

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

In the Matter of the Amended Accusation  
of :

CHARLES J. BIEHN,  
A Permanent Certificated Employee,

Respondent.

OAH No. 2012050145

**DECISION**

This matter was heard by the Commission on Professional Competence (Commission) in San Juan Capistrano on March 17 – 20, 24 – 27, and April 2 – 3, 2014, under the authority of Education Code sections 44932 and 44939. The Commission was comprised of the following: Martin Casas, Assistant Principal, Poway Unified School District; J. Manuel Carcido, Teacher, Pasadena Unified School District; and Vincent Nafarrete, Administrative Law Judge, Office of Administrative Hearings.

Complainant Dr. Joseph M. Farley, Superintendent, Capistrano Unified School District, was represented by Daniel R. Shinoff and Jeanne Blumenfeld, Attorneys at Law, of Stutz Artiano Shinoff & Holtz. Respondent Charles J. Biehn was present throughout the hearing and represented by Carlos R. Perez, Attorney at Law, of Reich, Adell & Cvitan, and Mitchell B. Hannah, Attorney at Law.

Prior to the start of the hearing, the Administrative Law Judge determined that the two other members of the Commission were qualified to serve on the Commission. Upon commencement of the hearing, the parties presented evidence on the issue of whether the four-year statute of limitations under Education Code section 44944 was applicable or was tolled due to the doctrines of equitable estoppel or delayed discovery.<sup>1</sup> The parties had

---

<sup>1</sup> On November 9, 2012, an administrative law judge of the Office of Administrative Hearings denied respondent's motion to strike allegations in the Accusation that occurred more than four years prior to the filing of the charges. Subsequently, respondent filed a petition for writ of mandate, seeking review of the ruling. On October 18, 2013, in *Charles Biehn, Petitioner, vs. Capistrano Unified School District, et al., Respondent*, Case No. 30-2012-00616562, the Superior Court of California, County of Orange, denied respondent's petition for writ of mandate and ruled that the Commission as the fact finder in this administrative hearing should decide whether or not the equitable doctrine of delayed

previously filed briefs on the admissibility of evidence of respondent's alleged conduct that occurred more than four years before the filing of charges in this matter.

Upon completion of this first phase of the hearing, the Commission determined that the four-year statute of limitations under Education Code section 44944 did not apply due to the application of the doctrine of delayed discovery. Thereafter, the hearing proceeded to the second phase and the parties presented additional witnesses and documentary evidence with respect to the remaining allegations of the Amended Accusation. The evidence presented during the first phase of the hearing was considered part of the evidence for the hearing on the merits of the Amended Accusation.

On conclusion of the evidentiary phase of the hearing, the parties presented oral argument. The Commission then conducted deliberations at the Office of Administrative Hearings on April 10 – 11, 2014, in Los Angeles; on April 18, 2014, in San Diego; and on July 10, 2014, in San Juan Capistrano.

Oral, documentary, and stipulated evidence having been received and oral arguments heard, the Commission on Professional Competence deliberated and considered the evidence in closed sessions, submitted this matter for decision on April 3, 2014, and finds as follows:

#### FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on January 21, 2014, the Amended Accusation was made and filed by complainant Dr. Joseph M. Farley in his official capacity as Superintendent of the Capistrano Unified School District, State of California (District). With administrative offices in San Juan Capistrano, the District is a fairly large comprehensive school district comprised of 56 primary and secondary schools and approximately 4,200 certificated and classified employees who serve approximately 49,000 pupils.

2. Respondent Charles J. Biehn, also known as Chi Chi Biehn (respondent), has been a permanent certificated employee of the District since in or about November 1993. He holds a credential to teach social science at the high school level. Respondent graduated from the District's Capistrano Valley High School (CVHS) in 1989 and then matriculated to Saddleback College. He played on the football teams while attending both high school and community college. Respondent then transferred to the University of La Verne and graduated with his college degree in or about 1993.

3. While he attended college, respondent was a volunteer coach for the football team at CVHS under the tutelage of the head football coach at the time who was Eric Patton. After he graduated from college, respondent began working for the District as a suspension

---

discovery should apply to allow the District to present evidence of conduct that occurred more than four years before the filing of the charges.

teacher, tutor, and resident substitute teacher. On an undetermined date, respondent attained a preliminary teaching credential and began working and receiving a stipend as a coach for the high school's sports teams. In or about November 1993, respondent was hired by the District as a permanent certificated employee. He began teaching social studies at Aliso Niguel High School where he became a coach for the freshman baseball team and an assistant football coach. Among his duties as an assistant football coach, respondent coordinated the offense, coached the quarterbacks, and made recommendations to the head football coach and equipment manager about replacing equipment for the football teams.

4. (A) Several years later, during the 2002-2003 school year, the position of head football coach at CVHS became open when the existing coach quit after coaching the football team but one season. Respondent applied for the position. He aspired to become a head football coach at the high school level. He had applied for other coaching vacancies on two prior occasions.

(B) In the spring of 2003, the principal at CVHS was Tom W. Ressler and the co-athletic director was Tom Airey. Ressler has worked for the District for 30 years. He was the principal of CVHS for five years and taught English there for 15 years. He has known respondent since 1985 when respondent was a student and football player at the high school. Ressler was also the athletic director for five years in 1990's. In 2008, Ressler was appointed the principal at the District's new high school, San Juan Hills High School. Airey was the co-athletic director at CVHS for three years from 2002 through 2005. As co-athletic director, Airey hired coaches for CVHS, supervised 22 sports teams, oversaw the budget of the CVHS athletic department, and allocated District funds to the sports teams. Airey is a social studies teacher, chairperson of the social studies department, and a coach for the basketball, track, and cross-country teams at CVHS.

(C) Respondent was interviewed for the head football coaching position by Principal Ressler and the co-athletic director Airey. The principal considered respondent to be an excellent candidate for the position of head football coach. He believed respondent was trustworthy and a leader. Airey found respondent was energetic and likeable, knowledgeable about football, and had built good relationships with student athletes at Aliso Niguel High School. Respondent had a vision for the football program at CVHS. After the interview process was completed, Principal Ressler recommended respondent to be hired as the new football coach at CVHS. In or about March 2003, the District approved the principal's recommendation and hired respondent. Respondent completed his teaching and coaching assignments for the 2003-2003 school year at Aliso Niguel High School before transferring to CVHS for the next school year. He began his head football coaching duties right away that spring of 2003.

#### Respondent Biehn

5. When he was hired as the head football coach at CVHS in March 2003, respondent was a first-time head high school football coach at age 33. He became

responsible for overseeing the football program at the high school, which included the varsity, junior varsity, and freshman football teams, and supervising and coaching the student-athletes on those teams. He was required to teach the fundamentals of football, work with student-athletes during the annual spring practice session, and prepare and coach the varsity football team for the games in the fall season. Respondent's duties included implementing and overseeing the offensive and defensive schemes and game plans for the football team, ensuring the safety of the players, and supervising the student-athletes' academic achievement and eligibility. While it was the District which hired personnel, respondent made recommendations to the District for the hiring of assistant coaches for the varsity football team and coaches for the two lower level teams. Respondent was responsible for the upkeep of the football facilities, which included the football field and locker room, and the maintenance and ordering of the football uniforms and equipment. He was required to interact and meet with the football booster club comprised of parents and members of the community. During the summer in the month of July, the District and CVHS allowed respondent to operate a summer football camp for student-athletes and youngsters interested in playing football. Any funds or fees from the summer camp were considered respondent's income. As the head football coach, respondent was expected to be a leader and representative of the football teams on the high school campus and in the community. Respondent was supervised and his performance evaluated by the principal and the co-athletic director at CVHS.

6. (A) As soon as he was hired as the CVHS football coach, respondent began searching for assistant coaches for the varsity team and coaches for the junior varsity and freshman teams whom he could recommend for hiring. He organized the schedules for the upcoming spring practice session, the team's participation in a summer passing league, the preseason football camp, the conditioning and weight-lifting program for the players, and the practices and games for the fall season. The high school football season was typically from August through November or December of the fall semester depending upon whether the varsity team made the playoffs. Respondent contacted coaches from other high schools to schedule games, met with parents and the booster club members, and recruited students on campus to join the football team. At the end of the fall football season, respondent was expected to organize a football banquet.

(B) In the spring of 2003, respondent checked the football facilities, including the football field and training room, and related equipment, including a lift from which coaches could view and record games and practices, to ensure their proper maintenance and operation. Respondent also had to evaluate the equipment needs of the football team. Because the CVHS football program was a 'non-cut' program, every student who came out for football was able to participate on the varsity, junior varsity, or freshman football team and needed football equipment. Respondent met with Robert "Bob" Parker, the CVHS equipment manager, who was also the locker room attendant and a custodian, and discussed the football team's needs for equipment.

(C) As the CVHS equipment manager, Parker's duties included checking and inventorying the football equipment and related supplies, maintaining the scoreboard as well

as the football lift used by coaches and others to view and record football practices and games, and overseeing the equipment and/or training room and the locker room. By Parker's count there were approximately 220 football helmets, 250 shoulder pads, 300 hip and knee pads, scrimmage vests, practice and game jerseys and pants, football equipment tools, back plates and footballs on hand at CVHS. Much of the football equipment was dated or old. Each year after the football season and in or about December, football helmets were typically sent to a vendor or company which examined the helmets and, if deemed safe, reconditioned for continued use by student-athletes. Upon looking at the football equipment at CVHS, respondent wanted to purchase new football helmets and equipment for his team. Parker suggested to respondent that he meet with Bill Lapes (Lapes) of Lapes Athletic Team Sales (LATS) if he wanted to purchase new football equipment.

7. That spring of 2003, respondent met with co-athletic director Airey and Principal Ressler to discuss the football budget. Airey advised respondent that the CVHS football team was to be allocated approximately \$8,000 to buy safety equipment for the football team. As he told other coaches, Airey instructed respondent that, for the purchasing of football equipment, he had to complete and obtain approval of a purchase requisition and submit the purchase requisition to the District. Ressler told respondent not to exceed the football budget and that he should listen to Parker about buying new equipment. Respondent told both Airey and Ressler that he planned to meet with Bill Lapes about purchasing new equipment from LATS. The administrators did not tell respondent not to meet with Lapes. Respondent was aware that the District funds were to be used to purchase safety equipment for football but he also believed that the funds could be used to buy what was necessary to play the game, such as footballs.

8. (A) As was its practice, the District provided funds to its high schools in the late spring or early summer to purchase football and other athletic equipment, such as balls and nets, and safety equipment. The amount of the District's allocation was determined in accordance with a formula.

(B) Due to the physical nature of the sport and the potential for injury, football required more safety equipment than other sports. Safety equipment for football included helmets, different types of pads for the shoulders, hips, and backs, and jerseys and pants that allowed for the use of the pads. The athletic director at each high school allocated the District funds to the various sports teams and coaches at the high school. At CVHS, the football team received approximately \$8,000 to \$10,000 per school year from the District to purchase safety equipment for the players. In or about June of each school year, the athletic director advised the football coach of the amount of the District funds allocated to the football team for the upcoming fall season.

(C) Funds for the football program also came from donations and the fund-raising activities of the players' parents and the football booster club. Funds from the student body association supplemented the District funds. In addition, the CVHS football team could receive funds or credits from a vendor if the football team participated in a spirit pack

program wherein student-athletes purchased such items as a practice shirt and shorts from the vendor.

9. (A) In 2003, the District and CVHS had an established procedure to buy football equipment from a vendor. This procedure was not fully memorialized in writing or described in a manual. When seeking to order equipment from the vendor, respondent and other District coaches were required to first obtain a quote for the equipment from a vendor. The vendor's quote described the equipment, the unit price, the quantity or number of units of each piece of equipment, and the total price of the equipment covered under the quote. Respondent and other coaches were then required to complete a District purchase requisition form and attach the quote to the form. On the purchase requisition, the coach indicated that he or she was the requisitioning employee, the reason for the purchase, such as football equipment for the upcoming fall season, and could specify whether the equipment was to be delivered to the school site or picked up by the coach. The school secretary usually typed the purchase requisition form which was then submitted to the high school principal for review. At CVHS at that time in 2003, Principal Ressler typically approved the purchase requisition because he assumed the coach was ordering what was needed for his sports team and the information on the purchase requisition form was accurate. The school secretary then forwarded the approved purchase requisition to the District's business offices for processing.

(B) At the District business offices, the fiscal services division verified whether there were sufficient funds to buy the equipment listed on the purchase requisition before entering the funding account code on the purchase requisition form. The purchasing division then prepared a purchase order which was based on the purchase requisition and the attached quote. The purchase order contained the stamped signature of the District employee who had authority to sign the form under a delegation order. The purchasing division then transmitted the purchase order to the vendor by facsimile transmission and gave copies of the purchase order to the Governing Board of the District, the purchasing division, and the requisitioning employee. After delivery or pick-up of the equipment, the requisitioning employee or school site was required to send the packing slip or an electronic mail message to the purchasing division to confirm receipt of the equipment that was ordered under the purchase order. On confirmation of delivery or receipt, the purchasing division prepared and issued a check. The check was then sent to the Orange County Department of Education which forwarded the check to the vendor on issuance of an authorization of release of the check.

10. (A) In or about May 2003, respondent informed Parker what the budget was for the CVHS football team for the upcoming fall season and the two of them went to see Lapes at the LATS offices to select and order new football equipment. Respondent and Parker viewed the new football equipment and gear on display or in stock at the vendor. Respondent informed Lapes that approximately \$8,000 was available to purchase safety equipment for the football team for the 2003 season. Lapes asked them what they needed for the CVHS football team. Respondent replied that he needed helmets, pads, footballs, game watches, and spirit wear. For the spirit wear, Lapes suggested that the players come into his company's showroom and buy spirit wear and the football team could accrue credits to

purchase equipment. Respondent was not interested in requiring his players spend their own money on spirit wear. Thereupon, respondent ordered spirit wear comprised of players' tee shirts and shorts and coaches' shirts and football watches and asked Lapes to deliver the merchandise. He told Lapes that the football booster club would pay for the spirit wear order. Respondent and Parker then selected equipment for the CVHS football team and indicated that Parker would order the football equipment later. After the meeting, respondent and Parker went out to dinner with Lapes.

(B) In or about May 2003, Lapes prepared a quote for the order or purchase of football equipment for the CVHS football team and gave the quote to respondent or Parker. Co-athletic director Airey and Parker used the quote from LATS to prepare a purchase requisition for football equipment for the CVHS football team for the 2003 season, as more fully described in Findings 23 and 32 below.

#### Lapes Athletic Team Sales, Inc.

11. (A) LATS was founded and organized in 1991 by William "Bill" Lapes to market and sell athletic and football equipment and apparel to high schools and colleges. LATS had sales offices and a warehouse facility in Lake Forest and later in Laguna Hills in south Orange County. At all times relevant herein, Lapes was the majority shareholder and chief executive officer of LATS. He also worked as a salesperson for the company. In 1992, Lapes' son, Chad, joined the company and worked in the purchasing area, dealing with customer orders and suppliers or manufacturers of athletic equipment. In 2004, Lapes' other son, Adam, also began working full-time at LATS and performed purchasing, retail sales, and warehousing duties.

(B) Prior to forming LATS, Lapes was a salesperson for Goodman's Sporting Goods. He was also a coach for the football team at CVHS where his sons attended high school. After Lapes formed his own sporting goods supply company, CVHS and other high schools in the District as well as high schools and colleges throughout southern California began ordering and purchasing football equipment, apparel, and athletic supplies for their teams from him.

(C) As established by or inferred from the evidence, the football coaches for the District's high schools have ordered and purchased football and/or athletic equipment from LATS since in or about 1991. The purchasing of football equipment was not subject to a competitive bidding process of the District. Nor were the football coaches required to obtain the best prices for the football equipment.

(D) As established by the District's records, including Vendor History Reports and Requisition Entry for Purchase Orders, and investigative reports (Exh. 80), between 2000 and 2008, the administrators, athletic directors, and football coaches and staff at the District's Aliso Niguel, San Clemente, and Tesoro High Schools as well as CVHS ordered football and other athletic equipment and supplies from LATS. Administrators and coaches

submitted purchase requisitions to the District and the District prepared and forwarded purchase orders to LATS for football and athletic equipment and supplies for their high school sports teams. The District paid LATS for the purchase orders when it received confirmation that the football and athletic equipment and supplies were delivered to the high schools. Over the years since its inception, LATS developed sales accounts with the high schools of the District and became an authorized vendor of football and athletic equipment for the District.

12. (A) When LATS was formed in 1991, the head football coach at CVHS was Eric Patton. Parker had just become the equipment manager at CVHS and continued performing his duties as the equipment manager for the next 15 years. In the 1990's and early 2000's, Parker accompanied Patton and the subsequent head football coaches at CVHS to LATS to order football equipment and supplies for the high school football team. On an undetermined date in or before 2003, Parker also began working for LATS during one month each summer, delivering athletic equipment and supplies to various schools or school districts.

(B) When Parker and the football coaches went to the LATS offices in the spring, they met with Lapes and discussed what football equipment and supplies were needed for the CVHS football team and the amount of money that the District had allocated to the high school to purchase football safety equipment for the upcoming fall football season. The head football coach and Parker selected football equipment that they wanted to order for the CVHS football team. Lapes completed team sales orders or quotes for the equipment which were used to prepare purchase requisitions that were filed with the District. The District prepared purchase orders for the football equipment and forwarded the purchase orders to LATS. Upon receipt of the purchase orders, LATS purportedly filled the orders and delivered the football equipment to CVHS. The District paid LATS on receiving confirmation from CVHS that the football equipment ordered under the purchase had been delivered to the high school. However, LATS did not actually deliver the football equipment to the high school and, instead, provided a credit to the football team when the District paid its purchase invoice as described below.

13. (A) Soon after starting LATS in 1991, Lapes created special accounts at LATS for the high schools and colleges that were customers of his company. The accounts were initially called "slush accounts." In or about 2003, LATS changed the name of these accounts to "promo" or promotional accounts. These accounts were kept by LATS as part of its normal business operations and activities and, in or about 2000, placed and maintained on its "SportzPak" software program on the business computer. LATS kept a promotional or slush account for each of the high school football teams in the District, including CVHS, and other high schools and colleges. The promotional account was identified at LATS by the number "9" before the regular account number for the high school or college football team. For example, the regular account number for CVHS was the first four letters of the name of the high school plus a number, or "CAPI01." The promotional account was identified as "9CAPI01."



(B) When a high school or college sports team ordered athletic or football equipment, LATS issued a purchase invoice to the school administration for the purported delivery of the equipment to the high school or college. The school administration paid for the order or LATS purchase invoice. However, the equipment ordered and paid for was typically not delivered by LATS to the high school or college. Rather, LATS provided a credit to the promotional or 9 account for the high school or college athletic program based on the payment for the equipment less the applicable sales tax. Lapes then allowed the coach of the athletic program to use the credits and accumulated credits in the promotional account maintained by LATS for the high school or college sports team to order and purchase athletic equipment, supplies, and apparel from LATS for his or her high school sports team and personnel, including apparel and gear for coaches and administrators. LATS delivered the items for these purchases which were paid for or debited from the promotional account to the high school or college.

(C) Records and documents demonstrated that LATS had promotional or 9 accounts for CVHS since the early 1990's. For example, a note dated September 13, 1994, stated that "Parker has slush of \$121." A team sales order dated October 20, 1995, showed that Parker ordered cleats for the CVHS football team. Lapes noted on the team sales order that the purchase was to be "take[n] off slush" account. On a team sales order placed by Parker that was to be shipped on October 12, 1995, there was a note that the purchase was to be deducted from the "slush fund." In a team sales order dated August 24, 2000, Parker returned five girdles and Lapes wrote on the order that the slush account was to be credited \$143.40. Numerous LATS documents from the 1990's contained references to slush accounts for CVHS and other high schools.<sup>2</sup>

14. (A) The preponderance of the evidence suggested that Lapes started using the promotional accounts at LATS for the high school and college football teams and allowing the football coaches to purchase football equipment with credits placed in the promotional accounts for business reasons. High school football teams, like that at CVHS, were allocated a certain amount of funding from the school district or administration to buy football equipment but the high school coaches, who ordered football equipment for their teams, did not know what the level of funding was going to be for the upcoming fall football season until in or about June of the preceding school year. In addition, soon after the fall football season ended in or about November or December, high school football teams sent their football helmets to outside companies for inspection and possible reconditioning. The coaches did not know how many of the helmets would be deemed safe to be used again by the student-athletes until after the helmets were reconditioned and returned in several months, which was usually in or about April. As such, high school football coaches did not know how much funding was available to buy football equipment or what football equipment

---

<sup>2</sup> Pursuant to complainant's motion, pages 1127-1128, 1157-1162, 1170-1171, and 1174-1177 of Exhibit 69 were admitted into evidence. After the Commission began deliberations, the Administrative Law Judge on his motion admitted the entirety of Exhibit 69 into evidence as a matter of fairness and for the purposes of mitigation.

was needed for their football teams for the upcoming fall football season until in or about June or July.

(B) For its part, LATS was required to project what its customers were going to order for the year. LATS was a member of a buying group comprised of vendors throughout the country. The buying group ordered football equipment and supplies in bulk from manufacturers and vendors in order to obtain the best possible selection and prices. In January or February each year, LATS was required to place a booking order with or through the buying group. LATS had to forecast the volume of football equipment, such as helmets, that was going to be ordered by its customers for the upcoming season based, in part, on their past orders. The evidence suggested that Lapes used the promotional accounts as a way to deal with the uncertainties and vicissitudes of high school funding levels and equipment orders, the timing of the booking orders and school district purchase payments for orders, and the difficulty of forecasting of orders by high school football teams. On the other hand, Lapes also may have instituted the promotional accounts to keep his customers and to have an assured stream of orders and income from them. In any case, LATS obtained and accumulated orders by high school and college football teams, collected payments on the orders, and provided credits in the promotional accounts set up for use by its customers. Football coaches, in turn, were able to use existing and past credits in the promotional accounts to order equipment for the spring football practice session and for the preseason practice sessions. Once the football season started in September, football coaches were able to use the funds placed in the promotional accounts due to credits for payments made by school districts and administrations in the late summer or early fall for invoices. Lapes' manner of doing business with the promotional accounts began to unravel and apparently caused financial difficulties for his company by 2006.

#### LATS and Geoffrey and Teresa Sando

15. (A) In or about April 2003, Geoffrey Sando (Sando), a certified public accountant with an Orange County public accounting firm, began performing accounting work for LATS. Sando's firm had prepared LATS' tax returns and annual financial statements for several years. As the accountant for LATS, Sando went to the LATS offices once a week and performed various accounting tasks. For example, he printed a list of vendors that were owed payments for the week and prepared checks from LATS bank accounts to pay the vendors. He answered questions of the staff. Once a month, for purposes of preparing financial statements, Sando reconciled LATS's customer accounts, accounts receivable, and bank accounts. At the end of LATS' fiscal year each September 30th, Sando helped to prepare or had access to the company's inventory records of its athletic equipment and supplies.

(B) Sando was LATS' accountant for approximately five years and claimed that he never had a reason to question any business record prepared by its staff or the continued financial viability or profitability of the company. Sando had reviewed the tax returns and financial statements or audits of the company and believed that LATS was

making money every year. Sando described LATS as having "been around forever." On the other hand, Sando was also aware that Lapes was earning \$180,000 annually from LATS and enjoyed gambling. During one tax year, Lapes reported having earned \$1 million in winnings from gambling.

(C) In or about November 2006, LATS began having financial trouble. A bank demanded that LATS pay \$100,000 of an outstanding loan or line of credit totaling \$450,000 and submit a plan to repay the loan or line of credit. Checks made by Sando were not being mailed out to suppliers because the company lacked sufficient cash to cover the checks or to pay the suppliers. Lapes' two sons proposed to buy 67 percent of the company's stock for \$200,000. Sando advised Lapes that his sons' proposal would not solve his company's financial problem inasmuch as LATS owed \$450,000 to the bank and Lapes wanted to retain control of the company. Sando told Lapes that he needed \$400,000.

(D) In or about February 2007, Sando invested \$400,000 in LATS and thereby acquired 45 percent of the stock of the company. Sando believed that his investment was sound and would bring financial stability to the company. As a condition of his investment, Sando insisted that Lapes execute a shareholder agreement wherein 75 percent of the company's shares were required to incur additional debt or to increase salaries and two signatures were required on company checks. However, Lapes failed to abide by the shareholder agreement. Just one month later, in or about March 2007, Lapes disappeared for three or four days with the company's checks and wrote checks totaling \$129,000 to himself. When he returned, Lapes told Sando what he had done. Sando responded by loaning \$50,000 to LATS. Over the course of the next year, Sando loaned a total of \$240,000 to LATS. The company, however, continued to experience a cash flow shortage.

(E) In or about February 2008, Lapes asked Sando for another loan so that LATS could buy products from suppliers to sell to customers. After initially suggesting the company reduce its costs by curtailing salaries or health insurance coverage for employees, Sando called in his promissory note or notes. Payments on the loans that he had made to the company were past due. As a result, Sando acquired the assets of LATS and all of the stock in company, including the stock belonging to Lapes. Lapes was terminated from his position and employment with LATS.

(F) After he became the owner of LATS in or about March 2008, Sando began reviewing the company's expense accounts and accounts receivable more closely. Sando found that there was an outstanding balance of \$175,000 in the accounts receivable and that a number of high schools owed money to LATS for the purchases of athletic equipment. Sando and his spouse, Teresa Sando, called or contacted customers and schools to try to collect on the accounts receivable. Several customers informed Sando and his spouse that they had already written checks to Lapes in payments of their accounts. Sando learned Lapes had taken customer payments of approximately \$35,000 that belonged to LATS. In or about June 2008, Sando decided to liquidate the assets and inventory of LATS, terminate its lease, and wind up and close the business.

(G) Subsequently, in or about late 2008, Sando filed a report with the Orange County Sheriff's Department, complaining that Lapes and his two sons, who had started their own athletic supply company, had taken a vehicle, computer, and other business assets belonging to LATS. In or about February 2009, Sando filed a civil lawsuit seeking damages from Lapes and his two sons. Sando testified that he obtained a default judgment of \$1 million against Lapes. According to Teresa Sando, the civil lawsuit was resolved through mediation.

16. (A) After he took over the ownership and control of LATS and decided to close the business in May 2008, the Sandos began rummaging through the files, computer records, storage areas, and offices at LATS and collected and reviewed the various business records and documents of the company that they found on the premises. They found handwritten team sales orders, bank deposit slips or registries, check registries, copies of checks from customers or school districts that had been deposited by LATS, packing slips that accompanied deliveries of athletic equipment, invoices or quotes, inventory records, and ledgers. After closing the business, the Sandos took home approximately 150 file boxes containing LATS documents.

(B) The Sandos also printed records of accounts receivable, sales orders, and purchase orders from customers and school districts that were stored on the LATS computer. On the computer, the Sandos found the SportzPak software program that LATS used to record, store, and track sales, purchase orders, and accounts receivable. The LATS Sportz-Pak program contained account receivable data and histories and account receivable aged trial balances for individual high schools and colleges that were customers of the company. The program showed that LATS assigned an account or customer number to each high school and college and used this account number on the sales or customer account and account receivable for the high school or college. In addition, the Sandos found that LATS maintained so-called account receivable aged trial balances on its Sportz-Pak program for each of the high schools and colleges that were customers of the company. For these account receivable aged trial balances, LATS prefixed the account number for each high school and college with the number "9." In a file or storage room at LATS, Teresa Sando found documents and records, including team sales orders or invoices, that referenced orders and purchases from the so-called "slush" and "promo," or promotional accounts.

(C) After poring over the records and documents from LATS for several months, Teresa Sando concluded that the promotional or 9 accounts were not accounts receivable but special accounts established by LATS for the coaches at high schools and colleges to be able to purchase football and athletic equipment at their discretion. Because they were unable to find documents such as purchase orders, delivery records, and sales tax payments at LATS, the Sandos wrongly assumed that LATS did not ever order or purchase any equipment or product from its suppliers and manufacturers and did not deliver any of the equipment ordered by the high schools and colleges at all. The Sandos surmised the promotional accounts were funded or credited by LATS based on payments made by the high schools and colleges on purchase orders for equipment that was not delivered to the high schools and colleges. The Sandos came to find

out that LATS had slush or promotional accounts of this nature for approximately 100 high school and collegiate sports programs.

(D) With respect to CVHS, Teresa Sando found that LATS had accounts for CVHS, the football booster club for CVHS, and the coaches of other athletic teams at CVHS. She found that there were 16 accounts for CVHS at LATS. It was not established whether all of the accounts that LATS had for CVHS were promotional accounts. The CVHS football team, like other high schools in the District and in southern California, had a promotional account.

17. In the spring of 2010, after she and her husband had resolved their civil lawsuit against Lapes and his two sons, Teresa Sando called the District as well as approximately 40 other school districts to complain about the promotional accounts that LATS had maintained for their high school sports teams and coaches. In the fall of 2010, the District's Superintendent met with Teresa Sando, who spoke about the alleged involvement of the coaches in the District's high schools with LATS and their use of the LATS promotional accounts to buy football equipment. Teresa Sando provided documents to the Superintendent. The District commenced an investigation of the allegations by consulting with its counsel who, in turn, retained a private investigator.

18. On June 6, 2011, investigators from the Orange County Sheriff's Department met with Teresa Sando to discuss her complaint about Lapes. Eventually, the District Attorney of Orange County declined to prosecute or to file any criminal charges in connection with the Sando's complaints. Teresa Sando claimed that the Sheriff's Department did not investigate her complaint because sheriff's deputies and other law enforcement officers bought football equipment from LATS for an annual "Cop Bowl" football game. Teresa Sando also asserted that investigators from the Orange County District Attorney's Office had a slush account at LATS. The Sandos have continued to press their complaints against the high school coaches due to their sense of "moral outrage" about the existence of the promotional accounts as well as their bitter disappointment about the financial losses from their \$650,000 investment in LATS. The weight of the evidence suggested that the Sandos attribute the loss of their investment in LATS to Lapes' use of the promotional accounts to facilitate and promote the business of the athletic equipment supply company.

#### Statement of Charges

19. In November 2010, the District's counsel retained Robert Price, a private investigator based in San Diego, to conduct the investigation of the complaints lodged by Teresa Sando against its high school football coaches and the use of the LATS promotional accounts. Price is a former special agent accountant with the Federal Bureau of Investigation and has experience in investigating economic crimes. Price investigated allegations against nine coaches employed by the District. The scope of Price's investigation included, in part, the obtaining and reviewing of documents and records from the Sandos and the District;

meeting and speaking with Teresa Sando, sheriff's personnel, the Superintendent, and District employees; conducting interviews of interested persons, including Parker; and gathering policies of the Governing Board for the District. Price approached the investigation in the same manner as if he were conducting an investigation of economic or white collar crimes. On December 28, 2011, Price issued a report of his investigation of respondent's conduct. No criminal charges were filed as a result of Price's investigation.

20. (A) On January 29, 2012, Dr. Joseph M. Farley made the Notice of Charges that There Exists Cause to Discipline a Permanent Certificated Employee Charles J. Biehn (Notice of Charges) in his official capacity as Superintendent of the District and pursuant to Education Code section 44932. Dr. Farley filed the Notice of Charges with the Governing Board and recommended therein that the Governing Board immediately discipline respondent, including considering to suspend and/or dismiss him as a permanent certificated employee for immoral conduct, evident unfitness for service, and persistent violation or refusal to obey school and/or District rules.

(B) On January 30, 2012, the District's Assistant Superintendent of Personnel Services informed respondent that the Governing Board was planning to meet on February 6, 2012, to hear charges to determine whether cause existed to recommend disciplinary action, including his dismissal from his position as a permanent certificated employee, under Education Code section 44934 and to determine whether to proceed with disciplinary action. A copy of the charges was provided to respondent.

21. (A) On March 2, 2012, the District served respondent with the Notice of Intention to Dismiss, Notice of Charges that Cause Exists to Dismiss, a Request for Hearing form, exhibits to the notice of charges, and pertinent sections of the Education and Government Codes. In the Notice of Intention to Dismiss, the District notified respondent in accordance with Education Code section 44934 that the Governing Board by majority vote had determined to dismiss him as a permanent certificated employee.

(B) On March 2, 2012, respondent acknowledged receipt of the aforementioned documents and filed a request to have a hearing before the Commission to determine if there is cause to dismiss him from his employment with the District.

22. (A) On May 31, 2012, the Accusation was made and filed by complainant Dr. Joseph M. Farley in his official capacity as Superintendent of the District.

(B) On or about October 15, 2013, the District notified respondent that the Governing Board had approved the Amended Notice of Charges to immediately suspend him without pay and to dismiss him as a permanent certificated employee pursuant to Education Code sections 44932 and 44939. The District notified respondent that his pay ended on October 10, 2013, and his District-paid benefits would be terminated on October 31, 2013. The District indicated that a copy of the Amended Notice of Charges would be included in an Amended Accusation that would be served upon respondent's attorney and filed with the Office of Administrative Hearings.

(C) On January 21, 2014, the Amended Accusation was made and filed by complainant Dr. Joseph M. Farley in his official capacity as Superintendent of the District. Jurisdiction exists in this matter under Education Code sections 44932 and 44934.

### CVHS Orders for Football Equipment

23. (A) By the spring of 2003, when respondent was hired as its new head football coach, the CVHS football program and coaches had an established practice of obtaining quotes from LATS before the summer for the proposed purchases of equipment for the fall season, submitting purchase requisitions with the LATS quotes to the District, receiving credit from LATS its promotional account when the District paid for the purchase order and/or LATS invoice, and ordering and receiving football equipment paid from the promotional account. By 2003, LATS was likewise an authorized and preferred vendor of the District and the football coaches of the District's high schools, respectively

(B) In or about May 2003, after respondent and Parker visited the LATS facility, co-athletic director Airey and Parker submitted the purchase requisition for football equipment for the CVHS football team for the fall 2003 football season. For subsequent seasons through 2007, respondent and Parker visited the LATS offices early in the calendar year to view football equipment. For the 2004 fall football season, respondent and Airey submitted the purchase requisition for football equipment to the District. For the 2005 through 2007 football seasons, respondent submitted the purchase requisitions to the District. From 2003 through 2007, after the District issued purchase orders to LATS to purchase football equipment as described in the purchase requisitions and attached quotes from LATS, the weight of the evidence suggested that no football equipment was delivered by LATS to CVHS. LATS nevertheless issued invoices to the District seeking payment for purported deliveries of football equipment under the purchase orders and the District paid LATS on the invoices after receiving confirmation received from the high school that equipment was purportedly delivered to the school site. Upon receiving payment from the District, LATS credited the promotional account that it maintained for the CVHS football team

(C) From 2003 through 2006, after the District paid LATS on its invoices, respondent allowed Parker to order football equipment, apparel, and supplies from LATS for the CVHS football team. After Parker's position was eliminated in 2006, respondent ordered the equipment from the vendor although Parker ordered some items on occasion from LATS. Whenever Parker made or called in the orders to LATS for football equipment, LATS delivered the equipment ordered by Parker, Parker accepted delivery of the orders, and the weight of the evidence demonstrated that respondent knew or was aware of Parker's actions and approved of Parker's orders for the CVHS football team.

(D) At all times relevant herein, from 2003 through 2007, when or after LATS delivered the football equipment to CVHS ordered by Parker and respondent, the cost of

these orders were paid for by LATS debiting the CVHS football team's promotional account. Parker usually accepted the deliveries at the high school and signed the delivery invoices.

(E) There are District records that date back to 2000 showing that this process of ordering and paying for football equipment under the promotional account for the CVHS football team. A summary of the orders and purchases of football equipment from LATS for the CVHS football team from 2000 through 2007 is set forth in the following paragraphs.

#### Orders for 2000 Football Season

24. District records demonstrated that, in 2000, CVHS football team received credit on the promotional account maintained by LATS. For the 2000 football season, the District paid LATS for three invoices for football equipment for the CVHS football team. Specifically, on or about July 7, 2000, the District issued checks to LATS in the amounts of \$5,279.75, \$2,167.93, and \$711.15, in payment of the invoices and the underlying purchase orders. In turn, LATS credited the promotional account of CVHS with the amounts of \$4,900, \$2,012, and \$660, which sums corresponded to the District's payments of the invoices less the applicable sales tax.

25. During the ensuing fall 2000 football season, the CVHS football team ordered and received delivery of football equipment from LATS. For example, on or about August 5, 2000, the CVHS football team ordered and received 25 helmets, 120 jaw pads, 120 chin straps from LATS at a cost of \$4,299. On August 6, 2000, the CVHS football team ordered and received 10 knee braces, 4 special shoulder pads, and eight "lightning" shoulder pads from LATS at a cost of \$1,840. On August 9, 2010, the CVHS football team ordered and received 36 practice pants, girdles, knee pads, and thigh pads from LATS at a cost of \$2,661.80. On September 29, 2000, the CVHS football team ordered and received 10 lateral knee braces from LATS at a cost of \$430. Payments for these purchases of football equipment in 2000 were made by LATS deducting the amounts of the invoices for these purchases from the promotional account of CVHS. No additional checks were issued by the District in payment of these purchases of football equipment in 2000.

26. In addition, LATS credited the promotional account of CVHS for other undetermined payments of invoices or purchases of football equipment as established by the LATS accounts receivable aged trial balance (Exh. 74). For example, on July 7, 2000, LATS issued a credit memo in the amount of \$2,467 to the promotional account for payment of an undetermined invoice or purchase.

#### Orders for 2001 Football Season

27. For the 2001 football season, the District paid LATS for four invoices for football equipment for the CVHS football team. Specifically, on or about June 28, 2001, the District issued checks to LATS in the amounts of \$4,512.85, \$5,759.85, \$1,198.65, and



\$479.45 in payment of the invoices and the underlying purchase orders. In turn, LATS credited the promotional account of CVHS with the amounts of \$4,198, \$5,358, \$1,115, and \$446, which sums corresponded to the District's payments of the invoices less the applicable sales tax. In 2001, LATS credited the account for payments of other undetermined invoices as well.

28. During the ensuing fall 2001 football season, the CVHS football team ordered and received delivery of football equipment from LATS. For example, on August 5, 2001, the CVHS football team ordered and received 12 helmets, 10 dozen jaw pads, chin straps and buckles, hip pads, replacement cleats, 96 web belts, knee braces, 104 girdles, 400 mouth pieces, knee pads, thigh pads, 24 game footballs, and 12 practice footballs, at a total cost of approximately \$6,596.60. On September 2, 2001, 51 practice pants were bought at a cost of \$631.95, and, on October 25, 2001, weighted sideline markers and Gatorade were bought at a cost of \$455.40. The payments for these purchases in 2001 were made by LATS deducting or debiting the amounts of the invoices for these purchases from the promotional account of CVHS. No other checks were issued by the District for these purchases in 2001.

#### Orders for 2002 Football Season

29. For the 2002 football season, and on an undetermined date in or about May 2002, Co-Athletic Director Airey and Parker submitted a purchase requisition to the District for the purchase of football equipment from LATS for the CVHS football team at a cost of approximately \$12,622.92. Lapes prepared the four team sales order or quotes for the purchase requisition. After the principal approved the purchase requisition, the purchase requisition and LATS quote were forwarded to the District's business office. The District completed a purchase order and sent the purchase order to LATS. On August 9, 2002, the District paid the sum of \$12,622.92 to LATS for purportedly filling the purchase order.

30. In paying \$12,622.92 to LATS, the District paid LATS for four invoices for football equipment for the CVHS football team. Specifically, on August 9, 2002, the District issued checks in the amounts of \$3,070.88, \$6,745.15, \$1,038.71, and \$1,768.18 to LATS. In turn, LATS credited the promotional account of the CVHS football team with the amounts of \$2,850, \$6,260, \$964, and \$1,641, which corresponded to the District's payments of the four invoices less the applicable sales tax.

31. For the ensuing 2002 fall football season, from October 5, 2002, through December 6, 2002, the CVHS football team ordered and received delivery of football equipment from LATS which was paid for from the promotional account maintained by LATS for the CVHS football team. For example, on October 5, 2002, the CVHS football team ordered and received 20 helmets, hip pads, thigh pads, knee pads, jaw pads, shoulder pads, 300 mouth pieces, 36 practice pants, replacement cleats, chin straps, and 48 web belts, at a total cost of \$7,871.30. On October 29, 2002, the CVHS football team ordered and received 6 helmets at a cost of \$640. Payments for these purchases were made by LATS deducting the amounts of the invoices for these purchases from the promotional account that

LATS maintained for the CVHS football team. The District did not issue any checks to LATS for these purchases in 2002.

#### Orders for 2003 Football Season

32. For the 2003 football season, and in or about May 2003, Co-Athletic Director Airey and Parker jointly submitted a purchase requisition to the District for the purchase of football equipment for the CVHS football team from LATS at a cost of \$8,290. Lapes prepared the team sales order or quote for the purchase requisition. After the principal approved the purchase requisition, the purchase requisition and LATS quote were forwarded to the District's business office. The District completed a purchase order and sent the purchase order to LATS. On or about September 23, 2003, and after receiving confirmation of the purported delivery of the equipment to CVHS, the District paid the sum of \$8,932.48 to LATS for filling the purchase order.

33. (A) On October 6, 2003, LATS deposited into its business bank account three checks in the amounts of \$178.54, \$209.47, and \$8,932.48 that the company received from the District in payment of its invoices for football equipment. On November 18, 2003, LATS deposited into its business bank account another check in the amount of \$866.31 that it received from the District in payment of an invoice for football equipment.

(B) In 2003, LATS credited the sum of approximately \$9,094 to the promotional or 9 account for CVHS for the checks that it received from the District and other undetermined sources in payment of invoices for football equipment. Specifically, on July 30, 2003, LATS credited \$8,290 to the promotional account of CVHS football team for the District's payment of \$8,932.48. On October 30, 2003, LATS credited \$804 to the promotional account of CVHS football team for the payment of \$866.31 by the District. As was its business practice, LATS credited the promotional account that the company maintained for CVHS football team with the amounts of the District's payments of invoices less the amounts of the applicable sales tax.

34. For the 2003 spring football practice session and 2003 fall football season, respondent and Parker ordered football equipment and supplies for the CVHS football team from LATS, as described in Finding 35 below.

35. (A) On May 12, 2003, Parker ordered 36 black coaches shorts and 36 Oxford tee-shirts with insignias from LATS. Lapes was the salesperson on the order and the team sales order. As showed by the purchase orders, LATS bought the items from suppliers and had the CVHS Cougar insignia or logo sewed on the shorts and tee-shirts. On May 20, 2013, LATS delivered the items under the order to CVHS to the attention of Parker. The total cost of the order was \$1,004.98 and the order was paid when LATS debited or deducted \$1,004.98 from the existing promotional account of the CVHS football team.

(B) On May 21, 2003, Parker ordered four stop watches, one lanyard, and one plastic whistle from LATS at a total cost of \$94.78. In a separate team sales order dated May 21, 2003, Parker ordered six helmets, six face masks, four jaw pads, six helmet pumps, and belts at a total cost of \$922.10. On May 21, 2003, Parker also ordered 18 game footballs, 12 practice footballs, 60 football socks, 60 girdles, 18 practice pants, and 200 mouth pieces at a total cost of \$2,530.94. On May 28, 2003, Parker ordered one line-up marker costing \$107.75, including sales tax. Parker received or picked up the items from these orders. Each of these orders was paid for by LATS debiting the purchase costs from the CVHS football promotional account.

(C) On June 2, 2003, Parker ordered 12 coach's shorts costing \$271.53 from LATS. On June 9, 2003, Parker ordered 24 jackets with embroidery for the CVHS football coaches at a cost of \$1,224. The jackets were to be embroidered in the left chest area with image of a football and the words, "Capistrano Valley Cougars."

(D) On July 7, 2003, Parker ordered 41 polo shirts and 24 jackets with embroidery at a cost of \$781.80. LATS paid another company to stitch embroidery on the clothing items. LATS delivered the polo shirts on July 30, 2003. On July 29, 2003, Parker ordered 24 small knee pads at a cost of \$96.

(E) On August 8, 2003, Parker ordered six coach's shorts and 36 Oxford tee-shirts with "Cougar Football" embroidered on the gear at a cost of \$377.80. In a separate team sales order dated August 8, 2003, Parker ordered 30 orange poly spots and 10 wrist coaches at a cost of \$168. On August 13, 2003, Parker ordered four triple extra-large mesh athletic shorts at a cost of \$60. On August 14, 2003, Parker ordered three small shoulder pads at a cost of \$266.85. On August 15, 2003, Parker ordered six small shoulder pads, 12 large football practice pants, and four cases of sport drink at a cost of \$618.80. On August 26, 2003, Parker ordered screws, nuts, and snaps for football helmets at a cost of \$45.55.

(F) On September 9, 2003, Parker ordered four white practice jerseys and four black practice jerseys, each of which were double extra-large in size and had numbers, at a cost of \$128.00 plus sales tax of \$9.92. On September 10, 2003, Parker ordered six sets of hip pads at a cost of \$45.80 plus sales tax of \$3.55. On September 24, 2003, Parker ordered four sets of polo shirts and shorts with logos of CVHS football at a cost of \$142. On September 25, 2003, Parker ordered 24 baseball hats with the embroidered image of the CVHS mascot, a cougar, at a cost of \$334.80. LATS contracted another company to embroider the hats. On September 29, 2003, Parker ordered a football down marker and chain set at a cost of \$326.95 plus sales tax.

(G) On October 7, 2003, Parker ordered 24 white socks, 100 helmet snaps, and 50 T-hooks from LATS at a cost of \$105.80 plus \$10 for freight. On November 3, 2003, Parker ordered three Spalding silver footballs at a cost of \$108. On November 13, 2003, Parker ordered 100 replacement football cleats at a cost of \$51. On November 17, 2003, Parker ordered one heavy-duty hinged knee brace for \$46.50 plus \$10 for freight or handling.

36. Each of the team sales orders and purchases from LATS by Parker in 2003 for the CVHS football team, as described in Findings 34 and 35 above, were paid when LATS debited or deducted the amounts of the orders and invoices from the promotional account that LATS maintained for the CVHS football team. Lapes wrote on the team sales orders that the purchases were to be taken or debited from the promotional account. The CVHS football team received delivery of the equipment. The District did not issue any checks in payments of these orders and purchases. Parker ordered the items for the CVHS football team with respondent's knowledge and/or consent.

37. On May 20, 2003, and September 28, 2003, LATS' Accounts Receivable Trial Balance showed that LATS credited the promotional or 9 account of the CVHS football team with the amounts of \$1,440 and \$60, respectively. The reason or reasons for these credits or credit memos were not established by the evidence in this matter. Nor was it established that these credits were bribes or kick-backs paid to respondent.

#### Orders for 2004 Football Season

38. (A) For the 2004 football season, and in or about May 2004, Co-Athletic Director Airey and respondent submitted a purchase requisition to the District for the purchase of football equipment for the CVHS football team at a cost of \$9,226.90. Lapes or his son Adam Lapes prepared the team sales orders or quotes for the purchase requisition. The District completed a purchase order and sent the purchase order to LATS.

(B) On an undetermined date in 2004, LATS sent four invoices to the District seeking payment of \$5,468.31, \$3,010.75, \$874.93, and \$587.99, or a total payment of \$9,941.98, for the football equipment ordered by the District under its purchase order. On or about August 27, 2004, after receiving confirmation of the purported delivery of the football equipment that was ordered, the District issued a check to LATS in the amount of \$9,941.98, which constituted payment for LATS' four invoices. On September 1, 2004, LATS deposited the \$9,941.98 check into its business bank account.

(C) On or about July 21, 2004, LATS credited the promotional account of the CVHS football team with the amounts of \$5,075, \$2,794.20, \$812, and \$574.70, which sums corresponded to the District's payments of the four invoices less the applicable sales taxes. On September 16, 2004, LATS credited the promotional account of the CVHS football team for additional payments of \$458 and \$250 for undetermined reasons.

39. For the 2004 spring football practice session and the 2004 fall football season, respondent and Parker ordered football equipment and supplies for the CVHS football team from LATS, as described in Finding 40 below.

40. (A) On January 7, 2004, Parker ordered athletic tape, Elastikon, skin lubricant, elastic wraps and bandages, and 24 bottles of sport drink at a cost of \$583.45. On January 30, 2004, Parker ordered 75 mesh practice jerseys with numbers on the backs and front of the

jerseys at a cost of \$1,336.50. Parker ordered the practice jerseys for shipment or delivery in July 2004. LATS contracted out the numbering of the jerseys. On July 23, 2004, LATS delivered the jerseys to CVHS.

(B) On February 5, 2004, Parker ordered eight youth-sized sleeveless tee-shirts for delivery in May 2004 at a cost of \$40. On March 11, 2004, Parker ordered three medicine balls at a cost of \$179.97.

(C) On March 31, 2004, respondent ordered 15 black football helmets with face masks at a cost of \$2,250. The helmets were to be delivered in July 2004 and shipped to Parker at CVHS. Lapes and his son Adam were the salespersons for LATS on this order and Lapes wrote the team sales order. On July 23, 2004, LATS delivered the helmets under this order to CVHS and Parker accepted the delivery.

(D) On May 11, 2004, Parker ordered 12 game footballs, 200 mouthpieces, 72 football game socks, 36 knee pads, 36 hip pads, 96 web belts, and 500 replacement cleats for CVHS football team from LATS at a cost of \$1,665.60. The items were to be delivered in July 2004. Adam Lapes was the salesperson on the order and completed the team sales order. On July 23, 2004, LATS delivered the items under this team sales order. In a separate team sales order on the same date, Parker also ordered 72 girdles, 48 practice pants, and 18 scrimmage vests for delivery in July at a cost of \$1,671.60. The items under both of these orders were to be delivered by July 2004. Adams Lapes was the salesperson who wrote both of the team sales orders. LATS delivered the items under both orders on July 23, 2004.

(E) On May 11, 2004, Parker ordered 11 black and 17 white polo shirts with the CVHS football logo embroidered on the left areas of the polo shirts at a cost of \$475.50. Adam Lapes was the LATS salesperson and wrote the team sales order. LATS delivered the polo shirts to CVHS.

(F) On May 11, 2004, Parker ordered six black V-neck, pullover jackets at a cost of \$188.80. The jackets were to be embroidered with an image of a football and the words, "Capistrano Valley Cougars" and delivered in July 2004. LATS contracted out the embroidery work. On August 31, 2004, LATS delivered the jackets to CVHS.

(G) On May 11, 2004, Parker ordered three jaw pads at a cost of \$167.85 and for shipment in July 2004. Adam Lapes prepared the team sales order. LATS delivered the jaw pads to CVHS on August 4, 2004.

(H) On May 18, 2004, Parker ordered two whistles and two lanyards for same-day shipment or pick-up at a cost of \$47.90 plus sales tax of \$3.71. Adam Lapes wrote the team sales order and delivered the whistles and lanyards to Parker at CVHS.

(I) On July 23, 2004, Parker ordered 10 stopwatches at cost of \$129.50 for same-day shipment or pick-up. Adam Lapes wrote the team sales order. Parker acknowledged receipt of the stop watches by signing a copy of the team sales order.

(J) On July 27, 2004, Parker ordered six game footballs at a cost of \$299.28 and requested immediate shipment. Adam Lapes wrote the team sales order for the footballs. LATs delivered the footballs to CVHS one week later on August 4, 2004.

(K) On July 27, 2004, Parker ordered two black pull-over, V-neck jackets and four white polo shirts, all with the logo of the CVS football team, at a cost of \$133.70. Adam Lapes wrote the team sales order. Lapes bought two of the polo shirts from Timberline Colorado and LATs contracted out the embroidery work. Adam Lapes delivered the jackets and polo shirts to CVHS on August 13, 2004.

(L) On August 13, 2004, Parker ordered three jaw pads at a cost of \$97.20. On August 10, 2004, Parker ordered six helmet pumps at a cost of \$53.94. On August 18, 2004, Parker ordered 18 practice pants and three shoulder pads at a cost of \$311.10. On August 20, 2004, Parker ordered a weighted sideline marker and two end-zone pylons at a cost of \$259. The jaw pads, helmet pumps, practice pants, shoulder pads, sideline marker, and pylons were delivered or picked up from LATs in the same month.

(M) On August 20, 2004, Parker ordered three face masks at a cost of \$93. Lapes wrote the team sales order. LATs delivered the face masks to CVHS on September 15, 2004.

(N) On September 1, 2004, Parker ordered two large, youth football shoulder pads for same-day delivery or pick-up at a cost of \$59.90. Adam Lapes wrote the team sales order and delivered the shoulder pads to Parker.

(O) On September 9, 2004, respondent ordered three four-inch back plates for same day delivery or pick-up at a cost of \$107.85. Adam Lapes wrote the team sales order and delivered the back plates to Parker at CVHS

(P) On September 17, 2004, Parker ordered three six-point chin straps for same-day delivery or pick-up at a cost of \$19.35. Lapes wrote the team sales order and the chin straps were delivered or picked-up on the same day.

(Q) On October 8, 2004, Parker ordered two air horns and 12 power packs, and 500 replacement cleats at a cost of \$190.90. On the same date, Parker ordered an equipment bag at a cost of \$26.35 plus sales tax of \$7. Adam Lapes wrote both team sales order and delivered the cleats to Parker at CVHS on the same day. The cleats were in stock at LATs. The air horns and power packs were not in stock and had to be ordered. LATs delivered the air horns, power packs, and equipment bag to CVHS on October 13, 2004.

(R) On October 20, 2004, Parker ordered 24 pairs of extra-large tube socks for same-day delivery or pick-up at a cost of \$67.20. Adam Lapes wrote the team sales order and delivered the socks to Parker at CVHS on the same day as the order.

(S) On October 14, 2004, Parker ordered two packages of four-inch Elastikon and two packages of two-inch Elastikon for same-day delivery or pick-up at a cost of \$135. Adam Lapes wrote the team sales order and delivered the Elastikon to Parker on the same day as the order.

(T) On November 15, 2004, respondent ordered four silver footballs for immediate pick-up at a cost of \$144. On the same day, respondent ordered an eighth inch, short T-nut at a cost of \$17. Lapes wrote both team sales orders and respondent picked up or had someone else pick up the items from LATS on the same day as the orders.

(U) On December 8, 2004, Parker ordered two navy fleece crew sweatshirts, two navy fleece sweatpants, three polo shirts, six navy Dri-Fit tee-shirts, and a pair of New Balance size 11 shoes for a cost of approximately \$212.25 plus \$16.45 for freight, or a total of \$228.70. Lapes wrote the team sales order. The items were picked up from LATS on December 17, 2004.

41. Each of the team sales orders and purchases made in 2004, as described in Findings 39 and 40 above, were paid by LATS debiting or deducting the amount of the order and invoice from the promotional account that LATS maintained for the CVHS football team. Lapes or the LATS salesperson wrote on each team sales order that the cost of the purchase was to be taken or debited from the promotional account. CVHS or the football team received delivery of the equipment under each order. It was not established that the District paid for any of the orders by the issuance of a District check.

42. On September 16, 2004, LATS' Accounts Receivable Trial Balance showed that LATS credited the promotional account of the CVHS football team with the amounts of \$450 and \$250, respectively. The reason or reasons for these credits or credit memos were not established by the evidence in this matter. It was not established that the \$450 credit memo arose from the return of five football helmets under Invoice No. 45461 because said invoice was dated August 18, 2005. These credits were not demonstrated to have been bribes or kick-backs paid to respondent.

#### Orders for 2005 Football Season

43. (A) For the 2005 football season, and on an undetermined date in or about May 2005, respondent submitted a purchase requisition to the District for the purchase of football equipment for the CVHS football team at a cost of \$8,325. Lapes prepared two team sales orders or quotes for the purchase requisition. The District completed a purchase order and sent the purchase order to LATS. According to the purchase requisition and/or purchase order, respondent planned to take delivery of the football equipment in mid-July 2005 by picking up the equipment at the LATS offices.

(B) On or about August 16, 2005, LATS sent two invoices to the District seeking payment of \$6,605.08 and \$2,365.11, or a total of \$8,970.19, for the football

equipment under the purchase order. After receiving confirmation of the purported delivery of the football equipment, the District paid the sum of \$8,970.19 to LATS for the two invoices. On August 26, 2005, LATS deposited the \$8,970.19 check into its business bank account.

(C) On or about August 17, 2005, LATS credited the promotional account of CVHS with the amounts of \$6,130 and \$2,195, which corresponded to the District's payment of the two invoices totaling \$8,970.19 for its purchase order less the applicable sales tax.

44. For the 2005 spring football practice session and the 2005 fall football season, respondent and Parker ordered football equipment and supplies for the CVHS football team from LATS, as described in Finding 45 below.

45. (A) On May 3, 2005, respondent ordered 12 triple extra-large, grey tee-shirts with "Cougar Football" to be color printed on the tee-shirts at a cost of \$110. LATS contracted out the printing of logo on the tee-shirts. Adam Lapes delivered the tee-shirts to CVHS on May 20, 2005.

(B) On May 27, 2005, Parker ordered two pairs of white New Balance coach's shoes, sizes 10 and 11, for \$120. Lapes wrote the team sales order. On June 13, 2005, Parker picked up two pairs of New Balance shoes from LATS.

(C) On June 1, 2005, Parker ordered 24 thigh pads, 24 hip pads, 36 knee pads, 36 practice pants, 48 girdles, 48 scrimmage vests, 300 mouth pieces for the CVHS football team at a cost of \$1,974. Lapes wrote the team sales order. On July 14, 2005, LATS delivered the ordered items in six boxes and respondent signed for and took delivery of the boxes of items.

(D) On June 1, 2005, Parker also ordered 24 shoulder pads, six black football helmets with face masks, and 12 footballs for shipment in July at a cost of \$3,060. Lapes wrote the team sales order. LATS delivered the items under this order to CVHS in six boxes on July 14, 2005, and respondent signed packing slip.

(E) On June 1, 2005, Parker also ordered 48 gold and 48 black web belts, 60 pairs of white football socks, 24 chin straps, 24 jaw pads, a bag of chin straps, two bags of T-nuts, and one bag of T-hooks for the CVHS football team. The items were to be shipped in July 2004 and cost \$701.15. Lapes wrote the team sales order. LATS delivered the items under this order to CVHS on July 14, 2005, and respondent accepted delivery and signed the packing slip.

(F) On June 1, 2005, Parker also ordered 18 black polo shirts, one black woman's polo shirt, 13 white and black polo shirts, six black pull-over V-neck jackets at a cost of \$1,251.10. The polo shirts were to be embroidered with the logo of the CVHS football team and LATS contracted out the embroidery work. Lapes wrote the team sales order. On July 18, 2005, LATS delivered the polo shirts and jackets to CVHS.



(G) On June 1, 2005, Parker also ordered six pairs of white tube socks for the CVHS football team at a cost of \$18. Lapes wrote the team sales order. Parker picked up the socks on the same day as the order.

(H) On July 18, 2005, respondent ordered two repair or football hardware kits at a cost of \$155.00. Adam Lapes wrote the team sales order. LATS delivered the repair kits to CVHS on or about July 18, 2005.

(I) On July 21, 2005, Parker ordered six practice pants, 36 knee pads, three jaw pad for will call pick-up at a cost of \$421.19. Lapes wrote the team sales order. Parker picked up the items on the same day as the order.

(J) On August 8, 2005, Parker ordered four white, four Navy blue, and four Oxford Dri-Fit tee-shirts at a cost of \$114.60. On August 19, 2005, Parker ordered 12 medium-sized practice pants and six large size practice pants at a cost of \$215.10. In a separate transaction on the same date, Parker ordered three football helmets on a rush basis at the cost of \$345 plus sales tax of \$26.74, or a total of \$371.74. Lapes wrote the team sales orders. LATS delivered the tee-shirts and practice pants to CVHS on August 19, 2005, and the helmets on August 22, 2005.

(K) On September 15, 2005, respondent ordered a kicking and five wrist coaches devices on a rush basis from LATS for \$66.40 plus sales tax of \$5.15. Lapes wrote the team sales order. LATS delivered the items on September 15 and 23, 2005. An undetermined person signed the packing slip and accepted delivery of the items on September 15, 2005. Respondent accepted delivery on September 23, 2005, and signed the packing slip.

(L) On August 22, 2005, Parker ordered one air liner costing \$33 on a rush basis. Lapes wrote the team sales order. LATS delivered the air liner to CVHS on August 23, 2005. An undetermined person at CVHS signed the packing slip.

(M) On September 16, 2005, respondent ordered one white snug tight game jersey with numbers on the front and back of the jersey on a rush basis for \$50. Adam Lapes wrote the team sales order. LATS contracted out the numbering on the jersey. On September 23, 2005, LATS delivered the jersey to CVHS. Respondent accepted delivery of the item and signed the packing slip.

(N) On October 24, 2005, Parker ordered an electric ball inflator costing \$98 plus \$12 freight for the CVHS football team. Lapes wrote the team sales order. LATS agreed to ship the ball inflator to Parker at CVHS.

(O) On November 28, 2005, Parker ordered four pairs of Reebok running shoes and three pairs of Reebok women's running shoes from LATS for \$388. On a separate order on the same date, Parker ordered two pairs of Reebok running shoes for \$120. Adam Lapes wrote the order. Parker picked up the shoes from the LATS offices. It was not

established that Parker ordered these women's running shoes for the CVHS football team. The order and all of the shoes were paid for by LATS debiting the cost of the shoes from the promotional account that it maintained for the CVHS football team.

(P) On December 1, 2005, Parker ordered a pair of New Balance running shoes costing \$69.85 from LATS. Adam Lapes wrote the team sales order. Parker picked up the running shoes from the LATS office.

(Q) On December 20, 2005, Parker ordered six pairs of black socks at a cost of \$23.70 on a will call basis. Lapes wrote the team sales order. Parker picked up the socks on the same day as the order.

46. Each of the team sales orders and purchases that were made by respondent and Parker in 2005 as described in Findings 44 and 45 above, were paid when LATS debited or deducted the amount of the order and invoice from the promotional account that LATS maintained for the CVHS football team. Lapes or another LATS salesperson noted on each team sales order that the cost of the purchase was to be taken or debited from the promotional account. CVHS or the football team received delivery of the equipment under each order. It was not established that the District paid for any of the orders by the issuance of a District check.

47. (A) On May 6, 2005, LATS issued two invoices to the Football Booster Association of CVHS seeking payment of \$5,826.05 for the sale of football equipment and/or apparel to the CVHS football team. On May 21, 2005, the Football Booster Association paid the invoices by providing a check of \$5,826.05 to LATS. On June 1, 2005, LATS deposited the check into its business bank account.

(B) On May 20, 2005, LATS issued two invoices for \$3,412.94 to the Football Booster Association of CVHS for a total payment of \$6,825.88 for football equipment and/or apparel for the CVHS football team. On May 28, 2005, the Football Booster Association paid the invoices by providing a check of \$6,825.88 to LATS. On June 7, 2005, LATS deposited the check into its business bank account.

(C) From July 7, 2005, through August 11, 2005, LATS issued six invoices to the Football Booster Association of CVHS for the payment of \$5,263.59 for the purchase of football equipment and/or apparel for the CVHS football team. On August 22, 2005, the Football Booster Association paid the invoices by providing a check of \$5,263.59 to LATS. On August 25, 2005, LATS deposited the check into its business bank account.

(D) Because LATS supplied football equipment and apparel to the CVHS football team and the LATS invoices were paid for by the Football Booster Association of CVHS, it may be reasonably inferred that LATS's invoices to the Football Booster Association were for the sale and delivery of football equipment and/or apparel to the CVHS football team. However, it was not established what items of football equipment or apparel

were purchased or paid for by the Football Booster Association or that the Football Booster Association paid for spirit wear or apparel for coaches and the high school staff.

48. (A) LATS' Accounts Receivable Trial Balance showed that, on February 28, 2005, LATS credited the promotional account of the CVHS football team with two credit memos of \$320, or a total of \$640, on February 28, 2005. LATS' credits or credit memos contained references to the two invoices which were paid by the Football Booster Association on May 28, 2005, as set forth in Finding 47(B) above.

(B) LATS' Accounts Receivable Trial Balance showed that LATS credited the promotional account of the CVHS football team with three credit memos of \$96, \$280, and \$600, or a total of \$976, on April 25, 2005. LATS's credits or credit memos contained references to two invoices which were paid by the Football Booster Association on May 21, 2005, and August 22, 2005, as set forth in Findings 47(A) and (C) above.

(C) The evidence did not demonstrate the reason or reasons why LATS credited the promotional account of the CVHS football team for the payment of these invoices by the Football Booster Association when, in fact, the Football Booster Association had its own account with LATS. It was not established that these credits to the promotional or 9 account were bribes or kick-backs paid to respondent.

49. (A) On January 12, 2005, respondent ordered a nine-inch Incrediball at a cost of \$35. Adam Lapes wrote the team sales order and the Incrediball was picked up on the same day as the order.

(B) On March 9, 2005, Parker ordered a batting tee and a nine-inch Incrediball from LATS for \$59.00 plus sales tax of \$4.57. Adam Lapes wrote the team sales order and the items were picked up from LATS on March 15, 2005.

(C) It was not established that the items under the orders and purchases described in Findings 49(A) and (B) were for respondent's personal benefit or constituted gifts. These orders were for athletic equipment or supplies and were de minimis purchases in the scale of orders and purchases made for CVHS from 2003 through 2007.

#### Orders for 2006 Football Season

50. (A) For the 2006 football season, and in or about May 2006, respondent submitted a purchase requisition to the District for the purchase of football equipment for the CVHS football team at a cost of \$8,750.38. Lapes prepared two team sales order or quotes which were attached or made a part of the purchase requisition. The District completed a purchase order and sent the purchase order to LATS. Respondent planned to take delivery of the football equipment in mid-July 2006 by picking up the equipment from LATS.

(B) On September 13, 2006, and after receiving confirmation of the purported confirming delivery of the equipment under its purchase order, the District paid LATS for the purchase order and LATS invoice by issuing a check of \$8,750.38 to the vendor. On September 18, 2006, LATS deposited the \$8,750.38 check into its business bank account.

(C) On or about August 6, 2006, LATS credited the promotional account that LATS maintained for the CVHS football team with the amounts of \$5,016 and \$3,105, which corresponded to the District's payment of the two invoices totaling \$8,750.38 less the applicable sales tax.

51. For the 2006 spring football practice session and the 2006 fall football season, respondent and Parker ordered football equipment and supplies for the CVHS football team from LATS, as described in Finding 52 below.

52. (A) On April 5, 2006, Parker ordered 20 football helmets, 20 face masks, and 21 shoulder pads for delivery by July 2006. The cost of the order was \$4,824.50. The team sales order was written by Lapes who also noted on the order that the cost of the order should be deducted from the promotional account of the CVHS football team. On or about July 2, 2006, the order was filled and Parker picked up the items from the LATS office and signed the shipping or packing invoice.

(B) On April 5, 2006, Parker ordered 48 practice pants, 36 knee pads, 36 thigh pads, 36 hip pads, six chin straps, 48 jaw pads, and 12 game footballs for the CVHS football team from LATS. The cost of the order was \$2,387.40. Lapes wrote the team sales order. On July 12, 2006, Parker picked up the items under this order from the LATS office. Parker signed the shipping or packing invoice, acknowledging his receipt of the merchandise.

(C) On April 5, 2006, Parker ordered a down marker and a football chain set at a cost of \$391 for delivery in July. Lapes wrote the team sales order. On July 12, 2006, Parker picked up the down marker and chain from the LATS office and signed an invoice acknowledging receipt of three boxes.

(D) On August 21, 2006, respondent ordered two women's polo shirts with the CVHS football logo to be embroidered in the left chest area at a cost of \$74. Lapes wrote the team sales order which was a rush order. Adam Lapes had another company perform the embroidery. On September 6, 2006, the order was ready and Parker picked up the order of two women's polo shirts from LATS office.

(E) On November 29, 2006, Parker ordered Reebok women's running shoes, Reebok men's walking shoes, two pairs of Reebok men's running shoe, Mizuno training shoes, and a black jacket at a cost of \$379.70. Adam Lapes wrote the team sales order which was a rush and will call order. Parker picked up this order for five pairs of shoes and a jacket from the LATS office.

53. Each of the team sales orders and purchases that were made by respondent and Parker in 2006, as described in Findings 51 and 52 above, were paid by LATS debiting or deducting the amount of the order and invoice from the promotional account that LATS maintained for the CVHS football team. Lapes or another LATS salesperson noted on the team sales order that the cost of the purchase was to be taken or debited from the promotional account. CVHS or the football team received delivery of the equipment under each of these orders. It was not established that the District paid for any of these orders by the issuance of a District check.

54. On an undetermined date prior to June 5, 2006, LATS issued four invoices to the Football Booster Association of CVHS for payment of \$14,538.60 for the purported purchase of football equipment and apparel for the CVHS football team. On June 5, 2006, the Football Booster Association gave a check of \$14,538.60 to LATS in payment of the four invoices. On June 17, 2006, LATS deposited the check into its business bank account and credited the account of the Football Booster Association. It may be inferred that football equipment and/or apparel was purchased or paid for by the Football Booster Association. It was not established that the Football Booster Association paid for spirit wear or apparel for coaches and staff or how the purchase was related to the District's purchase orders of the District or the purchases by respondent and Parker.

55. (A) LATS' Accounts Receivable Trial Balance showed that LATS credited the promotional account of the CVHS football team with \$600 on March 14, 2006. The credit memo contained a reference to an invoice was paid by the Football Booster Association on June 5, 2006, as set forth in Finding 54 above.

(B) The evidence did not demonstrate the reason or reasons why LATS credited the promotional account of the CVHS football team for the payment of this invoice by the Football Booster Association. It was not established that this credit or credit memo to the promotional account was a bribe or kick-back paid to respondent.

#### Orders for 2007 Football Season

56. (A) For the 2007 football season, and on June 11, 2007, respondent prepared or caused the preparation of a purchase requisition for football equipment for the CVHS football team in the amount of \$8,043.54. He obtained two quotes for the sale or purchase of football equipment, Invoice Nos. 55991 and 55992, from Lapes which indicated that the equipment would be shipped in July 2007.

(B) Under quote of Invoice No. 55991, Lapes offered to sell and deliver to the CVHS football team 15 helmets and face masks, 20 shoulder pads to be fitted by vendor, 20 six-inch injury shoulder pads, 20 hip pads, 40 knee pads, and 40 extra-large thigh pads at a cost of \$2,267.74, including sales tax. Under the quote of Invoice No. 55992, Lapes offered to sell 18 medium shoulder pads for \$775.80, including sales tax.

(C) Respondent attached the quotes to the purchase requisition form and forwarded the form to the school secretary Lynn Church-Bell. Respondent indicated he would pick up the football equipment that was to be purchased. Church-Bell typed the purchase requisition and gave it to Principal Ressler who approved and signed the purchase requisition. Church-Bell then forwarded the purchase requisition to the District business office.

(D) On or about July 2, 2007, the District determined there were sufficient funds for the purchase of the \$8,043.54 of football equipment and prepared Purchase Order No. 270431 which was then signed and authorized by business office personnel. The purchase order indicated that respondent submitted the purchase requisition, the purchase was for football equipment for CVHS for the 2007 season, and the equipment was to be delivered by August 1, 2007. The District business office sent the purchase order to LATS. Subsequently, LATS sent two invoices to the District, requesting payment of \$8,043.54 for purportedly filling the purchase order.

(E) On August 15, 2007, the District's accounts payable office asked Church-Bell whether the items ordered under Purchase Order No. 270431 from LATS had been received at CVHS and whether the District should pay the two invoices totaling \$8,043.5 that had been submitted by LATS. Church-Bell replied that the items had been received and that it was "OK" to pay the invoices. On August 21, 2007, the District issued the check in the amount of \$8,043.54 to LATS. On or about August 24, 2007, LATS received the check and deposited the check into its business bank account.

(F) On or about August 24, 2007, after depositing the District's check, LATS credited the promotional account of the CVHS football team with the amounts of \$6,745 and \$720, which corresponded to the District's payment of the two invoices totaling \$8,750.38 less the applicable sales tax.

57. For the 2007 spring football session and the 2007 fall football season, respondent ordered football equipment and supplies for the CVHS football team from LATS, as described in Finding 58 below.

58. (A) On April 1, 2007, respondent ordered 72 practice pants, 100 pairs of football socks, 24 footballs, 36 small hip pads, 36 small knee pads, 36 youth thigh pads, and three equipment bags. The cost of these items was \$3,397.40 and it was requested that the items be delivered in July 2007. Lapes wrote the team sales order. LATS delivered eight boxes for this order to CVHS on July 16, 2007, and another portion of the order was picked up from the LATS office. Parker accepted and signed for the delivery of the equipment on July 16, 2007.

(B) On April 1, 2007, respondent ordered 48 scrimmage vests, 48 web belts, 300 mouth pieces, 48 chin straps, two hardware kits, 100 chin strap buckles from LATS for delivery in July 2007. The cost of the order was \$1,322.60. Lapes wrote the team sales

order. On July 16, 2007, LATS filled and delivered the order to CVHS where Parker signed the packing slip.

(C) On April 1, 2007, respondent also ordered 17 shoulder pads for delivery in July and at a cost of \$1,564. Lapes wrote the team sales order. LATS delivered the shoulder pads to CVHS on July 16, 2007. Parker signed the packing slip at the time of delivery.

(D) On April 19, 2007, Lapes sold six pairs of black socks to the CVHS football team at a cost of \$23.70. Lapes received the order and wrote the team sales order but it was not established who ordered the socks. The socks were picked up from LATS on the same day that the order was placed with the Lapes.

(E) On May 1, 2007, respondent ordered 12 football helmets with face masks for delivery in July and at a cost of \$2,208. Lapes wrote the team sales order. On July 16, 2007, LATS delivered the helmets in three boxes to CVHS. Parker accepted delivery of the items and signed the packing slip.

(F) On June 18, 2007, respondent ordered one medium-sized youth shoulder pads and one youth back plate at a cost of \$42 plus \$10 for freight. Lapes wrote the team sales order. The items were picked up from LATS on the same day that the order was placed.

(G) On June 22, 2007, respondent ordered one youth football helmet with a face mask on a rush basis and at cost of \$174 plus \$10 for freight. Lapes wrote the team sales order. LATS delivered the helmet and face mask to CVHS on July 16, 2007. Parker accepted the delivery of the helmet.

(H) On July 17, 2007, respondent ordered one football helmet for \$165. He requested that the helmet be delivered "at once." Lapes wrote the team sales order. On August 9, 2007, LATS delivered the helmet to CVHS where respondent accepted the delivery and signed the packing slip.

(I) On September 14, 2007, an undetermined person ordered one football for the CVHS football team from LATS at a cost of \$55. Adam Lapes wrote the team sales order. The football was picked up from LATS on the same day as the order.

(J) On November 2, 2007, respondent ordered three women's polo shirts with the football logo of the CVHS football team to be embroidered on the shirts on a rush basis. The cost of the shirts was \$108. Lapes wrote the team sales order. LATS contracted out the embroidery work. On November 7, 2007, LATS delivered the polo shirts to CVHS. Respondent accepted the delivery and signed the packing slip.

59. Each of the team sales orders and purchases of football equipment and apparel for the CVHS football team in 2007, as described in Findings 57 and 58 above, were paid for when LATS debited or deducted the amount of the order and invoice from the promotional

account that LATS maintained for the CVHS football team. The CVHS or its football team received delivery of the items under each order. It was not established that the District paid for any of the orders by the issuance of a District check.

60. (A) On March 13, 2007, Parker ordered two pairs of Reebok women's running shoes for \$158 plus \$10.61 for freight. On March 20, 2007, Parker ordered two pairs of Reebok running shoes at a cost of \$110 plus \$10.61 for freight. Adam Lapes wrote both team sales order which were rush orders. In March 2007, LATS shipped the shoes to Parker at his home address in Lake Elsinore.

(B) On December 11, 2007, Parker ordered two pairs of New Balance shoes, six pairs of black socks, and two loose-fitting performance tee-shirts at a cost of \$133.50 and on a will call basis. Lapes wrote the team sales order and the items were picked up from LATS on the same day.

(C) On January 22, 2008, Parker ordered a baseball glove from LATS. The baseball glove cost \$30. Lapes wrote the team sales order. The baseball glove was picked up LATS on the same day as the order.

(D) It was not established that the orders and purchases made by Parker in March and December 2007 and January 2008, as described in Findings 60 (A) – (C) above, were for football equipment for the CVHS football team. The shoes that Parker ordered in March 2007 were shipped to his home. Parker admitted that he ordered shoes for his wife; his testimony that he paid cash for the shoes was not credible. The shoes and apparel ordered in December 2007 occurred after the football season. The baseball glove ordered in January 2008 did not constitute equipment for football. Therefore, the weight of the evidence demonstrated that these orders and purchases by Parker by use or debiting of the promotional account were for his own or his family's personal use. It was not established that respondent knew or approved of these purchases of shoes and apparel by Parker for his personal benefit.

61. (A) LATS' Accounts Receivable Trial Balance showed that, on March 23, 2007, LATS credited the promotional account of the CVHS football team with two credit memos of \$609 and \$100. The LATS' credits or credit memos contained references to two undetermined invoices. According to the "Slush Account Activity" summary prepared by Teresa Sando, these two invoices were purportedly issued to and paid by the Football Booster Association.

(B) LATS' Accounts Receivable Trial Balance showed that, on March 12, 2008, LATS credited the promotional account of the CVHS football team with a credit memo of \$700. The credit memo contained a reference to an undetermined invoice. According to the "Slush Account Activity" summary prepared by Teresa Sando, the invoice was purportedly for an "open order" for which LATS did not receive payment.

(C) The evidence did not demonstrate the reason or reasons why LATS credited the promotional account of the CVHS football team for the payment or nonpayment



of these invoices. These credits to the CVHS football promotional account were not shown to have been bribes or kick-backs paid to respondent.

#### Other Evidence

62. (A) Prior to his suspension from employment with the District in October 2013, respondent was a social studies teacher and the head football coach at CVHS for several years. He taught social studies at CVHS for approximately nine school years from the fall of 2003 through October 2013. He was the head football coach for seven seasons from March 2003 through December 2009. He was co-athletic director for three years from 2005 to 2008.

(B) Respondent went with Parker on his last annual visit to LATS to view football equipment in or about February 2007. Six months later, Parker told respondent that LATS was going out of business. For the 2008 football season, respondent obtained quotes to buy football equipment from the athletic supply company started by Lapes' two sons, Chad and Adam Lapes, which was called "C and A Athletics."

(C) On December 19, 2009, after the football team's season-ending banquet, respondent resigned his position as head football coach of CVHS. Respondent testified that he resigned because he no longer had the energy necessary to fulfill the responsibilities of the position and wanted to spend more time with his children. Respondent also admitted that, in the spring of 2009, he was asked by an attorney representing Teresa Sando to pay for LATS invoices that had not been paid. He then spoke to the principal and athletic director about the invoices.

63. (A) As established, in part, by the testimony of Co-Athletic Director Airey, the purchasing of football equipment for the CVHS football team was not subject to a competitive bid process. When respondent became the head football coach at CVHS in March 2003, CVHS and its athletic department did not have a manual that advised coaches how to operate a sports team or program, interact and raise funds with booster clubs, or deal with or purchase equipment from vendors. Respondent was not required to undergo any training about purchasing sports equipment or relating to vendors.

(B) Before the start of each sports season, Co-Athletic Director Airey met with the coaches at CVHS and, using a checklist, he told the coaches about the paperwork requirements, the necessity that student-athletes maintain their grades, fundraising with booster clubs, and the rules of the California Interscholastic Federation. With respect to the purchasing of equipment, Airey instructed coaches, including respondent, that purchase requisitions had to be approved before sports equipment could be ordered for their teams. After respondent became the head football coach, Airey advised respondent to get a quote from LATS or any other supplier. Airey did not expect respondent to get the best price for the football equipment and did not believe it was improper for respondent to contact vendors directly.

(C) Airey corroborated that teachers and administrators received complimentary polo shirts from the football and basketball programs that the staff wore to school on game days and at the games. He did not know whether District funds were used to purchase polo shirts for coaches but assumed that the polo shirts were paid by the fund-raising activities of the football booster club and school spirit packs. It was not established that respondent was ever questioned about how he paid for the polo shirts for the high school staff. Both the athletic director and principal were aware that spirit packs were purchased by the students.

64. (A) Phillipa Geiger, Executive Director of the District's Fiscal Services Department, was not aware of any instance where the District ever issued any check to a vendor in payment of an invoice before the District had verified that the items had been received under the purchase order. The District required verification of the delivery of items before issuing a check to a vendor. Verification was made by the transmittal of a packing slip from the vendor, receipt of a copy of the purchase order from the requisitioning employee that items had been received, or an email from the school site stating items had been delivered. Geiger was not aware of the District having paid for athletic equipment or merchandise that had not been delivered or received at a school site.

(B) Principal Ressler could not recall any instance when respondent complained to him that supplies or merchandise ordered from LATS was not received. Ressler did not know of any instance of LATS paying cash or benefits to respondent.

(C) As further established by the testimony and report of Orange County Sheriff's investigator, Superintendent Farley conceded that the District did not advise the coaches of the policies and procedures pertaining to the purchasing of equipment and the accounts that provided the funds for the purchases. The Superintendent indicated in a meeting with the Sheriff's investigator that the matter was an ethical one and the coaches should have known better. The District has changed its procedure for confirming delivery of athletic equipment to its high schools. The District now requires that delivery be confirmed by two employees.

65. Parker's testified he did not know about promotional account number "9CAPI01" or how orders for football equipment were paid for but he admitted that he heard about promotional or slush accounts at LATS over the years and knew of the existence of the promotional account for the CVHS football team. Parker did place orders with LATS to buy football equipment while he was the equipment manager during respondent's tenure as head football coach and beforehand during the service of the preceding head football coaches. He testified credibly that the purchasing of football equipment at CVHS did not change over the years or when respondent was hired as the football coach. He ordered polo shirts for coaches and administrators, including women, after consulting respondent. From 2003 through 2006, Parker received and accepted delivery of orders of football equipment at CVHS by LATS signing packing slips and did not return any equipment to LATS, except for five helmets in August 2005 that Lapes wanted to ship to another high school in Riverside County. Parker's

statements to the District's investigator proved more probative in this matter than his testimony.

### Respondent's Testimony

66. (A) Respondent admitted that, after he was hired as the head football coach, he was told, and became aware, that the District would pay only for safety equipment, such as helmets and pads, for the CVHS football team. He reasonably believed, however, that the District would also pay for equipment necessary to play football, such as football jerseys and pants which were worn over the pads, hardware for the helmets, tape, and cleats. Respondent admitted that he did not believe that the monies allocated by the District to the CVHS football team, which was approximately \$7,000 to \$10,000 per year, were sufficient to purchase safety equipment, equip and clothe the players, and operate the football program.

(B) Respondent testified credibly that he did not accept cash or gifts from LATS as incentives to order football equipment from that vendor and did not accept equipment or merchandise from LATS for his family. His testimony that he did not prepare "dummy invoices," and did not have control over the promotional account was believable inasmuch as there was no proof of these allegations

(C) On the other hand, with respect to the allegations of the Amended Accusation, respondent testified he was not aware of any slush fund or account but conceded that Parker mentioned to him about the past use of the slush account. Respondent testified that he was not interested in being involved with or using the slush or promotional account, which he thought was a form of fund-raising. Respondent further claimed that he did not order football equipment from LATS and could not recall any instance when he placed an order. He asserted that Parker was the one who ordered the football equipment and supplies for the CVHS football team and accepted the deliveries or picked up the orders. Respondent admitted he did sign for deliveries of equipment to the high school but indicated he did not think he was responsible for buying football equipment. He testified he was unaware of any equipment not being delivered to the high school because no one complained to him about it and he did not conduct any follow-up to check and see if LATS was paid. Respondent further claimed that the Football Booster Association paid for spirit packs, non-safety football equipment, and apparel for coaches and staff. Respondent's claims outlined in this sub-paragraph were not supported by the evidence and were not credible.

67. (A) There was no direct evidence that LATS failed to deliver the football equipment that the District ordered each year by the issuances of its purchase orders to the vendor. No District employee ever complained that equipment was not received. There was, however, clear evidence in LATS business records and documents of the existence of the promotional account for the CVHS football team. LATS records also showed that respondent and Parker ordered football equipment and supplies directly from the vendor and that the equipment ordered by them was picked up or delivered to the high school. The evidence further documented that LATS maintained and used the promotional account to pay

for or to cover the cost of these direct orders made by respondent and Parker. There was also an absence in the District records of any payment for these direct orders by respondent and Parker throughout each year.

(B) Based on the evidence of the credit memos placed by LATs in the promotional account after the District received confirmation of the purported delivery of football equipment and paid the LATs invoices; the orders for football equipment, supplies, and apparel that respondent and Parker made directly to LATs; the delivery of equipment from these direct orders to Parker or the high school; and the payment for these direct orders by the debiting of the promotional account, it can be reasonably inferred from this evidence that LATs did not fill the District's purchase orders at any time from 2003 through 2007 by delivering football equipment before each football season. Respondent and Parker surely would not have had to place orders for football equipment and supplies with LATs every year and there would have been no reason to debit the promotional account to pay for football equipment if, in fact, the District's purchase orders for football equipment had been filled by LATs each football season. The direct orders for equipment by respondent and Parker and the use of the promotional account to pay for the direct orders have a tendency in reason to show that no deliveries were made by LATs on the District's purchase orders.

(C) Moreover, the conclusion that LATs did not deliver football equipment before each football season pursuant to respondent's purchase requisitions and the District's purchase orders coupled with the evidence of respondent's and Parker's direct orders for football equipment, supplies, and apparel which were, in fact, delivered to the high school, leads to the further inference that the purchase requisitions, which were accompanied by the LATs quotes and submitted to the District, in part, by respondent for 2004 and by respondent for the years 2005 through 2007, were false or fraudulent statements. Respondent knew or should have known that LATs would not be delivering football equipment as set forth in the purchase requisitions and attached LATs quotes. When he submitted the purchase requisitions to the District and caused the District to issue purchase orders to the vendor, respondent knew or should have known that he was not requisitioning for football equipment. He did not expect LATs to deliver the football equipment under the purchase requisitions; rather, he expected the District to issue and pay the purchase orders so that credit would be accrued with LATs that could be used to purchase football equipment for his high school football at a later and more convenient time.

(D) It was not established that respondent made any false statements or representations regarding whether football equipment was delivered to the high school pursuant to the District's purchase orders. In 2007, the only year that there is direct evidence of a purchase requisition and a purchase order, the District's accounts payable office had to contact school secretary Church-Bell by email to check if delivery was made to CVHS on the purchase order. Church-Bell testified that, before sending the e-mail to the District's accounts payable office that it was OK to pay LATs' invoices, she would have received a document, such as packing slip or invoice, from the requisitioning employee verifying that CVHS had received shipment or delivery of items ordered under a purchase order. However, Church-Bell did not specifically name any person who verified the delivery and the evidence

did not demonstrate that respondent made any false statements to the school secretary or to the District about LATS' purported delivery of football equipment under the District's purchase orders.

#### Alleged Stolen Funds

68. (A) It was not established that, from May 2003 through March 2008, respondent stole, or conspired with Lapes or his company LATS or any other person, to steal District funds in the total amount of \$42,260.90 or any other amount. No direct evidence was presented showing respondent stole District funds. Nor was there any evidence of an agreement or plan between respondent and Lapes to steal funds from the District or to commit a crime or illegal act through the use of the LATS promotional account for the CVHS football team.

(B) Table 1 of the Amended Accusation summarized the credits or credit memos provided by LATS to the CVHS football team's promotional account for payments made by the District on invoices or purchase orders for football equipment and supplies for each football season from March 2003 through August 2007. It was not established that these credits or credit memos were allocated to a "special account" for respondent. Rather, the evidence demonstrated that these amounts were credited to the promotional account for the CVHS football team after the District paid LATS' invoices. Respondent then used the credits in the promotional account to order football equipment that was needed for the CVHS football team. For most of these years in question, equipment manager Parker assisted respondent by ordering or placing orders for football equipment with Lapes or LATS' other salespersons and by taking delivery of the football equipment either at the high school or at LATS' offices. Payments for these orders were made by LATS debiting the promotional account.

(C) As described above, Lapes began using the promotional accounts for the customers of his athletic supply company beginning in or about 1991 and had promotional accounts for a number of high schools. The evidence specifically showed that LATS credited and debited sums to and from the promotional account for the purchase of football equipment for CVHS football team in the years before respondent was hired as the head football coach. When respondent became the head football coach in March 2003, the LATS promotional account for the CVHS football team had a balance of \$1,870.41. In May 2003, the balance had increased to \$3,065.61. In other words, LATS had already in place and had been using the promotional account for the CVHS football team for several years prior to respondent being hired as the head football coach. Respondent did not enter into any agreement with Lapes or LATS to open or to start the promotional account.

(D) Further, it is difficult to conclude that respondent and Lapes conspired to steal District funds beginning in 2003 when no evidence was presented of any agreement or, conversely, of any amount of ill-gotten gains that Lapes and his company LATS made under any alleged agreement. The evidence did not show that LATS made money but, in fact, lost

money and went out of business. The argument that Lapes entered into any agreement with respondent to steal District funds was not reasonable in light of the fact that Lapes had the same promotional accounts for many high schools as well as colleges and no evidence was presented that Lapes stole money from any other high school or college. As set forth in Findings 11 – 14 above, Lapes started using the promotional accounts to facilitate the sale of athletic and football equipment to schools and athletic programs and not to steal money from the District, CVHS, or any other high school in the District.

(E) It was not established that respondent had any dominion or control over the promotional account in which LATS placed the District funds. It was not established that respondent knew or was made aware by Lapes or other LATS personnel of the credits, debits, or balance in the promotional account. The promotional account was wholly in the control and maintained by LATS as part of its business operations.

69. (A) The evidence of respondent's orders and purchases from LATS for the CVHS football team during his tenure as head football coach demonstrated that respondent did not steal any District monies.

(B) For the 2003 football season, Co-Athletic Director Airey and Parker submitted the purchase requisition. The District paid the sum of \$10,186.80 to LATS. LATS credited the promotional account of the CVHS football team with \$9,094, which was the amount of the District's payments less the applicable sales tax. In 2003, without including orders for apparel for coaches and staff, respondent and Parker ordered football equipment and supplies from LATS that amounted to approximately \$5,534.49. The cost of these purchases was deducted from the promotional account. Orders for apparel for coaches and staff in 2003 were approximately \$3,660.11. As such, respondent's purchases of football equipment and apparel for coaches and staff in 2003 totaled approximately \$9,194.60. While this amount was less than the District's payment, it was not shown that any difference between the District's payment and respondent's orders from LATS was given to or stolen by respondent, inured to respondent's personal benefit, or constituted stolen monies.

(C) For the 2004 football season, Co-Athletic Director Airey and respondent submitted the purchase requisition for \$9,226.90. The District paid \$9,941.98 to LATS. After the District's payment, LATS then credited the promotional account of the CVHS football team with \$9,255.90. In 2004, without including orders for apparel for coaches and staff, respondent and Parker ordered football equipment and supplies from LATS that amounted to approximately \$9,784.18. Orders for apparel for coaches and staff were approximately \$1,026.70. As such, respondent's purchases of football equipment and apparel for coaches in 2004 totaled approximately \$10,810.88, which exceeded the District's payment.

(D) For the 2005 football season, respondent submitted the purchase requisition to the District for \$8,325. The District paid \$8,970.19 to LATS. LATS then credited the promotional account of the CVHS football team with \$8,325. In 2005, without including orders for apparel for coaches and staff and for non-football equipment, respondent

and Parker ordered football equipment and supplies that totaled approximately \$7,162.73. Apparel and shoes for coaches and staff amounted to approximately \$2,173.55. As such, respondent's purchases of football equipment and apparel for coaches in 2005 totaled approximately \$9,336.28, which exceeded the District's payment to LATS.

(E) For the 2006 football season, respondent submitted the purchase requisition to the District for \$8,750.38. The District paid \$8,750.38 to LATS on its invoices. LATS credited the promotional account for the CVHS football team with \$8,121. In 2006, without including orders for apparel for coaches and staff and non-football equipment, respondent and Parker ordered football equipment and supplies that totaled approximately \$7,602.90. Orders for apparel for coaches and staff amounted to approximately \$453.70. As such, respondent's purchases of football equipment and apparel for coaches and staff in 2006 totaled approximately \$8,056.60 for 2006. While this amount was less than the District's payment, it was not shown that any difference in amount between the District's payment and respondent's orders from LATS was given to or stolen by respondent, inured to respondent's personal benefit, or constituted stolen monies.

(F) For the 2007 football season, respondent submitted the purchase requisition to the District for \$8,043.54.<sup>3</sup> The District paid \$8,043.54 to LATS on its invoices. LATS credited the promotional account of the CVHS football team with \$7,465. In 2007, excluding orders for apparel for coaches and staff and for non-football equipment, respondent ordered football equipment and supplies totaling approximately \$8,971.17, which was in excess of the District's payment. Orders for apparel and shoes for coaches and staff amounted to approximately \$530.72. As such, respondent's purchases of football equipment and apparel for coaches and staff totaled approximately \$9,447.89 in 2007, which exceeded the District's payment to LATS.

(G) Because respondent's expenditures for the CVHS football team largely equaled or exceeded the District's payment to LATS for each year and there was no proof of stolen funds, it cannot be concluded that respondent stole any funds from the District. Respondent used the funds to purchase football equipment and apparel for the student-athletes and the coaches and staff at CVHS.

70. Moreover, a review of the LATS quotes (Invoice Nos. 55991 and 55992) attached to the purchase requisition for football equipment for the 2007 season and the orders and purchases made for the CVHS football during 2007 showed that what respondent ordered and obtained delivery in football equipment in 2007 was substantially similar to the quotes and purchase requisition. For example, the quotes included the sale of 15 helmets and facemasks. In May, June, and July 2007, respondent ordered 14 helmets and facemasks. The quotes offered to sell 20 shoulder pads, 20 hip pads, 40 knee pads, and 40 thigh pads to the CVHS football team. In April 2007, respondent ordered and received 36 hip pads, 36

---

<sup>3</sup> Complainant presented the actual quotes, purchase requisition, and purchase order for only the 2007 football season. The District did not maintain or keep those records or documents for the preceding years.

knee pads, and 36 thigh pads. In April 2007, respondent also ordered and received 17 shoulder pads. In June 2007, respondent ordered another set of shoulder pads. For 2007, the evidence of the orders had a tendency in reason to demonstrate that respondent ordered and received football equipment that was similar to the football equipment ordered or described in the District's purchase order, respondent's purchase requisition, and the LATS quote.

#### Alleged Personal Purchases

71. (A) It was not established that, from May 2003 through March 2008, respondent accessed or used stolen funds placed or paid to the promotional account of the CVHS football team to order or purchase merchandise of a personal nature from LATS for himself, his family, or his associates. As set forth in Findings 68 – 70 above, respondent did not steal District funds and did not access or use stolen District funds. LATS placed the District funds in the promotional account for the CVHS football team, less the sales tax, and debited the account when respondent ordered football equipment for the CVHS football team. Funds of the District paid to LATS for football equipment were not stolen but kept in the promotional account for the CVHS football team and debited to pay for football equipment ordered by respondent.

(B) It was not established that respondent used the promotional account maintained by LATS for the CVHS football team to purchase personal items for himself or for his family. A review of the orders did not demonstrate that respondent purchased personal items which were paid for by the promotional account that contained District funds.

72. (A) The items described in Table 2 of the Amended Accusation, as having been ordered in 2003, were not personal items or merchandise purchased for respondent's personal benefit. From May 12, 2003, through November 17, 2003, Parker ordered and purchased athletic apparel or clothing from LATS for the CVHS football coaches for the 2003 fall football season, including coaches' shorts and Oxford tee-shirts, polo shirts, jackets, baseball hats, and socks. Except for the socks, the athletic apparel was embroidered with the CVHS football logo or insignia. Parker ordered these items with respondent's consent and under his direction. These items did not constitute merchandise of a personal nature for respondent or his family and associates but rather athletic apparel and clothing for the coaches or staff of the CVHS football teams.

(B) It was not established that the heavy duty knee brace purchased from LATS on November 17, 2003, was a personal item for respondent or his family and associates. A heavy-duty knee brace was likely bought for use by a high school student-athlete to help him to play football. The purchase occurred during the football season.

73. It was not established that the items described in Table 2 of the Amended Accusation, as having been ordered in 2004, were personal items or merchandise purchased for respondent's personal benefit. The athletic tape, Elastikon, skin lubricant, elastic wraps and bandages, and sport drink purchased on January 7, 2004, could reasonably have been



acquired to replenish the athletic supplies at CVHS after the football season or to be used by the football staff and football players for purposes of rehabilitation and training. The polo shirts and pull-over jackets embroidered with the CVHS football logo were likely athletic apparel or clothing for the football coaches and/or high school staff. The two large, youth shoulder pads ordered on September 1, 2004, could reasonably have been used by younger CVHS student-athletes on the freshman football team. The 24 pairs of socks ordered on October 20, 2004, were delivered to CVHS and could reasonably have been for the use by the players on the football teams. No evidence was presented to show that the eight youth-sized sleeveless tee-shirts costing \$40 and ordered by Parker on February 5, 2004, or the sweatshirts, sweatpants, polo shirts, tee-shirts, and shoes costing \$228.70 and ordered by Parker on December 8, 2004, were for purposes other than for the CVHS football team or football coaches.

74. (A) It was not established that all of the items described in Table 2 of the Amended Accusation, as having been ordered from LATs in 2005, were personal items or merchandise purchased for respondent's personal benefit.

(B) The tee-shirts, which were ordered on May 25, 2005, and cost \$110, were likely athletic apparel for the CVHS football team. The tee-shirts were extra-large in size and had "Cougar Football" printed on them. The shoes costing \$120; the six pairs of socks costing \$18; the 31 polo shirts, six jackets, and the one woman's polo shirt costing \$1,251; and the 12 extra-large tee-shirts costing \$114.60, which were purchased in May, June, and August 2005, respectively, were not shown to be other than pre-season purchases of apparel for football coaches and a female staff member.

(C) On the other hand, respondent's order of an Incrediball in January 2005 for \$35 and Parker's order of a batting tee and an Incrediball in March 2005 for \$63.37 were not purchases for the CVHS football team or staff. Parker's November 28, 2005 orders of four pairs of men's running shoes and three pairs of women's running shoes costing \$388 and two pairs of running shoes for \$120 were not purchases for the CVHS football team. In addition, Parker's orders in December 2005 of a pair of running shoes for \$69.85 and socks for \$23.70 were not purchases of football equipment for the CVHS football team. However, none of these items were shown to have been purchases by or for respondent for his personal benefit. The Incrediballs and batting tee could reasonably have been orders for other CVHS athletic teams. Parker picked up the shoes and socks described in this paragraph from LATs himself and it was not shown that respondent was aware of Parker's orders.

75. It was not established that the items described in Table 2 of the Amended Accusation, as having been ordered from LATs in 2006, were personal items or merchandise purchased for respondent's personal benefit. On August 21, 2006, respondent ordered two women's polo shirts costing \$74. The polo shirts were embroidered with the CVHS football logo. This purchase was not shown to be other than a purchase of polo shirts for female staff members at CVHS. It was not shown that respondent bought these items for his own benefit.

76. (A) It was not established that all of the items described in Table 2 of the Amended Accusation, as having been ordered from LATS in 2007, were personal items or merchandise purchased for respondent's personal benefit.

(B) The socks costing \$23.70 and ordered in April 2007, the youth medium sized shoulder pads costing \$52 and ordered in June 2007, and the youth football helmet with face mask costing \$184 and ordered in June 2007, were not shown to be purchases for respondent's personal benefit. These items could reasonably have been used by the CVHS football team. The women's polo shirts costing \$108 and ordered by respondent in November 2007 were likely purchases of apparel for CVHS staff. The shirts were embroidered with the CVHS football logo.

(C) On the other hand, Parker's orders of women's and men's running shoes for \$168.61 and two pairs of running shoes for \$120.61 in March 2007; order of two pairs of shoes, socks, and tee-shirts for \$133.50 in December 2007; and order for baseball glove for \$30 in January 2008, were not purchases for the CVHS football team. These purchases were for Parker's, and not respondent's, personal benefit. The shoes ordered in March 2007 were delivered to Parker's home. The other items were picked up by Parker from LATS. All of these items were ordered at a time when Parker was no longer the equipment manager for CVHS. It was not established that respondent knew of or approved of these purchases by Parker in 2007. As such, the evidence suggested that Parker made these orders or purchases for his own benefit.

77. On May 19, 2003, respondent filed a Fictitious Business Statement with the Orange County Clerk-Recorder that he was going to start a business under the name, "Black and Gold Football." Black and Gold Football was the name of respondent's summer football camp business that CVHS and the District allowed him to operate on the high school campus. It was not established that, from May 2003 through May 2008 or on any other dates, respondent purchased football equipment for his summer camp business by debiting purchases from the promotional account maintained by LATS for the CVHS football team and funded by the District monies for his business. Scant evidence was presented on the nature and breadth of respondent's summer football camp business, including whether he needed football equipment for his summer camp.

#### Alleged Bribes

78. (A) It was not established that, from May 2003 through March 2008, respondent accepted bribes or kick-backs from LATS on multiple occasions or accepted payments from LATS to influence his purchasing decisions or his choice of vendors or to influence him to ignore the District's purchasing policies. Nor was it established that LATS provided respondent with bribe money, gifts, or other things of value so that he would purchase football equipment and sporting goods for his football team exclusively from LATS and not require LATS to submit competitive bids or quotes for its sales to the District. It was not established LATS gave bribes to anyone. LATS had been an authorized vendor of the

District and a preferred vendor of football equipment for the CVHS football team for several years before respondent was hired as the CVHS football coach. At no time relevant herein was the purchase of football equipment subject to a competitive bidding process under the Board's policies. The District's investigator admitted that there was no evidence that respondent accepted any cash or checks.

(B) It was not established that LATS gave \$5,825 of bribe money to respondent by placing said amounts into his "special account." Nor was it established that respondent used bribe money put into his special account by LATS to satisfy his "personal obligations," to purchase personal clothing for himself and his associates, or to purchase items for his benefit and the benefit of his family and associates. The promotional account was not respondent's special or personal account but an account maintained by LATS for the CVHS football team that had been started by Lapes as a promotional or business tool when he first began doing business as a vendor in or about 1991. The money placed into the promotional account by LATS did not constitute bribe money but was District funds to be used to purchase football equipment for the CVHS football team. As summarized in Findings 68 – 77 above, respondent did not purchase personal items from LATS by use of the promotional account; he bought football equipment for the CVHS football team and apparel for coaches and staff.

(C) Based on Findings 78(A) – (B) above, it was not established that LATS' credits or credit memos to the promotional account maintained for the CVHS football team totaling \$5,825, as referenced in Table 3 of the Amended Accusation, constituted bribes or payments of bribes or kick-backs to respondent. No evidence or opinion was presented that these credits to the promotional account were bribes or kickbacks or that respondent was even aware of these credits to the promotional or 9 account of the CVHS football team. In the absence of any probative evidence, the classification of these credits or credit memos as bribes or kick-backs constituted nothing more than speculation.

79. (A) It was not established that respondent violated school laws of the state by giving and accepting bribes, committing theft, circumventing the District's open bidding requirements, engaging in a conspiracy to defraud the District, or misappropriating public funds. Aside from the fact that the preponderance of the evidence showed respondent did not commit these alleged acts, there was no evidence or argument presented as to what state school laws were allegedly violated by respondent.

(B) It was not established that respondent's conduct constituted violations of California's Penal Code sections 424, subdivision (a) (appropriation or misuse of public monies or falsification of public monies account), 487 (grand theft), 503 – 504 and 514 (embezzlement), 532 (fraud), or 641.3 (commercial bribery). The Orange County Sheriff's Department and District Attorney did not file any criminal charges against respondent and did not prosecute him for any crimes. The evidence was insufficient in this matter to demonstrate that respondent committed these offenses.

## District's Policies

80. (A) Under the Gifts, Grants, and Bequests Policy, the Governing Board may accept any bequest or gift of money or property on behalf of the District. The Board has stated under this policy that it fully supports athletic and academic programs and competitions as an extension of the educational program. If a school wishes to augment District-funded positions, this policy states it is permissible to seek donations from parents, guardians, or private donors. Gift money will be accepted for stipend payment for co-curricular activities but will not be accepted to pay for the primary employment of employees. Upon acceptance of funds and equipment by the District, the policy requires that all monies are to be deposited into a District-based account which has been established for each school site and which must be monitored by the school principal. All gifts, grants, and bequests become District property.

(B) Under the Gifts to School Personnel Policy (BP 3291), the Governing Board recognizes that sometimes students, parents, and community members give nominal gifts to District employees to show their appreciation for a job well done, and that vendors sometimes distribute free marketing materials or stationary items to staff members. The Governing Board prohibits the acceptance of gifts in situations in which it could be construed that the gift was given as a condition for providing educational services to a student, or to influence the District's decision to purchase instructional materials or any other items of value. Under this policy, the Governing Board has stated, in part, that acceptance of any gift or money or other valuable thing by an District employee, which he or she suspects or believes to be made as an inducement to directly or indirectly introduce, recommend, or otherwise influence the adoption or purchase of any instructional material or other items required in the operation of the schools, is against the policy of the District. Any school employee who violates this policy shall be subject to removal from his or her official position.

(C) It was not established that, from May 2003 through March 2008, respondent failed to abide by or violated the Gifts, Grants, and Bequests Policy or the Gifts to School Personnel Policy of the Governing Board. No probative evidence was presented to show that respondent received any gift of materials, supplies, or money from Lapes or his company LATS.

81. (A) Under the Policy for Bids (BP 3311a), which was adopted in February 1996, the Governing Board has stated, in part, that the District shall purchase equipment, supplies, and services on a competition bidding basis when required by law or whenever it is in the best interest of the District. Care must be taken to observe all statutory requirements for bidding and bidding procedures. For purchases made using procedures other than formal bid requirements, local vendors shall be given preferences when quality and price are competitive. Time of delivery and other factors that directly affect District costs a continued operation shall be considered.

(B) It was not established that the Policy for Bids of the Governing Board was applicable to the charges or facts in this matter. The evidence demonstrated that the purchase of football equipment for the CVHS football team was not required to be made on the basis of a competitive bidding process.

82. (A) Under the Relations with Vendors Policy (BP 3315a), which was adopted in February 1996, the Governing Board has provided that vendors shall contact the purchasing department to arrange for sales presentations. If visits to other departments and school sites are required, the purchasing department shall make the arrangements for such visits. The purchasing department is prohibited from extending favoritism to any vendor. Each purchase order is to be placed on the basis of quality, price, and delivery, with past service being a factor if all other considerations are substantially equal. The purchasing department is to conduct all price negotiations with vendors when necessary.

(B) Under the Relations with Vendors Policy, vendors are not to make any substitutions without the approval of the purchasing department. Vendors or requisitioners shall not make any exchange without the approval of the purchasing department. All communications with suppliers shall be through the purchasing department, except in special cases where technical details make it advisable to delegate authority to others. For this exception, a copy of all correspondence shall be forwarded to the purchasing department.

(C) Vendors are to be referred to the purchasing department by other District personnel if direct contact is made with a school or department. In interviews with vendors, no one who is not a member of the purchasing department shall commit himself or herself by implication or otherwise as the District's source of supply for any product.

(D) It was not established that the Relations with Vendors Policy of the Governing Board was enforced or followed by the District from May 2003 through March 2008, while respondent was the head football coach at CVHS, or at any time prior to March 2003. The District allowed football coaches to negotiate directly with LATS to view and select football equipment and to obtain quotes to buy football equipment for their high school football teams.

83. (A) Under the Student Activities Funds Policy (BP 3452a), which was adopted in February 1996, the Governing Board has proclaimed that student organizations may raise and spend money in order to promote the general welfare morale, and educational experiences of the students. Student funds shall finance worthwhile activities which go beyond those provided by the District. Minutes must be kept of student organization meetings and shall properly reflect all financial activities. Student funds shall be managed in accordance with sound business procedures designed to encourage the largest possible educational return to students without sacrificing the safety of the funds. With Governing Board approval, student funds shall be held or invested in one of the ways allowed by law. Students' funds must be disbursed according to procedures established by the student organization and approved by an official designated by the Governing Board, the certificated employee who is the advisor for the student organization, and a student organization

representative. The principal or designee is responsible for the proper conduct of all financial activities of the student organization.

(B) It was not established that the Student Activities Funds Policy of the Governing Board was applicable to the charges or facts in this matter. While some evidence was presented that funds from the associated student body supplemented the funds of the District to pay for the CVHS football team, there was no evidence to show how much money was provided by the associated student body to the CVHS football team or whether such money was ever used to purchase football equipment.

84. (A) Under the Purchasing Procedures Policy (BP 3310a), which was adopted in February 1996, the Governing Board has the authority and responsibility for all purchase contracts of the District. This authority and responsibility can be delegated with certain restrictions as set forth in the Government and Education Codes. The Superintendent or his designee must maintain effective purchasing procedures in order to ensure that the District receives maximum value for the money it spends and that records are kept in accordance with the law. Insofar as it is possible, the Purchasing Procedures Policy provides that goods and services purchased will meet the needs of the person or department ordering them at the lowest price consistent with standard purchasing practice. Maintenance costs, replacement costs, and trade-in values shall be considered when determining the most economical purchase price. The superintendent or his designee may issue and sign purchase orders and shall submit them to the Governing Board for its approval. The purchasing department conducts all purchase transactions for the District.

(B) With regard to the relationship between the purchasing department and the schools, the Purchasing Procedures Policy provides, in pertinent part, that the purchasing of services and supplies is centralized in the purchasing department. All requests for prices or for repair services and all purchases shall be made by the purchasing department, unless an exception has been made by the deputy superintendent of business and support services. The purchasing department is required to keep other departments informed regarding new materials, services, sources, prices, and processes in manufacturing. The purchasing department is prohibited from assisting any District employee in securing materials for personal use at a discount.

(C) Under the Purchasing Procedures Policy, the purchasing department must maintain a library of current trade catalogues in its offices that are available for use by District departments and schools, be constantly alert to any change affecting purchasing economies, and study the school supplies market to determine the most advantageous time to purchase specific materials. The purchasing department is also required to maintain an up-to-date list of vendors of various materials used by the District's departments and schools. The director of purchasing and buyers within the purchasing department shall visit suppliers when such visitation is deemed to be in the best interests of the District and a necessary augmentation to the purchasing process.

(D) Supplies and equipment to be used within the District shall be standardized as much it is feasible and does not hamper service. In keeping with purchasing procedures, instructional committees may be formed for developing standard bid lists for the purpose of obtaining maximum economy from volume buying. The purchase order form shall be restricted to use by the purchasing department.

85. Based on Findings 32 – 59, 62 – 67, and 84 above, from May 2003 through March 2008, respondent violated the Purchasing Procedures Policy of the District by purchasing football equipment and apparel from LATs through the use of the promotional account maintained by LATs for the CVHS football team when, in fact, the policy provides that the purchasing department is to conduct all purchase transactions for the District. Respondent testified that he had rudimentary knowledge of the Board's policies; his claim that he was not directed to follow the policies had little evidentiary weight and did not excuse his violation of the purchasing policy. Respondent was aware of the purchasing policy and procedure, for he filed purchase requisitions for several years.

86. (A) Under the Codes of Ethics, the Governing Board expects employees of the District to maintain the highest ethical standards, to follow District policies, and to abide by state and national laws. Employee conduct should enhance the integrity of the District and the goals of the educational program.

(B) Based on Findings 32 – 59, 62 – 67, 84 – 85, and 86(A) above, from May 2003 through March 2008, respondent violated the District's Codes of Ethics by failing to follow the Purchasing Procedures Policy and by misrepresenting to the purchasing department that the CVHS football team had received delivery of football equipment under purchase orders. Respondent stated, or allowed Parker and/or other District employees to state, to CVHS and the purchasing department, that football equipment had been delivered when, in fact, LATs did not deliver football equipment under the District's purchase orders. Thereafter, respondent ordered and received football equipment from LATs through the use of the promotional account maintained by LATs for the CVHS football team and without complying with the Purchasing Procedures Policy.

#### Character Witnesses

87. (A) Bruce Michael Carlisle has been a social studies teacher at CVHS for the past nine years. He was chairperson of the social studies department from 2008 through 2011. From 2003 through October 2013, Carlisle frequently interacted with respondent on the CVHS campus and during departmental meetings. Carlisle is also a coach at CVHS, has worked as a timekeeper at games, and watched football games. Carlisle was also a student in respondent's class at Aliso Niguel High School on undetermined dates in the 1990's.

(B) Based on his professional interactions with and personal observations of respondent over the past nine or 10 years, Carlisle has found respondent to be an honest and direct person who strives to abide by a strong code of honor. Respondent is highly regarded

by his fellow teachers. He constructs detailed lessons plans, is well-prepared, comes to school early, and has a well-organized and clean classroom. Respondent cares about his students and his teaching. Respondent is personable and able to connect with his students who believe that he has a plan for them every day and are able to learn the subject matter under his guidance. According to Carlisle, respondent applies concepts, imparts knowledge, and evaluates information. Carlisle has found respondent to be a good teacher and a leader on the high school campus. He knows of no complaints against respondent. He is aware of the allegations against respondent in this matter and has followed respondent's case through newspaper or media reports.

88. William J. Cunerty is a retired teacher and former football coach. He taught English and coached football at Saddleback College. He was the head football coach at CVHS, the District's Dana Hills High School, and West Torrance High School. Cunerty has known respondent since the latter was 14 years old and attended Cunerty's football camps. Later, Cunerty coached respondent when he played at Saddleback College. He has continued to observe respondent while respondent worked as a football coach. In Cunerty's view, respondent has helped to develop the student-athletes on football teams so that they are able to grow and mature. He believes that the student-athletes like respondent. Cunerty has never found respondent to have done anything untrustworthy or to have lied. He trusts respondent and sees respondent as a friend.

89. Airey viewed respondent as a model head football coach. Respondent was organized and communicated well with his football staff, CVHS administrators, parents, and football officials. He held student-athletes out from games or practices when it was the right thing to do for them. After graduating, players often returned to the high school to work with respondent. In Airey's opinion, respondent did not do anything to show that he is a dishonest or untrustworthy employee.

#### Performance Evaluations

90. In his evaluation the 2003-2004 school year, Principal Ressler found, in part, that respondent drew students out to ensure that material applied to their life situations and encouraged all students to participate in classroom activities. He respected diverse opinions and arranged activities to enable students to understand information. Respondent was an active member of the Western Association of Schools and Colleges (WASC) focus in learning group and worked collaboratively with members of his department to achieve educational goals. Principal Ressler commended respondent for the outstanding job that he did as the head football coach. Respondent offered leadership and promoted sportsmanship.

91. (A) Following the 2005-2006 school year, respondent received a satisfactory evaluation of his performance as a high school strength and exercise teacher. Respondent created an environment in the weight room where students knew the routines and expectations. He did an excellent job of keeping all students on task and motivated; there were no disciplinary issues or safety problems in the weight room. He understood that



football players needed a base-line of strength and conditioning to prevent injuries in practice and during games. Respondent was deemed a valuable and collegial member of the CVHS staff. That school year, he served as a physical education teacher, head football coach, and co-athletic director.

(B) Among his goals as co-athletic director for the 2005-2006 school year, respondent noted that he would develop an athletic budget that was based on money provided by the District and associated student body and would meet the needs of the athletic department and individual sports teams. He indicated he would determine the current assets and needs of the athletic programs at CVHS, find ways to improve the facilities and equipment for the student-athletes, and gain the cooperation of coaches and players to maintain the athletic facilities and equipment.

92. For the 2010-2011 school year, respondent received a satisfactory evaluation of his teaching performance as a tenth grade social studies or world history teacher. He engaged and supported students in learning by using video and power point presentations, giving lectures, and making quick formative assessments. He immediately reviewed and discussed the students' questions and answers on book reviews. He maintained an effective learning environment by developing focused units to improve test scores, using data from the prior school year to identify areas of need, and encouraging student participation. Respondent facilitated the learning of English language learners by engaging them in the lessons and calling on students to use their own knowledge and experiences. In the area of professional development, respondent used his time in the professional learning community to collaborate with members and other departmental colleagues. Respondent was described as a pleasure to observe because he was enthusiastic and committed to his students and to CVHS.

93. Allegations contained in the Amended Accusation or raised by the parties at the hearing in this matter for which there are no specific findings in this Decision were unproven or deemed surplusage and were therefore immaterial to the disposition of this matter.

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Commission on Professional Competence makes the following determination of issues:

#### LEGAL CONCLUSIONS

1. Complainant has the burden of proof in this matter inasmuch as the District is seeking to dismiss respondent from his employment as a certificated employee. The standard

of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

In a dismissal proceeding initiated against a certificated employee pursuant to Education Code sections 44932 and 44934, the hearing shall be initiated, conducted, and a decision made in accordance with the provisions of the Administrative Procedure Act commencing with Government Code section 11500. (Ed. Code, § 44944, subd. (a).) The hearing need not be conducted according to the technical rules relating to evidence and witnesses; any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs and hearsay evidence may be used for the purpose of supplementing or explaining other evidence. (Gov. Code, § 11513, subd. (c) and (d).)

2. It is well settled that the trier of fact may 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 trier of fact may also "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 testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Ibid.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal. App.2d 762, 767.) Further, the trier of fact may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) The testimony of "one credible witness may constitute substantial evidence." (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.)

The trier of fact must weigh the evidence, consider the credibility of witnesses, and resolve the conflicts in the evidence or in the reasonable inferences that may be drawn therefrom. (*Fibreboard Paper Products Corp. v. East Bay Union of Machinists* (1964) 227 Cal.App.2d 675, 696.) An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action. (Evid. Code, § 600, subd. (b).) An inference is not evidence but rather the result of reasoning from evidence; an inference of fact must be based upon substantial evidence and not conjecture. (*Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles* (2004) 117 Cal.App.4th 1138, 1149.)

3. Cause does not exist to dismiss respondent from his employment pursuant to Education Code sections 44932, subdivision (a)(1), and 44939, for immoral conduct in that it was not established that respondent engaged in any immoral conduct, based on Findings 1 – 93 above.

In general, immoral conduct has been defined as that which is hostile to the welfare of the general public and contrary to good morals. Immorality is not confined to sexual matters but also includes conduct indicative of corruption, indecency, depravity, dissoluteness, willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community and an inconsiderate attitude towards

good order in the public welfare. (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

In the instant matter, the evidence did not demonstrate that respondent engaged in any immoral conduct. The Amended Accusation made charges of theft, misappropriation, bribery, embezzlement, and kick-backs based, in large part, on the credits made to the promotional account for the CVHS football team and respondent's purchases of football and related equipment that were paid from the promotional account. While theft and bribery involve acts of moral turpitude, respondent did not steal District funds or conspire with Lapes to steal District funds. He did not misappropriate or embezzle any District monies or accept bribes from LATS to continue ordering from the athletic goods vendor. The funds expended from the promotional account to purchase the football equipment originated from the District but respondent did not have any control of the funds or the promotional account. LATS started and maintained the promotional account. Respondent did not purchase any goods or items for his personal benefit. Rather, in continuing the practice at CVHS of ordering equipment from LATS through the use of the promotional account, respondent bought only football equipment for his football team. Respondent submitted what has been determined to have been false or fraudulent purchase requisitions, but he did so, not with immoral or evil intent, to order football equipment for his team and apparel for coaches and staff. His conduct did not connote any immoral intent to benefit himself or to harm the District, CVHS, or its students.

4. Cause exists to dismiss respondent from his employment pursuant to Education Code section 44932, subdivision (a)(7), for persistent violation of or refusal to obey reasonable regulations prescribed for the governance of public schools by the governing board of the District, based on Findings 1 – 93 above.

Under Education Code section 44932, subdivision (a)(7), the violation must be persistent or "motivated by an attitude of continuous insubordination." (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.) Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

Here, complainant proved that respondent persistently violated the District's policies for purchasing procedures and ethics. The policy required that all purchasing for the District, which would naturally include the District's high schools and athletic programs, be conducted by the District's purchasing department. Respondent was apprised of this procedure and followed it to a certain extent. He obtained quotes from LATS for football equipment and submitted the quotes and purchase requisitions to the District's business office for processing and preparation of purchase orders. The District was to pay for the purchases on receiving confirmation of delivery of the equipment. From 2003 through 2007, respondent circumvented the policy by representing that equipment was received or

delivered to the high school when, in fact, LATS did not delivery equipment ordered by the District. Thereafter, respondent and equipment manager Parker with respondent's consent ordered football equipment through the debiting of a promotional account maintained by LATS for the CVHS football team. As such, respondent conducted purchase transactions in violation of District policy. His failure to abide by purchasing policy likewise violated the Board's ethics policy.

5. Cause exists to dismiss respondent from his employment pursuant to Education Code section 44932, subdivision (a)(5), for evident unfitness for service in that respondent engaged in conduct which demonstrated that he is not fit to be a teacher due to a defect in temperament that cannot be remedied or otherwise, based on Findings 1 – 93 above.

Evident unfitness for service means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App. 4th 1429, 1444-1445.) Unlike unprofessional conduct, evident unfitness for service connotes a fixed character trait, not remediable upon receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.* at p. 1444.)

In general, the determination of evident unfitness requires an analysis based on the criteria set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, to decide whether, as a threshold matter, the questioned conduct of a permanent certificated employee indicates unfitness for service. (*Board of Education v. Jack M.* (1977) 19 Cal. 3d 691, 696.) If the *Morrison* criteria are satisfied, the next step is to determine whether the unfitness is evident, i.e. whether the offensive conduct is caused by a defect in temperament. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App. 4th 1429, 1445.)

In the *Morrison* case, the California Supreme Court held that where charges of immorality or unprofessional conduct are raised in a teacher dismissal case, the applicable standard is whether the person is fit to teach. (*Morrison v. State Board of Education, supra*, 1 Cal 3d. at 229.) The terms immoral or unprofessional conduct have been held too vague, standing alone, and must be applied to a specific occupation and given context by reference to fitness for the performance of that occupation. (*Basset Unified School Dist. v. Commission on Professional Competence* (1988) 201 Cal. App. 3d 1444, 1453.) The *Morrison* case requires that the determination of whether a person is fit to teach be based on an objective and analytical approach consisting of a review of the teacher's conduct and an assessment of a variety of specific criteria which include: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the respondent; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher. These factors assist a board of education in determining whether a

teacher's fitness to teach, and whether the teacher's future classroom performance and overall impact on his or her students are likely to meet the standards of the board of education. (*Morrison v. State Board of Education, supra*, 1 Cal. 3d at 229- 230.)

Following a mandatory application of the *Morrison* standard, the Commission has broad discretion in matters of teacher discipline and dismissal. The role of the Commission is not merely to determine whether the charged conduct in fact occurred, but to decide whether the conduct, as measured against the *Morrison* criteria, demonstrates unfitness to teach. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 220.)

6. Analysis under Morrison Factors—The evidence demonstrated that, from in or about May 2003 through March 2008, respondent violated the District's purchasing procedures and ethics policies by personally engaging in the purchases of football equipment from LATS through the use and/or debiting of a promotional account maintained by the vendor for the CVHS football team. Respondent also made false statements on purchase requisitions submitted to the District from 2004 through 2007. To determine whether these acts demonstrated evident unfitness for service, the Commission measures respondent's conduct against the *Morrison* factors.

First, respondent's purchases by use of the vendor's promotional account were not shown to have adversely affected students or teachers at the high school. Student-athletes were not deprived of any athletic equipment by respondent's purchases through the promotional account but were provided football equipment and supplies necessary to play football in a safe manner and environment. It was not shown that the football team was ever in need of more equipment or that equipment was missing or in disrepair and unsafe condition. Teachers, staff, and coaches at the high school were provided shirts and jackets that were worn at school and during games to enliven the school spirit and staff camaraderie. Second, respondent's conduct in purchasing football equipment by use of the promotional account was neither recent nor remote in time. He engaged in the conduct for approximately six years from March 2003 through March 2008. Third, the type of teaching credential held by respondent was not shown to have any relevance to this analysis. Respondent was credentialed to teach social science at the secondary level and received satisfactory and good evaluations of his performance as a certificated employee.

Fourth, there were both extenuating and aggravating circumstances in this matter. In extenuation, respondent did not unlawfully steal, embezzle, or misappropriate any District funds and did not personally profit from his purchases. He ordered football equipment for his football team as well as apparel for coaches and staff. This scheme with the vendor LATS to use District funds to accrue credit in the promotional accounts had been in place for several years before respondent was hired at CVHS. As a new coach, he continued the practice. He did not receive any training or a manual to help him with purchases from vendors. No administrator questioned respondent's purchases, especially the purchases of apparel for coaches and staff. In aggravation, respondent's violation of the District policies by personally ordering and receiving football equipment through the promotional account was not an isolated incident but continued over the course of five

football seasons. He was advised by the co-athletic director that he was required to submit a purchase requisitions to purchase equipment. He did submit purchase requisitions but the purchase requisitions and the quotes or team sales orders attached to his purchase requisitions were false or fraudulent in that he knew or should have known that LATS was not going to deliver the equipment under the purchase requisitions or orders. There was no probative evidence of any publicity about respondent's conduct in ordering football equipment from LATS.

Fifth, it was not clear what motives respondent had in ordering and purchasing football equipment from LATS through the use of the promotional account that was maintained by the vendor for the CVHS high school football team. Respondent denied involvement in the scheme with Lapes and LATS. However, the weight of the evidence suggested that respondent had largely praiseworthy motives. As shown by the record of his purchases, respondent ordered predominantly football equipment for his football team and he also ordered apparel for coaches and staff. He sought to purchase equipment in order to equip his team and outfit the coaching and school staff. He was motivated to help his players on his football team to compete well in practice and on the playing field. He also wanted to raise school spirit and obtain the support of the school staff. In continuing the established practice at CVHS in buying equipment and supplies from LATS by use of the promotional account, respondent found the process to be more flexible and convenient in that he was able to buy equipment when the need arose and at his discretion. Respondent's failure to comply with the District purchasing policy was a blameworthy motive. Sixth, there is very little likelihood that respondent would repeat his conduct of violating the District's purchasing and ethics policy. Any authority that he had to order equipment ended when he resigned as the head football coach in December 2009. LATS went out of business in 2008. Seventh, this matter does not involve or impact respondent's constitutional rights.

7. Discussion—The Commission had a very difficult time deciding this case. First, in its view, many of the witnesses, both for the District and respondent, were not completely candid about what they knew regarding the promotional account at CVHS and the involvement of coaches and administrators in the purchasing of football equipment. The District's investigation relied largely on the review of the LATS documents conducted by Teresa Sando and recommended charges that were not supported by the evidence, such as the allegations of crimes and violations of most of the Board's policies. The original owner of LATS, his sons, and the CVHS equipment manager, all of whom were employees of the company, had their own reasons to avoid testifying about the vendor's promotional account. Because the District did not monitor the vendor's prices or sales quotes or the delivery of equipment and allowed school staff to even confirm deliveries by e-mail messages without the benefit of shipping documents, District business office personnel were able to testify generally about the purchasing procedure but not about the delivery of equipment under the District's purchase orders.

Second, respondent has been a good teacher for the District. He received satisfactory and good evaluations of his performance in the classroom and as a coach and supervisor in the athletic facilities. He is respected and well-liked by his colleagues and

supervisors. The violations alleged in the Amended Accusation did not involve his competency or performance as a teacher. However, respondent's denials of complicity in the scheme to use the LATS promotional account and his failure to take responsibility for his actions and violations of Board policies, including his claim that Parker ordered equipment on his own and without respondent's input or approval, were not helpful to his cause when considered against the extensive documentary evidence of the orders of football equipment made by respondent and Parker and respondent's role as the head football coach. Respondent was responsible for ordering football equipment and for ensuring compliance with the District's purchasing policy.

In the documented history of the purchases from LATS by the District and CVHS football team, which dated back to 1991, the Commission found mitigating circumstances for respondent's actions. After he was hired as the head football coach, he continued what appeared to have been a long-standing practice of purchasing equipment from LATS and using the promotional account to buy safety and non-safety equipment, such as apparel, for his team, coaches, and the high school staff. He bought largely football equipment and supplies for his football team and did not take any money or merchandise for himself. The documentary evidence in this matter also demonstrated that respondent ordered equipment from LATS using the promotional account for several football seasons. The District did not pay for these direct orders but did pay LATS for its purchase orders. The Commission was able to infer and to find that deliveries were not made on the District's purchase orders. Consequently, respondent's purchase requisitions were deemed to have been false or fraudulent statements. Respondent's false or fraudulent statements on the purchase requisitions and his direct orders and purchases of equipment in violation of the two Board policies were serious and repeated violations and connoted a character trait for a lack of honesty and a tendency to circumvent and not follow school district policies. His conduct helped to continue and sustain a school and business environment that was conducive to embezzlement or theft and raised questions and uncertainty about the status of public funds and budgeting for schools and school athletics. As such, the seriousness and continuous nature of respondent's conduct outweighed the mitigating circumstances and require that he be terminated from his employment with the District.

\* \* \* \* \*

//  
//  
//


WHEREFORE, the Commission on Professional Competence makes the following Order:

ORDER

Amended Accusation, Case No. 2012050145, filed and issued by complainant Dr. Joseph M. Farley in his official capacity as the Superintendent of the Capistrano Unified School District, and on behalf of the Governing Board, against respondent Charles J. Biehn is sustained, based on Conclusions of Law 1 – 7 above, jointly and for all. Respondent Charles J. Biehn is terminated as a permanent certificated employee of the Capistrano Unified School District.


Dated: 7/10/2014

I, Martin Casas, concur with the Decision and Order.

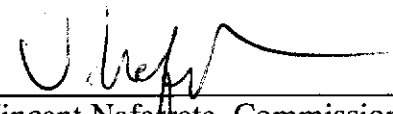
  
Martin Casas, Commission Member  
Assistant Principal  
Poway Unified School District

Dated: 7/10/2014

I, J. Manuel Carcido, concur with the Decision and Order.

  
Manuel Carcido, Commission Member  
Teacher  
Pasadena Unified School District

Dated: July 10, 2014

  
Vincent Nafarrete, Commission Member  
Administrative Law Judge  
Office of Administrative Hearings