

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS AND A  
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE  
LOS ANGELES UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Dismissal of :

JASON CAMP,  
A Permanent Certified Employee,

Respondent.

OAH No.: 2017050275

**DECISION**

The Commission on Professional Competence, consisting of complainant's designee, Alfredo Tarin, respondent's designee, Norberto Perez, and Administrative Law Judge Jennifer M. Russell, from the Office of Administrative Hearings, heard this matter in Los Angeles, California on October 30 and 31 and November 1, 2, and 3, 2017. The record closed and the matter was submitted for decision of February 9, 2018.<sup>1</sup>

Enrique M. Vassallo, Attorney at Law, represented complainant Los Angeles Unified School District (LAUSD or District). David Craig Bernstein, Attorney at Law, represented respondent Jason Camp, who was present throughout the hearing.

The District alleges that respondent engaged in conduct warranting his dismissal. The District charges respondent with issuing grades to two student athletes<sup>2</sup> who were academically ineligible to play football and who were not officially enrolled during a July 28 through August 12, 2016 period as students at Canoga Park High School (Canoga Park) or Owensmouth Continuation High School (Owensmouth), the two schools involved in this matter, in order to improve the two students' eligibility status. The District further charges respondent with enrolling the two student athletes, on September 6, 2016, in a seventh period class at Owensmouth that overlapped with the two students' sixth period class at Canoga

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<sup>1</sup> In accordance with a November 6, 2017 Post-Hearing Order, the record remained open for the parties' submission of written closing arguments. Complainant's Closing Brief is marked for identification as Exhibit 42. Respondent's Closing Brief is marked for identification as Exhibit A.

<sup>2</sup> Pursuant to a September 27, 2017 Stipulation and Protective Order, student records admitted as exhibits were placed under seal pursuant to protect confidentiality and privacy.

Park and with issuing grades for instruction the two students did not receive. Respondent disputes the charges.<sup>3</sup>

Conduct does not occur in a vacuum. Conduct occurs in a particularized context, which in turn imbues conduct with its significance and meaning. To determine whether the District meets its burden of establishing by a preponderance of evidence the allegations that respondent engaged in conduct warranting dismissal, a detailed explication of the particular context animating respondent's conduct is set forth in the Factual Findings. Based on these Factual Findings and governing legal principles set forth in the Legal Conclusions, the District has failed to meet its evidentiary burden, and the Accusation in this matter is dismissed.

## FACTUAL FINDINGS

### *Respondent's Employment with the District*

1. The District employed respondent for 20 years until the February 27, 2017 recommendation for his dismissal by Board of Education (Board) for the District. Respondent has an undergraduate degree in political science and a graduate degree in educational administration. He holds a Clear Single Subject Teaching Credential in Social Studies and a Certificate of Eligibility for an Administrative Services Credential. Respondent's leadership positions include his two terms of service as President of Senior High School Options Principals Organization and his service as Vice President of the Associated Administrators Los Angeles (AALA).

2. While serving as principal for Independence Continuation High School, respondent piloted Recovery + Intervention=Graduation (RIG), a program to help students attending comprehensive high schools to make up failed courses at a continuation high school, and respondent was recognized for his efforts. In 2015, respondent received the Continuation/Educational Options-Administrator of the Year Award, an honor bestowed by the Association of California School Administrators.

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<sup>3</sup> During the preparation of the Decision, the Administrative Law Judge observed that a Notice of Defense was not filed in connection with this matter notwithstanding the fact that respondent contests the charges. In addition, the Administrative Law Judge noted that the Accusation and Request for Hearing were not marked for identification or entered in evidence. Government Code section 11523 provides for judicial review, which a petitioner initiates by, among other things, requesting the Office of Administrative Hearings to prepare a complete record of the proceedings. Section 11523 provides that “[t]he complete record includes the pleadings[.]” Thus, to preserve a complete record of the proceedings in this matter, the Administrative Law Judge marked the Accusation and Request for Hearing as Exhibit OAH2, which has been entered in evidence, thereby rendering the jurisdictional documents or pleadings a component of the complete record.

3. In early February 2016, respondent “shared” with Vivian Ekchian, the then-Superintendent for Local District Northwest, his ambitions to be promoted. Respondent felt that all of his skills were not fully utilized at Independence Continuation High School. At the administrative hearing Ekchian explained that there were no vacancies for promotion. As respondent’s mentor and supervisor, Ekchian advised respondent, “Let’s look for opportunities for you to be able to receive a variety of experiences so that you can put that on your resume, and when the time comes for a promotion, you will be even more ready than you are today.”<sup>4</sup>

4. Ekchian presented respondent with offers to serve as principal for Stony Point High School or Zane Grey High School. Respondent, however, declined both offers explaining that he aspired to be the Local District Northwest Director of Educational Options Schools—a position Nadar Delnavaz occupied, and was therefore not vacant. In the presence of other District administrators including Delnavaz, respondent informed Ekchian that he “didn’t feel that the schools were being served properly, that Mr. Delnavaz didn’t possess the capacity in educational options to lead the schools that we had in Local District Northwest, and [he] felt that [he] could do the job more effectively.”

5. Towards the end of the 2016 spring semester, Ekchian again offered respondent an opportunity to move laterally—this time to Owensmouth, which is adjacent to Canoga Park, a comprehensive high school. Ekchian explained that “Canoga Park was one of our two high schools that was least achieving” and that “the opportunity to expand a credit recovery program and [help] students really graduate college and career ready existed at [Canoga Park].” According to Ekchian, Owensmouth was “a perfect place for the Canoga Park students to go either full time or pass back and forth.” Ekchian additionally considered Ownensmouth a “wonderful opportunity” for respondent, whom she characterized as “an experienced gentleman who wanted a promotional opportunity.” Respondent accepted the offer.

6. Three weeks prior to the recommendation to dismiss him from the District, on February 4, 2017, the Association of California School Administrators again awarded respondent the Continuation/Educational Options-Administrator of the Year Award. On February 21, 2017, the *LAUSD Daily* published an article titled, *Wooden, Owensmouth earn state honors as Model Continuation High Schools*, which, among other things, features respondent and touts Owensmouth as a model continuation high school for motivating and helping struggling students to reach their full potential. (See Exh. 21.)

*Plans to “Passport” Students between Canoga Park High School and Owensmouth Continuation High School*

7. In June 2015, the District introduced credit recovery, an initiative intended to boost student graduation rates and to foster college and career readiness. Among other

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<sup>4</sup> Throughout this Decision quoted testimony is taken from hearing transcripts, which the parties lodged with the Office of Administrative Hearings.

features, credit recovery enables students with failing grades who are attending the District's traditional comprehensive high schools to "passport" to a continuation high school to retake a failed course. As set forth in the District's Memorandum titled *Credit Recovery Program Opportunities* and dated January 20, 2017,<sup>5</sup> credit recovery opportunities and pathways include blended and virtual online courses (Edgenuity and APEX), independent study, Performance Assessment Student Support (PASS), RIG, adult education, community college courses, summer term, and fifth-year high school for specific students and school-designed opportunities.

8. According to the District's *Credit Recovery Program* memorandum, "School sites are responsible for designing or selecting the credit recovery programs that best meet the needs of their students." (Exh. 7.) It encourages students receiving a "D" to retake the course for a higher grade in order to be competitive when applying to universities. Thus, it provides that priority should be given to seniors and juniors who have received at least one "D" or a failing grade. (*Ibid.*) The District's *Credit Recovery Program* memorandum instructs that "As students complete the credit recovery programs, the course and final grades for individual students may be entered directly into the student's transcript by the counselor, scheduling administrator or office manager." (*Ibid.*)

9. As Superintendent for Local District Northwest, Ekchian's responsibilities included supervision of instructional programs. She supervised those instructional directors working with instructional teams, including school principals, to implement credit recovery programs. At the administrative hearing, Ekchian explained "the idea of passporting" stating, "Many students hesitate to attend a continuation school full-time because they do not want to be separated from the comprehensive high school for a variety of reasons. Sometimes they believe there's a stigma attached to moving from one school to the other . . . . The idea of passporting is that if there's a particular subject area that you need credit recovery in, you can spend part of the day in that continuation high school, but still remain a student at Canoga Park and be able to take advantage of the elective, the sports, and the other programs the continuation school can't offer, but the comprehensive high school can. So, it's for students who can take advantage of both—both the program at the comprehensive high school and the offerings at the continuation school."

10. In April or May 2016, respondent first encountered the term "I-Canoga" when Ekchian summoned him to a meeting at Canoga Park principal Robert Garcia. Respondent understood that Garcia "had been in discussions with Local District Northwest about an idea he had called I-Canoga. If I'm not mistaken, he was trying to pattern it after something at Granada Hills High School called I-Granada. [Garcia] had a piece of paper with some ideas on it. . . . It was going to be online. It was going to be using computers. There were going to be Apex and Edgenuity classes offered through it . . . . He also wanted to offer advanced placement classes online."

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<sup>5</sup> This memorandum bearing number MEM-6733.1 updates and replaces an earlier memorandum identified with the same number. (See Exh. 7.)

11. Ivan Moreno, a Dean of Students and the head football coach at Canoga Park, did not attend the April or May 2016 meeting, but he recalled observing respondent “spending time at the campus in the spring working with Mr. Garcia,” and he understood that they were “laying the ground work” for “a new thing”—I-Canoga. Moreno understood that I-Canoga would “use football and sports and extracurricular activities to motivate kids to stay in school and graduate.” Students would be “going to Owensmouth, taking classes, and still being enrolled at Canoga Park High School.”

12. On June 1, 2016, Ekchian introduced respondent to the staff and faculty at Owensmouth as their new principal. Garcia and several members of Local District Northwest, including Delnavaz, who served as the Instructional Director for Owensmouth, and Joseph Nacordia, the Instructional Director for Canoga Park, were also present. Ekchian discussed credit recovery.

13. Respondent credibly recalled Ekchian describing credit recovery to meeting attendees as a “seamless transition of students from one campus to another” at that June 1, 2016 meeting. “Students would be taking courses during the day and the evening hours on both campuses. My students would go to Canoga Park High School, and Canoga Park students would come to mine. It would be difficult to tell which campus the student was actually on. There was just going to be a partnership. A sharing of facilities was discussed. My continuation high school at Owensmouth . . . has a facilities issue, particularly when you’re talking about PE. There are no PE facilities. We’re very limited on what we can teach because of the number of teachers we have. So, this was supposed to be a wonderful opportunity for students at Canoga Park High School to remain at Canoga Park High School and receive credit under the umbrella of Options. And it was a good opportunity for my students to travel to Canoga Park High School to take PE, because we don’t have any PE facilities or credentialed PE teachers.”

14. After the June 1, 2016 meeting occurred, on a subsequent day, respondent, Garcia, Delnavaz, Nacordia, and the Canoga Park plant manager got together and they “walked the facilities and talked about the pilot program.” As they walked the facilities there was a brief encounter with Moreno and Kevin Carlsen, who served as assistant football coach at Canoga Park. Garcia introduced respondent to Moreno and Carlsen. Niceties were exchanged and the group talked a little bit about the pilot program before Moreno and Carlsen departed.

15. At the administrative hearing, Carlsen recalled encountering Garcia and respondent on a walk-through and discussing a program about sharing students. Carlsen understood that the program was intended to target students with bad grades or in need of credits. “Because I was in football, it was more football-based as to how it could help football players or the rest of the athletes at Canoga High School.”

16. The walk-through continued, and respondent, Garcia, Delnavaz, and Nacordia continued their discussion about how to implement “passporting.” Respondent explained, “We were going to extend Owensmouth High School for four or five classes. There were

also three rooms that had been used for ROTC, and they were really in bad shape. [Those were] the three rooms we wanted to use for the I-Canoga portion. There was supposed to be some construction in those rooms . . . over the summer. The classrooms were supposed to be moved and expanded. There was [*sic*] a couple of off-campus groups using some rooms, and they were supposed to leave so that the rooms could be prepared.”

17. The group discussed the bell schedules. Respondent explained, “It was Superintendent Ekchian’s charge that we passport students during the day. The current bell schedule certainly was not going to make that happen. We hadn’t at that time figured out what the bell schedule was going to be, but we knew we had to change it.” Respondent requested Delnavez to delay certification of the bell schedule for the 2016/2017 academic year. Respondent explained, “In order to get this pilot program off the ground, we had to synchronize the bell schedules, and that was obviously not a problem for Canoga, but it was a problem for Owensmouth. Traditionally speaking, you only need 180 minutes a day for a continuation high school. So, a lot of continuation high schools ended the day at 12:30. I was never really a big fan of that, so I was more than happy to bump the bell schedule up. . . . I took a look at Robert [Garcia’s] bell schedule. At first, I was just going to match it, but the teachers weren’t happy with that idea. So, I looked at it and tried my best to coincide some periods. . . . Since it had never been done before, the difficulty was trying to figure out how to match it up with their school. In a comprehensive high school, you traditionally have six periods. They have 50, 60 teachers, so you have conference periods scattered throughout the day. In a continuation high school where you only have four, five, six, teachers, you don’t scatter conferences throughout the day because you would have no place to put the students. So, I figured out where we could get six classes in to about 2:00, and then I would give my conference period, if a teacher desired it, from about 2:10 to 3:15, and that would be a regular school day. . . . I was able to closely match first and second period to Canoga Park High School’s first and second periods. But then with their five-minute lapse between class and their nutrition breaks and lunch, it just didn’t work until we got to Canoga Park High School fifth and sixth period. I could match . . . my sixth period with Canoga Park High school fifth period, and then my seventh with Canoga Park High School sixth period. So when we discussed the issues, we called it six/seven—Canoga Park High School’s sixth period with Owensmouth High School’s seventh period.”

18. Respondent encountered a “plethora of problems” as he prepared for the upcoming 2016/2017 academic year. The bell schedule was certified and locked in place. “I don’t recall all the details, but I remember getting a call from MiSiS<sup>6</sup> saying that they could no longer change the bell schedule. It was already programmed for the new year. I then contacted my supervisor downtown. His name is Scott Braxton. He worked on the issue for me downtown. Eventually, they called and said they couldn’t switch the bell schedule—whatever the bell schedule was, it was in place. So, then I got my teachers to agree to maneuver throughout the day and the windows in MiSiS and take roll properly. Their day

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<sup>6</sup> MiSiS is the database system and application for recording student enrollment, course schedules, grades, and academic history.

previously had ended at 12:40; so, you could see it was a problem. But, they agreed to work with me on it.”

19. There was a problem with properly accounting for the average daily attendance (ADA) “because ADA can only be collected by one school, but we were attempting to merge two schools together[.] Only one school can capture ADA.” Respondent explained at the administrative hearing, “If their students came to my school, and we took roll on MISIS, we weren’t sure . . . whether it would show Canoga Park or Owensmouth. So, we had a problem.”

#### *Summer 2016 Football Programs at Canoga Park High School*

20. Both the Boys and Girls Club and the District offered football programs at Canoga Park in summer 2016. Canoga Park football coaches, including Moreno and Carlsen, supervised and managed both programs. As in previous years, aspirants from several high schools, including Canoga Park students, participated. According to Carlsen, “They call it testing the waters.” Carlsen explained at the administrative hearing that “pretty much anybody” participates in the Boys and Girls Club’s football program, and that many of those participants are “ineligible grade-wise.” “A lot of kids would come to us because they were ineligible, and [ask], ‘What can I do?’” Typically, Moreno and Carlsen advised how to gain eligibility, including taking Apex or other online classes.

21. The District’s football program is limited to students enrolled at Canoga Park, and who meet the eligibility requirement. Historically, students intending to transfer to Canoga Park to play football, but who are not yet enrolled as students at Canoga Park, presented a challenge. No staff responsible for enrolling students at Canoga Park is present at the school in the summer when the District’s football program is in session. Carlsen explained, “It’s kind of up in the air at that point what you do with those students.” That was the case in summer 2016. Students intending to transfer to Canoga Park, regardless of eligibility status, participated in the District’s football program along with students who were already enrolled at Canoga Park.

22. There were 10 to 15 ineligible student participants in the District-sanctioned summer 2016 football program. Carlsen immediately thought about the new program he previously discussed with Garcia and respondent. Carlsen explained his thinking: “I was excited about the program because it would really help Canoga High School. As long as I’ve been there we’ve had ineligible students, and it sounded to me like it’s a really great program to get these kids where they needed to be, and so I was very encouraged by the program. Me being a football coach, you lose certain kids that can make your team better, . . . just to have a bigger team. Every year it seems like our team gets smaller and smaller. We used to have 50 kids. Now we’re only at 32. You lose kids every year, and it makes it more and more difficult.” Carlsen suggested to Moreno, “Let’s take them over there [meaning Owensmouth] to see what we can do. Maybe we can get it to work.”

23. Carlsen and Moreno required students intending to transfer from other schools to Canoga Park to produce a report card for review. “Whenever we get any kids from any other schools that want to transfer in the first thing we ask them for is their report card because we’ve learned the hard way that you ask kids for their grades—‘How are your grades?’ ‘Oh, good.’—and then you find out that they have all fails.” Carlsen and Moreno’s review of students’ report cards revealed, for example, that some students required a math class, others required a history class, and still others required a physical education class to obtain eligibility.

24. Carlsen recalled that he and Moreno referred or accompanied multiple different groups of students to Owensemouth on several different occasions during a two-week dead period before the 2016/2017 academic year commenced. According to Carlsen, “I believe [for] some kids there weren’t any classes that they could take to try to help them . . . Some we were able to work out . . . We were trying to work out—to figure out—how we can get these kids eligible; so, it was kind of a combination trying to work together to figure out how we can do it.”

25. At the administrative hearing, Carlsen could not state definitively respondent’s involvement in the process of sorting out which students would be able to take which classes at Owensemouth. Regarding respondent’s involvement in the sorting process, Carlsen testified, “I think it was more, you know, on us in trying to figure out what—I mean he could only, you know, do what he could to provide for the kids. So, it was either I can, you know, try to help you or—you know. And I don’t even know at that time if he had teachers.”

26. Nor could Carlsen state definitively respondent’s involvement in any instructions rendered to any students needing classes offered at Owensemouth. In response to the query, who was going to teach the physical education class, Carlsen testified, “I don’t know how that part works. I don’t know if he was going to teach it, or how that whole, you know, that part, works with the sharing of the students, or how that part works.”

27. Ultimately, four students were identified as suitable to enroll in a physical education class. Carlsen testified that he understood that “we were going to try to get these kids a class, a PE class, because, I think, Mr. Camp, was credentialed in PE. . . [W]e were trying to get . . . a PE class going so they could take PE right away.” The physical education class, however, did not commence immediately after the determination that there was a need for the class because unresolved funding issues delayed implementation. Carlsen remembered texting respondent inquiring, “When can we get this class started?”

#### *The Four Students*

28. S█████ H. was already enrolled at Canoga Park where he had completed ninth, tenth and eleventh grade. He earned an A in Advanced Physical Education 1A the fall semester of the ninth grade and an A in Varsity Boys’ Soccer in the spring semester of the ninth grade, and he received a total of 10 credits. He earned an A in Varsity Boys’ Soccer in the fall semester of the tenth grade and A’s in Junior Varsity Boys’ Soccer and Varsity Boys’

Soccer, both taken in the spring of the tenth grade, and he received a total of 15 credits. He earned A's in Varsity Boys' Soccer taken in the fall and spring of the eleventh grade and he earned a total of 10 credits. In sum, his 35 physical education credits satisfied the 20-credit physical education requirement needed for high school graduation. His athletic eligibility GPA was 1.833. (Exh. 2 at p. 5.)

29. I [REDACTED] M. completed the ninth grade at Chula Vista High School, the tenth grade at Chatsworth Charter High School and the eleventh grade at William Tell Aggeler Opportunity High School. He earned A's in Advance Physical Education in the ninth grade and received a total of 10 credits. He earned A's in Varsity Football in tenth grade, and he received a total of 10 credits. In sum, his 20 physical education credits satisfied the 20-credit physical education requirement need for high school graduation. His athletic eligibility GPA was 0.600. (Exh. 1 at p. 2.)

30. M [REDACTED] Y completed the ninth, tenth, and eleventh grades at San Fernando High School (San Fernando) where he participated in both basketball and football. While at San Fernando, he earned A's in Boys' Basketball in both semesters of the ninth grade and received a total of 10 credits. He earned A's in Junior Varsity Boys' Basketball in both semesters of the tenth grade and received an additional total of 10 credits. In sum, his 20 physical education credits satisfied the 20-credit physical education requirement needed for high school graduation. His athletic eligibility GPA was 1.500. (Exh. 2 at p. 2.)

31. During the July 28 through August 12, 2016 dead period, S [REDACTED] H., I [REDACTED] M., and M [REDACTED] Y., worked out in the weight room at Canoga Park by themselves, and they maintained weight lifting logs Carlsen provided to them. They also wrote essays about famous athletes. According to Carlsen, "Because we were hoping the class was going to go, so they had the kids already start working on, you know papers that they were writing, and that kind of stuff. We tried to help them get going ahead of time. . . . And then when the school year started . . . they would do it during sixth period because they can't practice football."

32. I [REDACTED] H. completed the ninth, tenth, and eleventh grades at Birmingham Community Charter High School (Birmingham) where he was a member of the school's football team. While at Birmingham in the ninth grade, he earned an A in Fresh/Soph Football in the fall semester, a C in Varsity Football in the spring semester and a B in Advance Physical Education 1B also in the spring semester. He received a total of 15 physical education credits. In the tenth grade, he earned an A in Fresh/Soph Football in the fall semester and a B in Fresh/Soph Football in the spring semester for a total of 10 additional physical education credits. In sum, his 25 physical education credits satisfied the physical requirement needed for high school graduation. His athletic eligibility GPA is noted as 1.667. (Exh. 41.)

33. At the conclusion of each season I [REDACTED] H. played on the Birmingham football team, his coach declined to play him in the playoffs telling him, "You have next Year." I [REDACTED] H. was frustrated with hearing the "You have next year" refrain, and he determined at

the conclusion of his junior year to leave Birmingham to play football at Paraclete High School (Paraclete). I [REDACTED] H. told another teammate about his decision, and the teammate in turn informed the Birmingham football coach about I [REDACTED] H.'s decision. From I [REDACTED] H.'s perspective, the coach responded by assigning him failing grades in Football, Study Skills, Geometry, Physical Geology B, and History, all of which are courses taught by other football coaches at Birmingham. I [REDACTED] H.'s mother testified, however, that at least with respect to I [REDACTED] H.'s football class, the coach at Birmingham informed her that I [REDACTED] H. "did no work" and "wouldn't lift." Because of these failing grades, Paraclete, which required a 2.5 grade point average for matriculation, was eliminated as a viable option for I [REDACTED] H. I [REDACTED] H. next considered attending Chatsworth High School, but even after completing four weeks of classes during the 2016 summer session at Birmingham he was unable to raise his GPA to meet Chatsworth's academic standards. I [REDACTED] H.'s mother preferred her son to complete his senior year at Birmingham, and I [REDACTED] H. resigned himself to the fact of remaining at Birmingham even if it meant he would no longer play football there.

34. Throughout summer 2016, Moreno and Carlsen engaged I [REDACTED] H. in discussions about playing football at Canoga Park. I [REDACTED] H. was friendly with members of the Canoga Park football team and he was acquainted with the team's coaches. One day, a friend on the Canoga Park football team who was knowledgeable about I [REDACTED] H.'s situation at Birmingham texted I [REDACTED] H. inviting him to join the football team at Canoga Park. I [REDACTED] H. objected telling his friend that he did not want to attend Canoga Park. I [REDACTED] H.'s friend gave I [REDACTED] H.'s phone number to Moreno, who in turn texted I [REDACTED] H. inviting him to join Canoga Park's football team. According to I [REDACTED] H., Coach Moreno "text[ed] me every day and was like, 'Come. We'll help you. It's better over here.' He kept telling me, 'Just come. Just come.'" Both I [REDACTED] H. and his mother regarded these contacts as recruitment.

35. On August 8, 2016, instruction resumed at Birmingham, and I [REDACTED] H. returned there, but his attendance was sporadic—he attended classes the entirety of the first week, two or three days the second week, and stayed at home the third week. During the second week, Moreno and Carlsen traveled to Birmingham to meet with I [REDACTED] H. to review his academic transcript. Moreno and Carlsen informed I [REDACTED] H. that in order for him to join the football team at Canoga Park he had to make up a class, and they proposed that he do so by writing "some essays" and by taking a weightlifting class. I [REDACTED] H.'s mother recalled at the administrative hearing, "I know they said they [were] going to help him get into a credit recovery class in order to be eligible to play football."

#### *Enrolling Transferring Students at Canoga Park High School*

36. August 10, 2016, was the start of the 2016/2017 academic year at Canoga Park. Nuria Steinhauer is a guidance counselor at Canoga Park, whose responsibilities include, among other things, conducting a "graduation check" of senior students' academic history to ensure their completion of required courses and credits, identifying which students need "to make up classes that they failed in the past" with credit recovery, and directing students to Donna Finkelstein, the Canoga Park credit recovery coordinator.

37. Steinhauer is the counselor who enrolled M [REDACTED] Y., who was transferring from San Fernando, and I [REDACTED] H., who was transferring from Birmingham, at Canoga Park. I [REDACTED] H.'s mother was present during Steinhauer's enrollment of I [REDACTED] H. It was not established whether M [REDACTED] Y.'s parents were present during Steinhauer's enrollment of M [REDACTED] Y.

38. Steinhauer conducted a graduation check of both students' academic records and she determined that both students had satisfied the physical education requirement for graduation. Steinhauer also referred both students to Finkelstein for credit recovery because she determined that both students "were in need of a required class to graduate." She did not specify the required class.

39. I [REDACTED] H. was assigned to Moreno's sixth period class at Canoga Park, which was populated with students ineligible to play football at Canoga Park. On a date not established by the evidence, Moreno instructed I [REDACTED] H. to write about "sports or football players." I [REDACTED] H. wrote four one-page essays. Moreno instructed I [REDACTED] H. to complete logs used for documenting several types of exercises, including bench press, row, pulldown, and triceps extensions, which were purportedly performed over a five-week period on Mondays, Wednesdays, and Fridays during "off-season" in the summer of 2016. I [REDACTED] H. completed the logs with numbers he obtained "from the top of [his] head." I [REDACTED] H. explained at the administrative hearing, "That's false information." He fabricated the numbers "because Moreno told me to just write anything there." He performed none of the exercises documented as occurring at Canoga Park during summer 2016. I [REDACTED] H. justified his compliance with Moreno's directive stating, "I just wanted to play football."

*"Passporting" Students between Canoga Park High School and Ownesmouth Continuation High School in the 2016/2017 Academic Year*

40. On August 16, 2016, instruction began at Canoga Park. On August 23, 2016, Garcia, Canoga Park's principal, commenced a meeting to discuss the pilot program, which he feared had fallen off the radar. Respondent, Delnavas, Nacorda, Finkelstein, Brian York, the Title One Coordinator for Canoga Park, and an unidentified gentleman from the Local District office attended. Moreno, Ivet Diaz-Swayer, an assistant principal at Canoga Park, and others popped in for unspecified lengths of time, but did not stay for the entire meeting, which, according to respondent, was very long.

41. Respondent testified, "I don't recall everything in order, but I knew (*sic*) we talked about funding, which was one of the biggest issues. We didn't know how to secure funding at that point, I believe. . . . We talked about staffing. We talked about sharing facilities. We talked about the classes that we would offer in the evening. We talked about classes we could offer in the day. We specifically talked about our first crack at sharing kids during the day was going to be the period six/seven. . . . We talked about the bells, and I explained that I had somewhat overcome the hurdle . . . . It had been previously been brought to my attention that . . . a PE teacher was carrying the roster for the football team in the spring . . . at Canoga Park High School, and it was shared that—I don't know what

happened between the teacher and the football coaches—but, I guess he gave a lot of Ds and Fs to the kids. So, we talked about that being an opportunity because the kids had all been in Mr. Moreno’s summer weightlifting class, and he had already had them in a weightlifting program. At that time, we were about one week into school, and the kids were all in Mr. Moreno’s period six lifting weights. They couldn’t practice football because they were ineligible, and there was (*sic*) that class, it’s a comprehensive high school, they can’t recover the credit until December. So, what we decided to do was use his facilities for weightlifting. We would put the class in period seven under Owensmouth High School umbrella. Ms. [Rebecca] Loiacono had carried a roster before, so we would use her as the teacher. We also chose her because she was running the online Apex and Edgenuity for me. . . . Donna [Finkelstein] would put anybody in the class who had failed the spring course. Whatever kids that she discovered had failed the spring course, she would look and see, number one, did they need PE credit or did they need electives credits. PE is one to the few classes you can take over and above the PE requirements because it can be used as an elective. So, if a student failed something or . . . had already completed PE, [and] if [the] student were still taking football, [PE] would typically be used as an elective.”

42. Respondent was excited about the combined period six/seven class because it meant that students enrolled at Owensmouth would have access to Canoga Park’s physical education facilities, including its weight room. Owensmouth lacked the necessary facilities to offer any physical education courses. “All we can have our kids do is walk and do push-ups and sit-ups. . . . You can’t give traditional PE classes in a school that doesn’t have the facilities. We typically require our kids to do some type of writing assignments. We do some type of physical activity, and then they always take the California fitness exam every single year.” Respondent suggested that the six/seven class should consist of both a physical activity component and a writing component. Moreno agreed.

43. After that August 23, 2016 meeting, there was a concerted effort to implement the pilot program for “passporting” students between Canoga Park and Owensmouth. On August 29, 2016, at approximately 12:48 p.m. Finkelstein sent a text to respondent informing him that she met with Moreno and other Canoga Park counselors, and that she “need[ed] to make some changes.” Finkelstein asked respondent if she could stop by, and at 1:00 p.m., respondent answered, “Absolutely!” Twenty minutes later, Carlsen texted respondent informing him, “Kids will be coming over to your 6th [*sic*]<sup>7</sup> period with Ivan [Moreno]. Do you only have PE?” To which respondent texted, “Just spoke to Donna [Finkelstein] and she said not yet, they aren’t ready to enroll them.” Then in response to the question, “How long do you think it will take?” Respondent texted, “Idk. By Friday I hope.”

44. Notwithstanding Finkelstein’s request for temporary forbearance, on August 29, 2016, Moreno took S █ H., I █ M., M █ Y., and I █ H. to respondent at Owensmouth to discuss the parameters of the combined period six/seven class. Since it was

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<sup>7</sup> Carlsen’s reference to “your 6th period” appears to be an error in light of the competent, credible evidence that a feature of the combined period six/seven class was sixth period at Canoga Park and seventh period at Owensmouth.

previously decided at the August 23, 2016 meeting that those students enrolled in Moreno's six period, who were also enrolled in Moreno's summer weightlifting class, would recover credit, respondent instructed Moreno "to please keep all the work that was done."

45. It is typical for continuation high school students to complete a course's requirements at any time during the academic year. Consequently, at continuation high schools all teachers keep folders of completed work as proof of completion in the event that they are audited to determine whether the grade is justified. Moreno objected to keeping any folders containing students' completed work, and he assured respondent that he (Moreno) had a roll book. Respondent offered to create and maintain the folders for students in the combined period six/seven class in his office.

46. Moreno informed respondent that the accompanying four students—S [REDACTED] H., I [REDACTED] M., M [REDACTED] Y., and I [REDACTED] H.—were enrolled in the combined period six/seven class. The four students handed over weightlifting logs to respondent. Respondent asked Moreno about additional enrollees, and Moreno informed respondent that Finkelstein would be "putting them in [MiSiS] eventually."

47. Respondent obtained four manila folders from his desk drawer; one for each of the four students. He then realized that he did not have the proper paperwork for the students. At the administrative hearing respondent explained, "Traditionally speaking, when a student comes over and we accept paperwork in progress, . . . they have a checkout form. If it's in the middle of the semester, they have the current classes that they are taking [and] they have the grades of the current classes. This had never been done before, and we didn't have the proper paperwork." Respondent pulled out *Los Angeles Unified School District Complementary Report* slips from his desk drawer. According to respondent, "I said, 'Well, we'll record the work that I'm collecting that was done under your supervision during the summer outside of the fall class.' . . . If we got audited and somebody wanted to see it, if the course is finished in the fall but there's work from the summer, . . . you'd have to try to document what's happening."

48. Two of the four *Los Angeles Unified School District Complementary Report* slips—for M [REDACTED] Y. and I [REDACTED] H.—were offered at the administrative hearing. (Exh. 9 at p. 69.) Both slips identify the school as "Owensmouth HS," the class as "PE 2B," and the class activity as "summer weight program." In the comment section of each slip the following appears: "AEE final grade July 28-Aug 12 2016." Respondent's signature appears above the words "Teacher's signature." "Principal" appears over the words "Principal's signature." (Exh. 9 at p. 69; hereinafter "summer weight program slips".)

49. At the administrative hearing, respondent explained the circumstances surrounding his creation of the summer weight program slips as follows: "I put a location code that the work takes place. I put down the names of the kids he was telling me about. I put down the high school that's handling the umbrella of credit recovery. [Moreno] told me that all the kids had taken the summer weightlifting program during summer school. Canoga Park High School did have summer school. He told me that they had all taken his course and

received A's. This work began during that class. So he said they all got a summer school grade of AEE, so I put down AEE for the final grade they got in their summer course. He told me that their work was outstanding. I wrote down that this was my summer credit record—that it was a summer weightlifting program. I wrote down the date summer ended, and I wrote down the dates that he said the course began. He couldn't remember exactly, but he told me he believed it was between July 28 and August 12. So I put that information down, and I signed it as a principal that I was authorizing the acceptance of work."

50. After he filled out the summer weight program slips with the information Moreno provided him, respondent placed a slip for each of the four students in folders bearing their names. The summer weight program slips were intended only to keep track of the work each student completed under Moreno's supervision before the fall semester started. The weightlifting logs respondent received from the four students were also placed in each respective student's folder.

51. Respondent explained, "We began the program, both night and day, before anybody was enrolled in MiSiS. Donna [Finkelstein] was having a very difficult time with MiSiS, so we started the class." "It was my understanding that they were enrolled in period six football with Mr. Moreno and they were lifting weights every single day [prior to September 6, 2018]."

*Moreno Provides Names of Students "Passporting" between Canoga Park and Owensmouth to Finkelstein for Enrollment in MiSiS*

52. On September 6, 2016, Moreno handed Finkelstein a folder containing the academic transcripts of students who would be "passporting" between Canoga Park and Owensmouth for credit recovery. From those transcripts, Finkelstein created a list of the 18 students' names. (Exh. 2 at p. 1.) The first four students' names on the list are S [REDACTED] H., I [REDACTED] M., M [REDACTED] Y., and I [REDACTED] H.. Moreno instructed Finkelstein to input these four students' names in MiSiS as enrollees in a seventh period class at Owensmouth. Finkelstein recalled at the administrative hearing, "I was told that they were kids sitting in a football class [who] are not eligible to play football, and rather than just sit around, they might as well take a class and get credit for it." Following Moreno's instruction, Finkelstein placed S [REDACTED] H., I [REDACTED] M., M [REDACTED] Y., and I [REDACTED] H.'s names in MiSiS as enrollees in PE 2A at Owensmouth. MiSiS automatically identified Rebecca Loiacono as the teacher of record for the PE 2A course at Owensmouth.

53. Loiacono, who has been teaching at Owensmouth for the past seven years, holds a Professional Clear Multiple Subject Teaching Credential with a Cross-cultural Language and Academic Development, or CLAD, emphasis and Art supplementary. At the administrative hearing, Loiacono explained how her credentials permit her to teach physical education. "So, with a continuation high school or any type of contained environment where there's any type of intervention, I have the credentials to teach multiple subjects . . . and that will include PE, but not [as] a single subject. For instance, I have taught intervention with all

core subjects. But I cannot teach specifically PE as a core subject. . . . I [have] never taught PE as a subject alone.”

54. After Finkelstein input the four students’ names in MiSiS as enrollees in PE 2A at Owensmouth, the students were expected to check in with Elida Perez-Rubalcava, the head secretary at Owensmouth, whose responsibilities included maintenance of students’ records of enrollment, attendance, and academic performance. Perez-Rubalcava creates and maintains a roster identifying students regularly enrolled at Owensmouth separate from a roster identifying Canoga Park students enrolled in the credit recovery program at Ownensmouth. A September 2016 Ownensmouth High School Credit Recovery Roster Perez-Rubalcava created was offered at the administrative hearing. (See Exh. 1 at pp. 19-20.) The offered Credit Recovery Roster did not address enrollment prior to September 7, 2016, which is the date on M [REDACTED] Y. and I [REDACTED] H. reportedly completed the requirements to gain eligibility to play football at Canoga Park. (See Factual Finding 72.)

55. Instructors teaching in the credit recovery program at Owensmouth forwarded attendance sign-in sheets to Perez-Rubalcava, who maintains them for audit purposes. S [REDACTED] H., I [REDACTED] M., M [REDACTED] Y., and I [REDACTED] H.’s names do not appear on September 2016 attendance or sign-in sheets for credit recovery courses at Owensmouth. (Exh. 1 at pp. 21-39.)

*Moreno Informs Respondent about “Passporting” Students’ Completion of Period Six/Seven Course Requirements*

56. On a regular basis, Moreno took students’ work product to respondent’s office for inclusion in the students’ folders maintained in respondent’s office. Moreno had access to the students’ folders because students completed the work under his supervision.

57. On September 6, 2016, Moreno informed respondent that Finkelstein had finally figured out MiSiS and that the “passporting” students’ enrollment was reflected in MiSiS. Moreno additionally informed respondent that S [REDACTED] H., I [REDACTED] M., M [REDACTED] Y., and I [REDACTED] H. had completed the requirements for his sixth period football course. Respondent had no reason to doubt Moreno’s representation because respondent had folders containing six weeks of weightlifting logs and students’ work product.

58. Respondent communicated to Loiacono that Moreno informed him that the four students completed the course work, and that each received AEE as a grade. Respondent instructed Loiacono “to close” the course by preparing completion slips. Loiacono hand-wrote a *Los Angeles Unified School District Complementary Report* for S [REDACTED] H., I [REDACTED] M., M [REDACTED] Y., and I [REDACTED] H. “Owensmouth H.S.” appears on the line above the word “School” on each slip. Respondent provided Loiacono with the information appearing on the “work in” line, which states, “ADV PE 2A AEE.” (Exh. 3 at pp. 1, 2, 4, and 5; hereinafter “course completion slips”.)

59. At the administrative hearing, Loiacono explained that “to close” a class requires a final grade and that the “completion slips are a final grade at our continuation school.” “We don’t fill these out until the class is completed.” She explained also that “Adv PE 2A AEE” “means that [a] student closed the class with a grade of AEE.” Because S [REDACTED] H., I [REDACTED] M., M [REDACTED] Y., and I [REDACTED] H. were not Loiacono’s students, she did not affix her signature above the line for “Teacher’s signature.” At the administrative hearing, respondent recalled that Loiacono “did object.” “She said she didn’t feel comfortable filling out an Ownensmouth High School course completion slip for work that had been done at Canoga under somebody else’s supervision. I agreed, and it was at that point I realized we had another problem.”

60. Respondent provided the following explanation of the problem: “Typically speaking, in a continuation high school when a student finishes a course, the teacher fills out a course completion slip and they keep one for themselves. They put it in the folder at work, and they keep it in their room. They send the other one to the counselor, and the counselor inputs the grades and keeps it in her folders in her desk. We had never before done this with another campus. I didn’t want to give Owensemouth High School course completion slips to teachers . . . at Canoga Park High School campus. So, we had a problem.”

61. After she prepared the course completion slips, Loiacono returned the slips to respondent, who then placed them on his desk in his office.

*Difficulty Inputting Final Grades for “Passporting” Students in MiSiS.*

62. On September 7, 2016, respondent received multiple phone calls informing him that Finkelstein was having difficulty inputting in MiSiS final grades for PE 2A for S [REDACTED] H., I [REDACTED] M., M [REDACTED] Y., and I [REDACTED] H. After the first phone call, respondent suggested contacting Pia Diamonte, the head counseling coordinator for Local District Northwest, for directions. Diamonte was unavailable. After the second phone call, respondent suggested contacting Ivet Diaz-Sawyer, an assistant principal at Canoga Park. Respondent received a third phone call. “They just couldn’t figure it out, and so I tried to explain it to them. They kept asking me to come over. So, at that point, I realized I was going to have to come over.”

63. Before going over to Canoga Park to Finkelstein, respondent affixed his signature to the course completion slips Loiacono prepared the previous day. He left a copy for each of the four students on his desk. He took a duplicate copy for each of the four students with him for Finkelstein. Respondent recalled that when he arrived at Canoga Park, “They were all standing outside Ms. Diaz-Sawyer’s office trying to figure this out. I gave Ms. Finkelstein her four copies for her records. We then went to her desk, and I tried to do it.”

64. Respondent tried going into Loiacono’s class to input the final grade AEE into grading window four based on Moreno’s representation to him that the four students completed the course requirements. All present realized for the first time that Finkelstein did

not have the access privileges of a continuation high school counselor. This was another problem with the implementation of the pilot program—how to input grades.

65. Respondent resolved that Finkelstein would seek guidance from Pia Diamonte. Respondent also instructed Finkelstein to ask Canoga Park's principal Garcia whether he could change her MiSiS privileges to allow her a higher level of access. The alternative was to wait until December to input the final grades. Respondent anticipated a nightmare situation if they were required to wait until December. "By the time the semester ended, we had over 100 kids in the program. Not just this program; we had 100 in the day and evening. Some of them finished multiple classes. We could have had 150 to 200 grades. At the end of the semester, what we would have had to have done is go through each kid, take a look at their slips, go to the kid's class schedule, find the course, input the grade and grade them in window four. It automatically propagates into their transcripts. . . . If the kid finished two classes during that semester, and we had 100 kids, that's 200 grades we would have to enter in December. We were having problems, serious problems." Finkelstein assured respondent that she would find a resolution, and that she would inform him about the outcome.

66. On September 9, 2016, Moreno and respondent approached Diaz-Sawyer in her at her office and requested her approval of the course completion slips for S [REDACTED] H., I [REDACTED] M., M [REDACTED] Y., and I [REDACTED] H.. (Exh. 3 at pp. 1, 2, 4 and 5.) Diaz-Sawyer recalled that Moreno and respondent communicated to her "that the students had completed that course and that it need to be inputted." For each student's course completion slip, Diaz-Sawyer signed "*approved by Ivet Diaz Sawyer*." Diaz-Sawyer then called Josefa Rita Drum, an office technician, into her office, gave Drum the course completion slips, and asked Drum to input the information for the four students in MiSiS.

67. At the administrative hearing, Drum had a specific recollection of Diaz-Sawyer handing her only two course completion slips and that one of the two course completion slips was for S [REDACTED] H. Drum returned to her computer to input the information for S [REDACTED] H. in MiSiS, but noticed that the first name "S [REDACTED]" was missing and that, although "8/16 was there," there was no end date. Drum went back into Diaz-Sawyer's office and stated to all present—Diaz-Sawyer, respondent, and Moreno—that "I need more information. I need the student's name. I need a beginning date and an end date." In response to Drum's request, respondent wrote "S [REDACTED]" on one of the course completion slips without S [REDACTED] H.'s complete name. At that point, Drum noticed that respondent's signature was also missing from the "Principal's signature" line, and she asked respondent to sign it, which he did. (Exh. 3 at p. 3.) Drum thereafter successfully input in MiSiS S [REDACTED] H., I [REDACTED] M., M [REDACTED] Y., and I [REDACTED] H.'s names, grade levels, name of class—Advance Physical Education 2A, and grade—AEE. Drum date stamped the course completion slips "2016 SEP-9 AM 10:11" as a reminder of the date when she worked on the documents.

68. Moreno realized and informed respondent that the wrong class was identified on the course completion slips. Respondent relayed the error to Finkelstein. "I told her, 'Could you please change it to . . . 2B.' She said she would make the correction to 2B . . . ." Respondent revised the copies of the four course completion slips in his office by writing 2B

over 2A, and he placed his initials “jc” next to each revision. (Exh 9 at pp.67 and 68; hereinafter “revised course completion slips”.) Respondent placed a revised course completion slip for each of the four students in their respective folders stored in his office.

*Instruction to Input Grades from Summer Weight Program Slips in MiSiS*

69. Moreno and Carlsen took the summer weight program slips for M [REDACTED] Y. and I [REDACTED] H. to Steinhauer’s office, and they requested that Steinhauer “input these records into the student’s cumulative records.” Steinhauer noticed the words “final grade” on the summer weight program slips. She explained at the administrative hearing, “I was a little hesitant just because that wasn’t my job at the time. Usually our credit clerk [Rita Drum] was the one that inputted the grade in the system. Secondly, because we usually just put the final or official transcript in the MiSiS.” Steinhauer referred Moreno and Carlsen to Drum and then to Diaz-Sawyer, but neither Drum nor Diaz-Sawyer were in their respective offices. Ultimately, Steinhauer complied. She used the information on the summer weight program slips provided to her by Moreno and Carlsen to input in MiSiS a final grade of AEE for Advance PE 2B for M [REDACTED] Y. and I [REDACTED] H. Moreno represented to Steinhauer that she would be receiving a copy of the official transcripts for the two students.

*California Interscholastic Federation Inquires*

70. Carlsen testified, “Somewhere in September, we got word that [S [REDACTED] H., I [REDACTED] M., M [REDACTED] Y., and I [REDACTED] H.] had finished.” Grades were submitted, and paperwork was transmitted to California Interscholastic Federation (CIF) Los Angeles City Section for eligibility determination for M [REDACTED] Y. and I [REDACTED] H. At some point in time not established by the evidence, it was determined that the entire time S [REDACTED] H. was an eligible athlete able to play football. For reasons not established at the administrative hearing, I [REDACTED] M. could not play football. Consequently, there was no request for a CIF eligibility determination for S [REDACTED] H. and I [REDACTED] M.

71. On September 13, 2016, CIF declared M [REDACTED] Y. and I [REDACTED] H. eligible to play football at Canoga Park.

72. Lori Jiacopuzzi is the athletic director at Canoga Park whose responsibilities include obtaining eligibility determinations for student athletes’ participation in a chosen sport. At the administrative hearing, Jiacopuzzi recalled receiving “a report card or progress report” with just “an end date,” which she initially identified as “9/7/16,” for M [REDACTED] Y. and I [REDACTED] H. Jiacopuzzi identified the documents she received as the revised completion slips, which she submitted to CIF. After Jiacopuzzi obtained an eligibility clearance from CIF, Jiacopuzzi was confronted with questions about the dates on which the physical education class started and ended. Jiacopuzzi sought answers from the coaches.

73. Jiacopuzzi recalled that Carlsen provided her with “updated forms,” from which she determined that the start date was August 16, 2016. Jiacopuzzi’s testimony explaining how she made that determination was confusing. Jiacopuzzi testified, on one

hand, that she sought and obtained an answer from either “the coaches” or “the counselors.” She testified on the other hand, however, that she obtained the answer for M [REDACTED] Y. from MiSiS and the answer for L [REDACTED] H. from the “updated forms.” Jiacopuzzi had Diaz-Sawyer check the “updated forms” she obtained from Carlsen. Diaz-Sawyer told Jiacopuzzi, “It was okay.” Jiacopuzzi also conversed by telephone with respondent about the matter. Respondent reportedly told Jiacopuzzi that “he’s the principal and he can open a class because he has a PE credential, and as long as they fulfill the requirements of the class, then they can get credit for the class.”

74. Jiacopuzzi informed CIF that the start date for the Advance PE class was August 16, 2016. On September 15, 2016, CIF retracted its determination that M [REDACTED] Y. and L [REDACTED] H. were eligible to play football at Canoga Park. CIF noted that the August 16, 2016 start date for the physical education class was the first day of instruction at Canoga Park High School. CIF informed Jiacopuzzi that “you can’t be enrolled in PE at Owensmouth and at Canoga at the same time.”

75. At 5:48 p.m. on September 15, 2016, Carlsen, aware of the CIF retraction, sent the following text message, which is reproduced here in an unedited form, to respondent:

*So sorry to bother you at home. What to give you a heads up:  
City section called back at 4pm today and said they need the transcript to have  
end date before 8/10 or something so it reads as summer class for[H.] and  
[Y.]*

Respondent replied:

*I can't do that. I did not have registered summer school program. I can only  
offer a transcript for fall classes.*

Carlsen texted in return:

*They said that the class just need to be finished before August 16. Is that possible?*

Respondent again replied:

*Sorry but no. Owensmouth HS did not have a registered summer school  
program. There is no teacher of record that could issue the grade. All  
teachers first day of class started august 15 and the first day of instruction  
began august 16. All misis classes under the employee number can go back  
prior to the first day of instruction.*

*Why are they refusing to allow the class with the current dates? It is not a  
new course/original credit. It is recovery for a previously taken course.*

///

Carlsen responded:

*That's what we are trying to figure out. They cleared the kids Tuesday and called back at 4pm today.*

(Exh. 8 at pp. 12-15.)

#### *LAUSD Administrative Investigation*

76. Delnavaz was notified of the CIF inquiry by a September 28, 2016 phone call and follow-up email attaching the summer weight program slips for M [REDACTED] Y. and I [REDACTED] H. Delnavaz accessed MiSiS and reviewed M [REDACTED] Y. and I [REDACTED] H.'s records and transcripts, which indicated that both enrolled at Canoga Park on September 6, 2016, that both received credit for a summer class designated Advanced PE 2B from Owensmouth, and that M [REDACTED] Y. had completed his physical education requirements in the ninth, tenth, and eleventh grades at San Fernando High School when he was a basketball and football player there. I [REDACTED] H.'s complete transcripts were not available in MiSiS for Delnavaz's review.

77. On September 29, 2016, Delnavaz, accompanied by Narcorda, met with M [REDACTED] Y. At the administrative hearing, Delnavaz claimed that M [REDACTED] Y. told him that during summer 2016 football practice ended at 9 o'clock in the mornings, at which time "Mr. Camp would be on the field at that time, and the student understood that to be the beginning of the class." Delnavaz claimed that M [REDACTED] Y. identified respondent as the instructor and that respondent's instruction took place on the field.

78. M [REDACTED] Y.'s alleged statements to Delnavaz were not credible. Canoga Park football coaches, Moreno and Carlsen, were unequivocal that respondent never coached football at Canoga Park in summer 2016.

79. I [REDACTED] H. was not present in his designated class when Delnavaz and Narcorda attempted to meet with him on September 29, 2016. They made no additional effort to meet with I [REDACTED] H.

80. Delnavaz and Narcorda next met with Steinhauer, who at the time of their meeting possessed the yellow copies of the summer weight program slips for M [REDACTED] Y. and I [REDACTED] H. Delnavaz testified that he obtained no explanation from Steinhauer about the circumstances surrounding her receipt of the two summer weight program slips. He believed that Steinhauer told him she entered the information on the summer weight program slips in MiSiS when M [REDACTED] Y. and I [REDACTED] H. enrolled as transfer students at Canoga Park on September 6, 2016.

81. After their meeting with Steinhauer, Delnavaz and Narcorda met with Garcia, who was already aware of the CIF inquiry. Delnavaz recalled Garcia only stating that he would notify the students' parents that the course was "not valid" and "will not be calculated into the student's GPA for athletic eligibility."

82. On September 30, 2016, Delnavaz, accompanied by Steven Munoz, the lead Operations Coordinator for Local District Northwest, met with respondent. Asked about M [REDACTED] Y. and I [REDACTED] H., respondent told Delnavaz and Munoz that Moreno introduced the two students along with an additional 13 to 15 students who needed credit recovery to him, and that only these two students completed the Advance Physical Education 2B course. Delnavaz claimed respondent stated that he (respondent) “took the students to a weight room at Canoga Park. He mentioned that he was doing weight training with them.” Delnavaz’s claim is not credible. Competent, credible evidence establishes that respondent did no weight training at Canoga Park. Respondent had denied engaging in such activities. Canoga Park football coaches Moreno and Carlsen, both of whom supervised and trained football students, have corroborated that respondent was not involved in any such activities.

83. According to Delnavaz, he asked respondent “why Owensmouth issued grades during the period of time that there was no summer school anywhere,” and Delnavaz claimed respondent’s “response at the time was that he had flexibility because it was a continuation school, so continuation schools have flexibilities, and he mentioned that if he has over so many students or under so many students, he could act as the teacher of the course. He mentioned that the other students that Mr. Moreno had brought him, the other 13 or 15, etcetera, students, they needed credit recovery in other subject areas, such as history, and he provided them laptops of some sort for online access, but those students never completed, and they didn’t come back. But these two students had finished the course and had earned the grade.”

84. In October 2016, Delnavaz and Munoz met with Moreno at Canoga Park. According to Delnavaz, Moreno provided “very little” information. “He did not know of any 13 to 15 students that he had brought to Mr. Camp, he said. He didn’t remember these students being part of that. He did say they were practicing during summer time, and it was . . . through Boys and Girls Club at Canoga Park, and he didn’t recall anything to the effect that these students needed PE. It was very little information in terms of what Mr. Camp had provided to us.”

85. Delnavaz and Munoz elicited superficial and incomplete information from Moreno. Moreno’s recruitment of I [REDACTED] H., Moreno’s role in the summer 2016 football programs at Canoga Park, and Moreno’s active participation identifying and selecting student athletes for “passporting” between Canoga Park and Owensmouth are important for consideration in any comprehensive and complete investigation. Delnavaz and Munoz were apparently unsuccessful eliciting that information from Moreno or others.

86. Delnavaz and Munoz checked the attendance sign in and sign out records the Boys and Girls Club maintained for participants in their summer 2016 program. Delnavaz testified, “And so, I got to the part where it was relevant to the dates July 28 to August 12, and I flipped through all the pages and went through every single name to find out if M [REDACTED] [Y.] or I [REDACTED] [H.] had signed in for any particular day. . . . There was no evidence of I [REDACTED] [H.’s] signature or sign-in/sign-out on any day. M [REDACTED] [Y.] had signed in one day in that time period.”

87. The July 28 to August 12, 2016 period is known as a dead period. The Boys and Girls Club does not operate a football program during that period.

88. With assistance from Kirsten Murphy, a Staff Relations Administrator whose responsibilities include representing the District in disciplinary matters, Delnavaz prepared a draft Interoffice Correspondence with his findings. Delnavaz testified that the document was intended to bring to respondent's attention "the series of events that had happened regarding these students, [and that] he was being notified that basically as a school administrator, as the principal of the school, there was some wrongdoing here . . . in dealing with these students."

89. On November 10, 2016, accompanied by Murphy and Steve Quon, an AALA Representative, Delnavaz had a conference with respondent at the Local District Northwest offices and provided respondent with the draft Interoffice Correspondence. According to Murphy, at this November 10, 2016 conference, respondent "did not make a statement" regarding the circumstances giving rise to the conference. "His AALA representative said that they were declining to make a statement and that they would not make a statement."

90. Delnavaz, on the other hand, claimed that at this November 10, 2016 conference, respondent's "description of what had happened had changed." According to Delnavaz, respondent "produced another set of report card type document. They were scratched, and 2B was changed to 2A or 2A to 2B . . . I had never seen [them] before." At the administrative hearing, these documents were identified as the revised completion slips. Delnavaz testified that respondent stated the revised completion slips "were for his own records," and "'I think [Moreno] stole them from my desk' or '[Moreno] took them from my desk without permission.'"

91. Delnavaz provided respondent with several directives, which were attached to the draft Interoffice Correspondence, and which included the District's *Employee Code of Ethics*, District Policy Bulletins *Criteria for Granting Instructional Credit in Secondary Schools, Marking Practices and Procedures in Secondary Schools*, and *Enrollment in Continuation High Schools*.

92. The November 10, 2016 meeting is memorialized in a November 15, 2016 Interoffice Correspondence.

93. On December 1, 2016, respondent provided Delnavaz with an eight-page written response to the November 15, 2016 Interoffice Correspondence. Respondent denied engaging in any misconduct.

94. At a December 15, 2016 conference attended by Murphy, Delnavaz, and Quon, the District issued two notices, a Notice of Unsatisfactory Act(s) of Administrative /Supervisory Certificated Employee and a Notice of Suspension of Certificated Employee – Administrative/Supervisory, both of which attach the November 15, 2016 Interoffice Correspondence.

95. According to Murphy, at this December 15, 2016 conference, respondent “stated that the grade slips in question, the summer credit recovery from July 28 to August 12, that he had created those for CIF and that those were never intended to go to any school campus—that he had created them just for CIF.”

96. On December 15, 2016, respondent commenced a Grievance Procedure for AALA Represented Employee seeking “Rescission and removal of the Notice of Unsatisfactory Acts, fifteen (15) days Suspension and Dismissal of recommendation from all District files and records.”

97. On January 23, 2017, a Skelly/Administrative Review occurred at Ekchian’s office. Respondent, represented by legal counsel, Murphy, and My Huynh from the District’s general counsel office attended.

98. By letter dated January 31, 2017, Ekchian informed respondent that, “Based upon all the information available to me, I have concluded that the proposed dismissal recommendation should be forwarded to the Board of Education for disposition.” At the administrative hearing, Ekchian elaborated on the information that was available to her and on which she based her conclusion regarding respondent’s dismissal. “I carefully reviewed the investigation reports that revealed that Mr. Camp’s recall of what had happened over time changed dramatically from the first interaction with staff that interviewed him that he said, ‘I made a mistake. What do you want me to do about it?’ to ‘I’ve had nothing to do with this. I don’t even know what you’re talking about’ to ‘Someone stole the papers off my desk. I don’t know who the person was that stole.’ So what I recall is that his testimony changed dramatically over time, and I was hoping that during the Skelly he would tell me the truth so that based on the fact that I knew him and I had respected him as a professional, I could take all of that into consideration to say that if he had made a mistake, he would tell me that he had made a mistake, and I would be able to honor that as people make mistakes, but then we can address it properly. But, in the absence of his response to me, the investigation clearly revealed that every time he met with a group of people that were following up on the investigation, his story changed, which led me to believe that I needed to continue and use the results of the investigation for my decision.”

99. In accordance with the provisions of a collective bargaining agreement between AALA and the District, respondent appealed the proposed recommendation for his dismissal from the District. On February 23, 2017, an informal meeting convened. Murphy, who was in attendance, recalled respondent stating that the summer weight program slips “were his personal notes that he had taken, that the football coach at Canoga Park High School had asked him to give grades for classes that took place in the summer, and that he did not want to do that, but that these were his personal notes and they were stolen from his office.”

100. After the February 23, 2017 informal meeting, by letter dated February 27, 2017, Alma Pena-Sanchez, Chief of Staff, Los Angeles Unified School District, informed

respondent of her decision to submit the proposed recommendation for his dismissal to the Board of Education.

101. By letter dated April 19, 2017, the Board notified respondent that he was suspended without pay and of its intention to dismiss him 30 days from the date of the letter. Accompanying the letter is a Statement of Charges setting forth the specific instances of conduct alleged to constitute respondent's immoral conduct, unprofessional conduct, dishonesty, evident unfitness for service, persistent refusal to obey the Board's regulations for the District and willful refusal to perform regular assignments without reasonable cause.

102. On May 3, 2017, respondent requested a hearing on the charges pursuant to Education Code section 44943. On June 28, 2017, the District filed and served an Accusation incorporating the Statement of Charges contained in the April 19, 2017 notice. Thereafter, these dismissal proceedings ensued.

#### LEGAL CONCLUSIONS

1. Education Code section 44932 provides that a permanent, certificated employee shall not be dismissed except for, among other causes, immoral conduct, unprofessional conduct, dishonesty, evident unfitness for service, or persistent violation of, or refusal to obey, reasonable regulations prescribed by the governing board of the school district employing him or her.

2. "Immoral conduct" has been defined generally as "that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or a willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare." (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

3. "Unprofessional conduct" is conduct which violates the rules or ethical code of a profession or conduct unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553.) The conduct in question must indicate an unfitness to teach in order to amount to "unprofessional conduct." (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

4. "'Dishonesty' connotes a disposition to deceive. [Citation.] It . . . denotes an absence of integrity; a disposition to cheat, deceive or defraud[.]" (*Gee v. California State Personnel Bd.* (1970) 5 Cal.App.3d 713, 718-719.) Courts understand integrity to mean "'soundness of moral principle and character, as shown by a person's dealings with others, in the making and performance of contracts, in fidelity and honesty in the discharge of trusts. In short, it is used as a synonym for probity, honesty, and uprightness in business relations

with others.”” (See *In re Estate of Gordon* (1904) 142 Cal. 125, 132, quoting *In re Bauquier* (1891) 88 Cal. 307.)

5. “Evident unfitness for service” means ““clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.”” “Evident unfitness for service” connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.)

6. “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” as cause for dismissal requires more than a single violation of a school board’s rules by a permanent school teacher. (*Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, rehearing denied 28 Cal.App.3d 77.) In addition, persistent violation of, or refusal to obey, a district’s governing board’s reasonable regulations requires a “showing of intentional and continual refusal to cooperate.” (*San Diego Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.)

7. Abstract characterizations of conduct—for example, as “immoral” or “unprofessional”—are insufficient grounds for removal from the teaching profession. (See *Morrison v. State Board of Education* (1969) 1 Cal.3d 214.) A rational connection or nexus must exist between alleged misconduct and competence or ability to teach effectively. The determinative test is whether conduct demonstrates unfitness to teach. (See *Board of Education v. Jack M.* (1977) 19 Cal.3d 691.) Fitness to teach is a question of ultimate fact. (*Id.* at p. 698, fn. 3.)

8. *Morrison* identifies several factors relevant to determining unfitness to teach: the likelihood that conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of credential held or applied for by the person involved; the extenuating or aggravating circumstances surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of the recurrence of the questioned conduct; the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons; and the publicity or notoriety given to the conduct.

9. All *Morrison* factors need not be present to reach a determination of unfitness to teach. In other words, an item by item analysis of each established individual fact is not required. Rather, *Morrison* calls for a comprehensive analysis of the accumulated established facts. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th at 1457.)

10. The District has the burden of proving by a preponderance of evidence that cause exists pursuant to Education Code section 44932 to dismiss respondent, a permanent certificated employee, from the District. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) “‘Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ (Citations.) . . . [T]he sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325; italics in text.) In meeting the burden of proof by a preponderance of the evidence, the complainant “must produce substantial evidence, contradicted or un-contradicted, which supports the finding.” (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

11. a. In this dismissal proceeding, the Commission evaluated the credibility of witnesses in accordance with the factors set forth in Evidence Code section 780: the demeanor and manner of the witness while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceedings.

b. The manner and demeanor of a witness while testifying are the two most important factors the Commission considered when judging credibility. (See Evid. Code, § 780.) The carriage, mannerisms, tone of voice and hesitation, eye contact, and facial expressions of a witness are “wordless language,” which although difficult to describe in such a way that the reader truly understands what caused the Commission to believe or disbelieve a witness, were part of the evidence for consideration as well as evidence on which the Commission made factual determinations. (See *Dyer v. MacDougall* (2d. Cir., 1952) 201 F.2d 265, 268-269.)

c. “On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted—but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability.” (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.)<sup>8</sup>

d. The Commission was mindful that it is permitted to “accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted.” (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67.) The Commission was mindful also that it may “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the

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<sup>8</sup> As observed in *Broadcast Music v. Havana Madrid Restaurant Corp.* (2d. Cir., 1949) 175 F.2d 77, 80, the best and most accurate record or hearing transcript is like a dehydrated peach; it has neither the substance nor the flavor of the fruit before it was dried.

testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.*, at pp. 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 777.) The Commission is permitted even to reject testimony that is not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

e. “Although impeaching evidence in the nature of contradictions or otherwise has been received, it is still the right as well as the duty of the [Commission members] to determine to what extent they believe or disbelieve the testimony. [Citations.] [The Commission members] may likewise give credence to a witness . . . [citation] whose testimony contains contradictions or inconsistencies.” (*Hansen v. Bear Film Co.* (1946) 28 Cal.2d 154, 184.)

12. Administrators, teachers, and staff testifying at the administrative hearing—Diaz-Sawyer, Canoga Park assistant principal; Steinhauer, Canoga Park guidance counselor; Drum, Canoga Park office technician; Loiacono, Owensmouth teacher; Finkelstein, Owensmouth credit recovery coordinator; and Perez-Rubalcava, Owensmouth head secretary—observed or participated in the enrollment of students and input of grades in MiSiS. They possessed limited or no knowledge of the myriad of factors animating a student’s enrollment or the creation of the student grades they processed. Generally, during the course of their testimony when unable to recall specific details of conversations and occurrences they admitted that they were unable to do so. The Commission accorded significant weight to their testimony due to their forthrightness.

13. The Commission regarded as credible I [REDACTED] H.’s testimony recounting Moreno and Carlsen’s efforts to recruit him and explaining Moreno’s instruction for his completion of weight lifting logs. I [REDACTED] H. was not benefited by his testimony. If anything, I [REDACTED] H. implicated himself in wrongdoing by answering directly and truthfully questions which exposed the extent of his own questionable conduct in pursuit of a more desirable football team membership. The Commission accorded significant weight to his testimony.

14. Carlsen made every attempt to answer all questions honestly and to the best of his ability. He willingly disclosed information. He remained neutral during his testimony. The Commission accorded significant weight to his testimony.

15. During the course of his testimony, Moreno was initially unguarded in some of his answers. As his testimony progressed, however, he developed a convenient memory. He could not recall facts and occurrences impugning his conduct. He presented as defensive when questioned about a number of topics. He attempted to be credible, but his priority was protecting himself. The Commission accorded moderate weight to his testimony.

16. Delnavaz could have been biased due to respondent’s expressed interest in Delnavaz’s position as the Local District Northwest Director of Educational Options School. Despite this potential for bias, Delnavaz demonstrated none. Nonetheless, the Commission did not find Delnavaz a credible witness because he was mistaken, if not totally wrong, about material events. During the course of the LAUSD administrative investigation, among other

things, he failed to interview certain percipient witnesses, including [REDACTED] H. and assistant coach Carlsen, and he failed to conduct a probing interview of coach Moreno, a central character integral to achieving the investigative objective of an accurate and complete account of what occurred. Additionally, Delnavaz's testimony failed to address his personal knowledge about and involvement in efforts to implement the pilot program for "passporting" students between Canoga Park and Owensmouth in the 2016/2017 academic year. Under these circumstances, the Commission accorded diminished weight to his testimony.

17. Ekchian attempted to answer questions truthfully, but her answers were colored by evident bias. Ekchian presented as disappointed by, if not angry with, respondent for what she perceived as his failure to acknowledge "the mistakes that he had made" and the "huge burden that he had imposed upon the system." This bias was reflected in her testimony, and under these circumstances, the Commission accorded some, but not significant, weight to her testimony.

18. At the outset of his testimony, respondent presented as eager to explain what happened—"Everybody keeps telling me, 'Don't speak. Don't speak.' I need to speak." The Commission's initial concern was that respondent's eagerness shaded his credibility. As respondent's testimony progressed, however, he gained credibility because other independent evidence—witnesses' testimony and contemporaneous text messages—corroborated probative facts disclosed in respondent's detailed testimony. Respondent did not evade challenging questions posed to him; rather, he answered questions directly and in a forthright manner. The Commission accorded significant weight to his testimony.

19. Applying the above principles, the District has failed to produce substantial, credible evidence to satisfy its burden of establishing by a preponderance of evidence that the conduct alleged in the Accusation<sup>9</sup> constitute cause for respondent's dismissal.

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<sup>9</sup> Government Code section 11503, subdivision (a), provides in pertinent part that "[t]he accusation . . . shall be a written statement of charges that shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his or her defense." At the administrative hearing, the District, and respondent, offered testimony and documents necessary to explicate the broader context within which respondent conducted himself. The accusation in this matter, however, alleges certain specific acts or omissions as conduct constituting cause for respondent's dismissal. The accusation therefore delineates the legal boundaries of the Commission's deliberation, which is limited to only those acts or omissions specifically alleged. (See *Manning v. Watson* (1952) 108 Cal.App.2d 705, 710-712.)

l. During the period commencing on or about August 12, 2016 and ending on or about September 16, 2016, CAMP issued five credits and final grades of "AEE" in Advanced PE 2B to students I [ ]<sup>10</sup> H. and M [ ] Y., respectively stating in writing that the class was completed between the dates of July 28, 2016 and August 12, 2016 as "summer credit recovery," despite the facts that:

- a. neither M [ ] nor I [ ] were enrolled as a student at Owensmouth CHS;
- b. Owensmouth CHS was not authorized to offer classes during the period of July 28, 2016 through August 12, 2016;
- c. Owensmouth CHS did not offer summer credit recovery; and
- d. neither I [ ] nor M [ ] were given instruction in Advanced PE 2B during this time.

2. On or about September 6, 2016, CAMP enrolled students M [ ] Y. and I [ ] H. at Owensmouth CHS in period 7 Advanced PE 2A from 2:00-2:53 p.m., despite the fact that they were enrolled in 6<sup>th</sup> period Football at Canoga Park HS from 2:18-3:12 p.m.

3. On or about September 6, 2016, CAMP authorized a Grading Period 1 grade of "AEE" to be issued to I [ ] H. and M [ ] Y., respectively for period 7 Advanced PE 2A, despite the fact that:

- a. both I [ ] and M [ ] were enrolled in the class on that same day ,September 6, 2016;
- b. both I [ ] and M [ ] had not received any instruction in period 7 Advanced PE 2A; and
- c. both I [ ] and M [ ] were enrolled in another class at another school during the time that the Advanced PE 2:A class was scheduled to meet.

4. During the period commencing on or about July 28, 2016 and ending September 16, 2016, CAMP failed to follow the LAUSD policy Criteria for Granting Credit in Secondary Schools when he granted five instructional credits each to M [ ] H. and I [ ] Y.<sup>11</sup> for Advanced PE 2B without the required 60 hours of instruction.

5. During the period commencing on or about July 28, 2016 and ending September 16, 2016, CAMP failed to follow the LAUSD policy Marking Practices and Procedures in Secondary Schools when he issued final grades of "AEE" respectively to M [ ] H. and I [ ] Y.<sup>12</sup> for Advanced PE 2B without:

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<sup>10</sup> This miss-spelling of I [ ] appears throughout the Statement of Charges.

<sup>11</sup> "M [ ] H. and I [ ] Y." are incorrect references appearing in the accusation. The references should be to M [ ] Y. and I [ ] H.

<sup>12</sup> See footnote 10.

- a. recording a minimum of one performance mark reflecting progress toward mastery of standards for every five class hours of instruction;*
- b. recording grades for any classwork, homework, or other assignments;*
- c. recording any progress grades for any grading periods other than the final grading period; or*
- d. providing a computer-generated report card for the final grading period.*

6. *During the period commencing on or about July 28, 2016 and ending September 16, 2016, CAMP failed to follow the LAUSD policy Enrollment in Continuation High Schools when he granted five instructional credits and grades of “AEE” respectively to M [REDACTED] H. and L [REDACTED] Y.<sup>13</sup> for Advanced PE 2B taken at Owensmouth CHS without:*

- a. receiving a referral for enrollment from the students’ schools of residence;*
- b. holding an intake conference with the students and their parents;*
- c. reviewing the students’ academic progress, setting goals, and developing a plan to achieve the goals; or*
- d. receiving check-out marks, transcripts, and a Pupil Attendance Report and/or electronic transfer of records.*

7. *On or about December 2, 2016, CAMP was dishonest when he provided a written response to the conference memo of November 15, 2016 stating that:*

- a. he had never issued grades for the two students in question during the period of time stated in the complaint;*
- b. he submitted a revised “complementary report” that reflected the students having taken Advanced PE 2A but crossed it out, changed it to Advanced PE 2B, and then initialed the report; and*
- c. at no time was the “complementary report” issued for work completed from July 21, 2016, to August 12, 2016, to be used as a final grade.*

8. *As a result of the investigation into the above-referenced students’ eligibility, and the determination that CAMP gave invalid grades for coursework not completed during an unapproved instructional time, the students’ parents were issued letters from the Canoga Park High School principal advising them that the grades and classes purported during the July 28 to August 12, 2016 period at Owensmouth CHS were invalid, and that the students remained ineligible for the football season.*

9. *The above conduct violates the reasonable rules and regulations of the District, including, but not limited to: LAUSD Employee Code of Ethics, Criteria for Granting Credit in*

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<sup>13</sup> See footnote 10.

*Secondary Schools, Marking Practices and Procedures in Secondary Schools, Enrollment in Continuation High Schools.*

10. *The above conduct likely violated California Government Code Section 6200, subd. (c).*

11. *The above Charges, separately, and in any combination, support CAMP's dismissal from the District.*

(Exh. OAH 1.)

20. The District and respondent's differing perception, interpretation, and understanding of the events occurring at Canoga Park and Owensmouth in the summer and fall of 2016 were fully presented at the administrative hearing. Testifying witnesses communicated their particular memories of what they personally experienced and believed was occurring at the time when actual events unfolded. Each individual witness's recollection therefore reflected not just his or her partial experiences, but also a partial truth. *The Parable of the Blind Men and the Elephant* and its message that one's subjective experience while true may not be the whole truth are apropos to analysis of the established facts in this matter.

21. Credible evidence of the whole truth emerging after combining bits of competent testimony and reasonable inferences drawn from testimony establishes that respondent has a history of successful implementation of a credit recovery program for which he was esteemed. Respondent arrived at Owensmouth as its new principal with the expectation that he would achieve a similar success there. Multiple meetings occurring both before and after commencement of the 2016/2017 academic year contemplated the implementation of a broadly conceived pilot program for "passporting" Canoga Park and Owensmouth students back and forth. Specific details regarding student enrollment, class time, structure and content, and course requirements were, however, unsettled. Respondent exercised his best judgment to resolve these and other issues unique to "passporting" as they materialized. On the fly, respondent addressed reallocation of certain space within each school's facility, creation of a period six/seven course, synchronization of the two schools' bell schedules, enrollment of "passporting" students, accounting for "passporting" students in each school's average daily attendance, and documentation of the work product required to complete the newly created period six/seven course. As evinced by language in the District's *Credit Recovery Program Opportunities* memorandum addressing a myriad of credit recovery opportunities and empowering schools to design programs that best meet the needs of their students, the District apparently anticipated the probability that administrators such as respondent would have to innovate to manage emergent situations.

22. Moreno and Carlsen selected and introduced students, including I [REDACTED] H. and M [REDACTED] Y., to respondent as Canoga Park students suitable for "passporting" to Owensmouth via the newly created period six/seven course. Attempts to enroll those Canoga Park students "passporting" through Owensmouth were met with unanticipated technical difficulties, which were subsequently resolved through agreement among Canoga Park,

Owensmouth, and District administrators that “passporting” would entail crediting Canoga Park students in Moreno’s sixth period weight lifting class for course work already commenced in Moreno’s summer weight lifting program. Creation of the summer weight program slips to document and reflect Moreno’s representation that, between July 28, 2016 and August 12, 2016, I [REDACTED] H. and M [REDACTED] Y. completed the requirements for Advanced PE 2B under his (Moreno’s) supervision and that he (Moreno) issued a final grade of AEE to each student is one exemplar of respondent’s innovation implementing the pilot program for “passporting” between Canoga Park and Owensmouth.

23. The charge that, on September 6, 2016, respondent enrolled M [REDACTED] Y. and I [REDACTED] H. in seventh period Advanced PE 2A at Owensmouth was not established by the credible evidence offered at the administrative hearing. The credible evidence established that Moreno provided Finkelstein with a folder containing the academic transcripts of students who participated in Moreno’s 2016 summer weight lifting program, and from which Finkelstein created a list identifying, among others, M [REDACTED] Y. and I [REDACTED] H. Moreno directed Finkelstein to enroll M [REDACTED] Y. and I [REDACTED] H. in the course noted as “Advanced PE 2A,” which notation was subsequently corrected to “Advanced PE 2B.”

24. On September 6, 2016, Moreno also represented to respondent that M [REDACTED] Y. and I [REDACTED] H. completed the course requirements for Advanced PE 2A and that each earned an “AEE” grade. Based on Moreno’s representation, respondent instructed Loiacono to close the course with the preparation of course completion slips. Respondent reasonably presumed that Moreno conducted himself with the integrity expected of the teaching profession. Considered in the context of respondent’s implementation of the pilot program for “passporting” students between Canoga Park and Owensmouth and accounting for the combined six/seven period specifically designed to implement the pilot program, it is not established that respondent’s authorization of the course completion slips for a final grade and closure of the course constitute conduct warranting respondent’s dismissal.

25. District Policy Bulletin *Criteria for Granting Instructional Credit in Secondary Schools* set forth guidelines requiring, among other things, 60 hours of instruction per term to grant five instructional credits. Competent, credible evidence established that credit recovery programs have their own programming requirements and processes. At the administrative hearing, respondent explained that students are not only permitted to work and complete course or instructional requirements at their own pace, they may also do so in less time than the traditional instructional hours. Corroboration is found in the District’s Policy Bulletin *Credit Recovery Program Opportunities*, which provides for the entry of individual students’ final grades as a course is completed. The District offered no refutation evidence. It is not established by a preponderance of evidence that respondent failed to follow the guideline requiring 60 hours of instruction per term to grant five instructional credits.

26. It is not established by a preponderance of evidence that respondent failed to follow guidelines in District Policy Bulletin *Marking Practices and Procedures in Secondary Schools*. Moreno, representing that he supervised I [REDACTED] H. and M [REDACTED] Y.’s completion of Advanced PE 2B, issued final grades of “AEE” to I [REDACTED] H. and M [REDACTED] Y. As the principal

of Owensmouth, respondent provided instruction for inputting the final grades in MiSiS. The marking practices and procedures set forth in this District Policy Bulletin are directed to District personnel acting in the capacity of classroom teachers. While this District's Policy Bulletin provides that school principals, which would include respondent, have responsibility for its implementation, the evidence offered at the administrative hearing did not establish respondent's obligation *as principal* or whether *as principal* he was obligated, but failed, to record performance marks reflecting progress; grades for classwork, homework, or other assignments; or grades for interim grading periods, or to provide computer-generated report card for the final grading period.

27. District Policy Bulletin *Enrollment in Continuation High Schools* sets forth guidelines for students enrolling in and attending Continuation High Schools. Ekchian's testimony explaining the "idea of passporting," and respondent's testimony identifying a potential problem counting the average daily attendance or ADA suggests this District Policy Bulletin has limited or no applicability to the novel situation where students remain enrolled at a traditional District high school—such as Canoga Park—as they "passport" through a continuation high school—such as Owensmouth—for classes providing credit recovery opportunities. As Ekchian explained, "Many students hesitate to attend a continuation school full-time because they do not want to be separated from the comprehensive high school for a variety of reasons. Sometimes they believe there's a stigma attached to moving from one school to the other. . . The idea of passporting is that *if there's a particular subject area that you need credit recovery in, you can spend part of the day in that continuation high school, but still remain a student at Canoga Park* and be able to take advantage of the elective, the sports, and the other programs the continuation school can't offer, but the comprehensive high school can. So, it's for students who can take advantage of both—both the program at the comprehensive high school and the offerings at the continuation school." Ekchian's explanation clarifies that, at least with respect to "passporting," students taking a course for credit recovery, although enrolled in the course at Owensmouth because the course is offered there, remains an enrolled student at Canoga Park. Otherwise, as respondent noted, there is a problem with the proper accounting of the ADA. Only one school can capture the ADA. How, if at all, this District Policy Bulletin applied to "passporting" was not actually litigated. It is not established by a preponderance of evidence that respondent failed to follow District's Policy Bulletin *Enrollment in Continuation High Schools*.

28. It is not established by a preponderance of evidence that respondent was dishonest in his December 2, 2016 response to the November 15, 2016 conference memoranda. Respondent was truthful when he stated that he never issued grades for I [REDACTED] H. and M [REDACTED] Y. Moreno issued grades for these students. Respondent was truthful when he stated that he corrected the revised course completion slips changing Advanced PE 2A to Advanced PE 2B and initialed the correction. Respondent was truthful when he stated that the summer weight program slip was not intended to be used as a final grade.

29. It is not disputed that Canoga Park principal Garcia issued letters to I [REDACTED] H. and M [REDACTED] Y.'s parents advising them that grades and classes purported during the July 28 to August 12, 2016 period at Owensmouth were invalid. It is disputed and unsupported by

competent, credible evidence, however, that respondent engaged in misconduct warranting Garcia's action.

30. Government Code section 6200, which addresses crimes relating to the removal, destruction, or falsification of public records, documents, and certificates, provides, "Every officer having the custody of any record, map, or book, or any paper or proceeding of any court, filed or deposited in any public office, or placed in his or hands for any purpose, is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years if, as to the whole or any part of the record, map, book, paper or proceeding, the office willfully does or permits any other person to do any of the following: (a) Steal, remove, or secrete. (b) Destroy, mutilate, or deface. (c) Alter or falsify." The charge alleging a "likely" violation of section 6200 is without merit because that statutory provision is inapplicable to the facts of this matter. Government Code 6200 governs the conduct of public officials. Respondent is not a public official. Student records are not public records.

31. None of the charges alleged in the Accusation, separately or in any combination, was established by a preponderance of evidence to support respondent's dismissal from the District.

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## ORDER

The Accusation is dismissed.

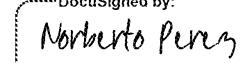
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JENNIFER M. RUSSELL  
Administrative Law Judge  
Office of Administrative Hearings

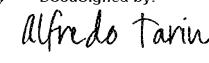
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NORBERTO PEREZ  
Commissioner  
Commission on Professional Competence

DATE: May 16, 2018

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ALFREDO TARIN  
Commissioner  
Commission on Professional Competence