Caldwell held an office conference with Respondent on April 27, 2010 and provided Respondent with a written memorandum memorializing her observations and recommendations. On May 4, 2010, Respondent prepared a written response to the memorandum.

39. Paragraphs 10 and 11 of the Accusation are based upon deficiencies that Assistant Principal Caldwell identified in her April 23, 2010 observation.

a. It was established that Respondent failed to provide direct standards-based instruction when he did not clarify for students which of two packets of worksheets they were to work on in class and only provided the students with five minutes to solve 65 math problems.

b. It was not established that Respondent failed to maintain appropriate order and discipline in the classroom. The evidence established that it took several minutes for the class to gradually quiet down, but Respondent was in control of his class at all times.

40. Assistant Principal Caldwell observed Respondent’s second period math class on June 8, 2010. Assistant Principal Caldwell held an office conference with Respondent on June 10, 2010, and provided a written memorandum memorializing her observations and recommendations. Respondent prepared a written response to the memorandum.

41. Paragraph 12 of the Accusation is based upon deficiencies that Assistant Principal Caldwell identified in her June 8, 2010 observation. The Commission determined that Respondent allowed approximately half the class to be off-task, talking and looking at yearbooks instead of doing the warm-up activity. Respondent said, “Can I have your attention please?” three times before students responded. This delay caused “down time” in the use of instructional minutes. It was established that this was a failure to maintain appropriate order in the classroom, but it was not a failure to maintain discipline in the classroom.

42. On October 28, 2010, Assistant Principal Anderson observed Respondent’s classroom from 1:09 p.m. to 1:44 pm. Assistant Principal Anderson held an office conference with Respondent on November 1, 2010, and provided a written memorandum memorializing her observations and recommendations. Respondent prepared a written response to the memorandum on November 6, 2010. Assistant Principal Anderson became angry with Respondent when she read the first paragraph of his response because it referred to a discussion about his disability that Assistant Principal Anderson contends did not occur. Assistant Principal Anderson

provides care for a family member that is blind and quadriplegic. She was not sympathetic to Respondent and was resentful of his references to his disabilities. Assistant Principal Anderson did not finish reading Respondent's response and saw no value in reading his responses. After reading the first paragraph of his first response, she did not read any of Respondent's responses to any of her later memoranda.

43. Paragraph 13 of the Accusation is based upon deficiencies that Assistant Principal Anderson identified in her October 28, 2010 observation. It was established that Respondent failed to make effective use of instructional time. Respondent had students turn in tests at 1:37 p.m. leaving students sitting in the classroom for seven minutes with no instruction until the dismissal bell rang at 1:44 p.m.

44. On November 10, 2010, Assistant Principal Anderson observed Respondent's classroom for an unspecified period of time at the beginning of the third period math class. Assistant Principal Anderson held an office conference with Respondent on November 15, 2010 and provided a written memorandum memorializing her observations and recommendations. Respondent prepared a written response to the memorandum on November 24, 2010.

45. Paragraph 14 of the Accusation is based upon deficiencies that Assistant Principal Anderson identified in her November 10, 2010 observation.

a. It was established that one student remarked "we did this yesterday" when he saw the lesson for the day.

b. It was not established that Respondent failed to maintain appropriate discipline and order in the classroom.

c. It was not established that Respondent failed to control his class during a group testing situation.

46. On December 3, 2010, between 1:40 p.m. and 2:46 p.m., Assistant Principal Anderson observed Respondent's class. Respondent had been given advance notice of the observation. Assistant Principal Anderson held an office conference with Respondent on December 10, 2010, and provided a written memorandum memorializing her observations and recommendations. Respondent prepared a written response to the memorandum on January 20, 2011.

47. Paragraphs 15, 16, 17 and 18 of the Accusation are based upon deficiencies that Assistant Principal Anderson identified in her December 3, 2010 observation.

a. It was established that Respondent failed to make effective use of instructional time when he allowed only 10 seconds for students to answer before he told them the answer to questions.

b. It was established that Respondent failed to make effective use of instructional time when he said, "Anybody have any questions?" and after receiving no response from the students, he said, "OK, done."

c. It was established that Respondent failed to provide for diverse student needs when he failed to develop questioning strategies to reach all students including those at the advanced and remedial levels.

d. It was not established that Respondent failed to plan properly to make effective use of instructional time by not planning instruction for all of the instructional minutes in the period.

e. It was not established that Respondent failed to use Bloom's Taxonomy or failed to use higher levels of Bloom's Taxonomy⁹ in his lesson.

48. On January 24, 2011, Assistant Principal Anderson observed Respondent's class from 1:27 p.m. to 1:45 p.m. Assistant Principal Anderson held an office conference with Respondent on January 27, 2011, and provided a written memorandum memorializing her observations and recommendations. Respondent prepared a written response to the memorandum on February 11, 2011. Assistant Principal Anderson did not read Respondent's response.

49. Paragraphs 19, 20 and 21 of the Accusation are based upon deficiencies that Assistant Principal Anderson identified in her January 24, 2011 observation.

a. The evidence did not establish that Respondent failed to teach critical thinking and problem solving strategies or that he failed to clarify misunderstanding or to re-teach concepts.

b. It was not established that Respondent failed to plan properly when he did not have his answer sheet for the problems that students were working on or that he praised a student for doing steps correctly when in fact she had not done them correctly.

9 Bloom's Taxonomy is a classification of learning objectives. It refers to a classification of the different objectives that educators set for students and is divided into three domains: cognitive, affective and psychomotor. Within the domains, learning at the higher levels is dependent on having attained prerequisite knowledge at the lower levels.

c. The evidence did not establish that Respondent failed to provide for diverse student needs by failing to check for understanding of the lesson and failing to give “wait time” for answers.

50. Assistant Principal Anderson observed Claimant’s classroom between 9:20 a.m. and 9:50 a.m. on February 8, 2011, which was a shortened day with fewer instructional minutes and a different bell schedule. Assistant Principal Anderson held an office conference with Respondent on February 9, 2011, and provided a written memorandum memorializing her observations and recommendations. Respondent prepared a written response to the memorandum on February 12, 2011.

51. Paragraphs 22, 23, 24, 25, 26 and 27 of the Accusation are based upon deficiencies that Assistant Principal Anderson identified in her February 8, 2011 observation.

a. It was established that Respondent did not plan for the reduction in instructional minutes and tried to compensate for the reduction in time by speeding up the lesson resulting in a failure to plan properly in the following instances:

(1) Respondent failed to provide “wait time” for students and to check for understanding when students were presented with five questions in a period of five minutes as evidenced by a student finally saying, “What number is that?”

(2) Respondent failed to provide opportunities for students to review how the teacher arrived at the answer to a math problem before moving on to the next problem.

(3) Respondent failed to provide opportunities for students to review how he arrived at an answer to an “Order of Operations” quiz before moving on to the next problem beginning at 9:38 a.m. and then ending the last problem at 9:46 a.m. by the teacher asking, “Who got them all right?”

b. The evidence did not establish that Respondent failed to plan properly by not using the “Unit 2 Review Warm-up” for Guided/Independent Practice before the periodic assessment. While it would have been appropriate and may have been the preference of the evaluator for Respondent to use the “Unit 2 Review Warm-up” as a guided/independent practice, the evidence did not establish that Respondent’s lesson was not properly planned.

c. The evidence established that Respondent failed to provide direct standards-based instruction when he presented a mathematical word problem equation without writing out the equation for “rate” on the board, “ $r=d/t$,” and explaining what each letter meant which could have helped the students dissect the problem, solve it, and allow him to check for understanding.

52. On February 28, 2011, Assistant Principal Anderson observed Respondent's class between 10:31 a.m. and 11:11 a.m. Assistant Principal Anderson held an office conference with Respondent on March 3, 2011, and provided a written memorandum memorializing her observations and recommendations. Respondent prepared a written response to the memorandum on March 17, 2011.

53. Paragraphs 28 and 29 of the Accusation are based upon deficiencies that Assistant Principal Anderson identified in her February 28, 2011 observation.

a. The evidence did not establish that Respondent failed to teach problem solving and critical thinking techniques.

b. The evidence did not establish that Respondent failed to provide standards-based instruction by not using appropriate mathematical vocabulary when presenting a math lesson.

54. Assistant Principal Anderson observed Respondent's class on March 30, 2011, between 2:00 p.m and 2:44 p.m. Assistant Principal Anderson held an office conference with Respondent on April 1, 2011, and provided a written memorandum memorializing her observations and recommendations. Respondent prepared a written response to the memorandum.

55. Paragraphs 30, 31 and 32 of the Accusation are based upon deficiencies that Assistant Principal Anderson identified in her March 30, 2011 observation of Respondent's class.

a. The evidence did not establish that Respondent failed to properly plan for instructional time.

b. The evidence did not establish that Respondent failed to use instructional time effectively.

c. The evidence did not establish that Respondent failed to use mathematical vocabulary with students.

56. On April 12, 2011, Assistant Principal Anderson observed Respondent's classroom from 9:54 a.m. to 10:33 a.m. Assistant Principal Anderson held an office conference with Respondent on April 14, 2011, and provided a written memorandum memorializing her observations and recommendations. Respondent prepared a written response to the memorandum.

57. Paragraphs 33, 34 and 35 of the Accusation are based upon deficiencies that Assistant Principal Anderson identified in her April 12, 2011 observation.

- a. The evidence did not establish that Respondent failed to properly plan for and make effective use of instructional time.
- b. The evidence did not establish that Respondent failed to provide students with sufficient “wait time” and moved too quickly for students to comprehend the instruction.
- c. The evidence did not establish that Respondent failed to use appropriate mathematical vocabulary as required for direct standards-based instruction.

Remediation

58. Respondent was provided with a Peer Assistance and Review (PAR) Coach after his second below standard evaluation. The PAR coach is usually a retired teacher who comes in to work with a teacher that has received two consecutive below standard evaluations. The PAR Coach works with the teacher on specific goals, observes the teacher’s classes at regular intervals and offers constructive feedback. Principal Aragon established goals for the PAR Coach to work on with Respondent during her tenure. The principal was not privy to the interactions between the PAR Coach and the teacher. In this case, the PAR Coach provided detailed notes of his classroom observation to Principal Aragon, however she did not read or consider the notes, but placed the notes in Respondent’s file. Although he made progress, Respondent did not meet his PAR goals.

59. Respondent also received support and assistance from Diana Zarro, the school Math Coach. Respondent’s discussions with Ms. Zarro were confidential by the terms of the union contract with District.

60. Despite the assistance of the Math Coach, the PAR Coach and observation of other math teachers, Respondent’s performance did not improve significantly.

61. Wilmington Middle School administrators established an optional mathematics remedial class for Respondent's students in response to complaints about the poor instruction and poor state testing scores in his class.

LEGAL CONCLUSIONS

1. The Commission has jurisdiction to proceed in this matter pursuant section 44944. (Factual Findings 1 through 5.)
2. Pursuant to section 44944, subdivisions (c)(1)-(3), when a school board recommends dismissal for cause, the Commission may only vote for or against it.

Likewise, when suspension is recommended, the Commission may only vote for or against suspension. The Commission may not dispose of a charge of dismissal by imposing probation or an alternative sanction.

3. The District has the burden of proof in this matter because it is seeking to dismiss Respondent from employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardiner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.) The “preponderance of the evidence” standard requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence. (*In re Michael G.* (1998) 63 Cal.App.4th 700.)

4. The Accusation and Statement of Charges does not set forth specifically which of the District’s factual allegations relate to each of the five alleged grounds for dismissal: (1) unprofessional conduct, (2) unsatisfactory conduct, (3) evident unfitness for service, (4) 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, and (5) willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district.

5. Section 44932 provides in pertinent part:

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

(1) Immoral or unprofessional conduct.

...¶...

(4) Unsatisfactory performance.

(5) Evident unfitness for service.

...¶...

(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.

6. “Unprofessional conduct,” as used in section 44932, subdivision(a)(1), may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553); (see *Perez v. Commission on Professional Competence* 91983) 149 Cal. App.3d 1167, 1174)

7. "Unsatisfactory performance" is not specifically defined in section 44932, subdivision (a)(4), but generally denotes a failure to meet

reasonable standards. School districts establish reasonable requirements for all teachers concerning fundamental duties such as attendance, respectful treatment of others, adherence to adopted curriculum and methodology, presentation of classroom instruction, engagement of students and professional development which are the standards by which teaching performance is measured. (see *Perez, supra* at 1174.)

8. “Evident unfitness for service,” within the meaning of section 44932, subdivision (a)(5), means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-1445 (*Woodland*).) Evident unfitness for service requires that unfitness be attributable to a defect in temperament which “connotes a fixed character trait, presumably not remedial upon receipt of notice that one’s conduct fails to meet the expectations of the employing school district.” (*Id.* at p. 1444.)

9. Under section 44932, subdivision (a)(7), the violation of school rules must be persistent or “motivated by an attitude of continuous insubordination.” (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 317.) Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

10. Even where unprofessional conduct or evident unfitness for service are established, it must also be established that such unprofessional conduct, or evident unfitness renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal. 3d 214, 229-230 (*Morrison*); *Fontana Unified School District v. Burman* (1988) 45 Cal. 3d 208 (*Fontana*); *Woodland, supra*, 4 Cal. App.4th at pp. 1444-1445.)

11. In *Morrison*, the California Supreme Court noted that legislation authorizing disciplinary action against the holders of a variety of certificates, licenses and government jobs other than teaching contain general terms. The Court had not attempted to formulate explicit definitions of those terms, but had given those terms more precise meaning by referring to the particular profession or specific governmental position to which they were applicable. (*Ibid.*, at p. 220). With regard to such general terms “immoral” or unprofessional conduct” and “moral turpitude,” those terms had to be interpreted in a manner bearing upon the teacher’s fitness to teach. “Without such a reasonable interpretation, the terms would be susceptible to so broad an application as possibly to subject to discipline virtually every teacher in the state.” (*Ibid.*, at p. 225.)

12. Under the facts of the *Morrison* case, the Court reviewed the teacher's conduct and determined that a school board may consider such specific criteria as (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuation or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

13. The Commission did not find facts that would support a determination that Respondent violated ethical rules or engaged in conduct unbecoming of a member of the teaching profession. The Commission determined that cause does not exist to dismiss Respondent for unprofessional conduct, pursuant to section 44932, subdivision (a)(1), for the reasons set forth in Factual Findings 8-57 and Legal Conclusions 3, 5 and 6.

14. Respondent failed to meet minimum reasonable requirements for teaching as measured by the District. Respondent has a sustained history of poor teaching and a failure to make significant progress towards improvement despite specific recommendations, coaching and accommodations. Respondent went through the motions of teaching by placing PowerPoint presentations before his class, but did not engage the students or guide them through the lessons with any meaningful exchange. The Commission determined that Respondent's conduct constitutes unsatisfactory performance, and that cause exists to dismiss Respondent for unsatisfactory performance pursuant to section 44932, subdivision (a)(4), for the reasons set forth in Factual Findings 8-61, and Legal Conclusions 3, 5 and 7.

15. The Commission did not find facts that would support a determination that Respondent's poor performance was a result of a defect in his temperament or a fixed character trait. The Commission determined that cause does not exist to dismiss Respondent for evident unfitness for service, pursuant to section 44932, subdivision (a)(5), for the reasons set forth in Factual Findings 8-57 and Legal Conclusions 3, 5 and 8.

16. Although the Commission is concerned about Respondent's failures to provide instruction for the entire class period (bell to bell), the Commission determined that cause does not exist to dismiss Respondent for persistent violation of school laws of the state or the reasonable regulations prescribed by the government of the public schools by the State Board of Education or by the governing board of the school district employing him pursuant to section 44932, subdivision (a)(7), for the reasons set forth in Factual Findings 8-57 and Legal Conclusions 3, 5 and 9. The Commission determined that Respondent's failures to adhere to the bell schedule were

a result of his lack of organization and general issues of competence rather than to any insubordinate, persistent or willful conduct.

17. The Commission did not find facts that would support a determination that Respondent willfully refused to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, pursuant to section 44939, for the reasons set forth in Factual Findings 8-57 and Legal Conclusion 16 above. The Commission did not find any evidence that Respondent was insubordinate or refused to perform assignments. As set forth in Legal Conclusion 16 above, his failures to adhere to the bell schedule were a result of his lack of organization and general issues of competence and, as such, lacked the intent or willfulness required.

18. The Commission does not believe that the *Morrison* factors apply to this case because the sole charge that was sustained was "Unsatisfactory Performance." However, the analysis required by *Morrison* is useful in explaining the Commission's ultimate decision to dismiss Respondent and is therefore included here. The Commission determined that Respondent's conduct was not detrimental to other teachers. However, his conduct and poor teaching was detrimental to his students because they were not receiving appropriate instruction and lacking the fundamental instruction needed for the next level of mathematics. In some instances, students had to take an extra specially created math class in order to obtain the needed instruction. Respondent's performance as measured on standard evaluation forms and over the course of 17 observations, did not improve significantly despite assistance, supports and accommodations. His conduct and generally poor teaching occurred over an extended period of time and is likely to continue. Although Respondent has a disability which may be considered an extenuating circumstance, it was established that he received all accommodations that he requested. In sum, he failed to meet minimum requirements for acceptable performance, despite accommodation and support. Although by most accounts Respondent is a kind and caring person, his failure had a tremendous impact on the students that depended on him for mathematics instruction. For these reasons, the Commission determined that Respondent should be dismissed. (Factual Findings 8-61 and Legal Conclusions 1-18)

ORDER

WHEREFORE, IT IS HEREBY ORDERED that:

Respondent Joseph Salemi is dismissed from his employment as a permanent certificated employee of the Los Angeles Unified School District.

November____, 2012

JASON BRANHAM
Member
Commission on Professional Competence

November____, 2012

GLYNDA B. GOMEZ
Administrative Law Judge
Member
Commission on Professional Competence

DISSENT

Susan Mercer concurs in the accuracy of the factual findings recorded herein, but respectfully dissents from the conclusion that Respondent's performance was unsatisfactory and from the ultimate conclusion of dismissal reached in this matter. The dissent is based upon the observation that with respect to the allegations of unsatisfactory performance, Respondent seemed to make efforts to correct the deficiencies in his performance when they were made known to him and did show some improvement. District should have done more to support this teacher and provide him with clear guidance for improvement.

DATED: November _____, 2012

Susan Mercer
Member
Commission on Professional Competence