

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

In the Matter of the Dismissal of:  
  
JOSE ROJAS,  
A Permanent Certificated Employee,  
  
Respondent.

OAH No. 2018060096

**DECISION**

This matter was heard by a Commission on Professional Competence (Commission) on November 5-9 and 13-15, 2018, in Los Angeles, California. The Commission convened for this matter was comprised of the following members: Teresa Brown, teacher credentialed in history, with the Torrance Unified School District; Carolyn Monroe, principal and teacher credentialed in history (retired), from the Los Angeles Unified School District (District or LAUSD); and Deena R. Ghaly, Administrative Law Judge of the Office of Administrative Hearings, who presided.

Kelly Kim and Cherrie Moe, LAUSD Assistants General Counsel, represented Complainant LAUSD Assistant Chief Human Resources Officer Jose R. Cantu.

Richard Schwab and Rusty Gore, Attorneys, Trygstad, Schwab, and Trygstad, represented Jose Rojas (respondent), who was present throughout the hearing.

**FACTUAL FINDINGS**

*Parties and Jurisdiction*

1. Respondent is a permanent, certificated employee of LAUSD.
2. On May 9, 2018, complainant served respondent with a letter notifying him of the Board's intention to dismiss him and place him on immediate unpaid suspension.
3. On May 31, 2018, respondent served the District with his Request for Hearing and Notice of Defense.

4. On June 14, 2018, complainant served respondent with an Accusation.

5. On August 3, 2018, complainant served respondent with an Amended Accusation. Thereafter, this matter ensued.

*Background Information*

6. Respondent completed his undergraduate education at California State Polytechnic University, Pomona, where he majored in Social Science and History. He obtained his teaching credential, a dual professional clear credential in Social Science and History, and certification as Bilingual Cross-Cultural Language in Academic Development (BCLAD) compliant, from California State University, Los Angeles.

7. Respondent began teaching in 1999. He worked at several high schools within LAUSD, teaching regular and advanced placement (A.P.) courses. In 2009, respondent joined the Los Angeles Center of Enriched Studies (LACES) where he taught History, A.P. U.S. History, A.P. Geography, and Spanish.

8. During the period from April 2015 through May 2016, respondent engaged in a pattern of communications and interactions with, and gift-giving to, three students at LACES, M [REDACTED] R., E [REDACTED] T., and L [REDACTED] C.<sup>1</sup> In May 2016, these students brought some of the communications to the attention of administrators. LACES administration suspended respondent and undertook an investigation.

*Student M [REDACTED] R.*

9. a. During the 2014-15 academic year, M [REDACTED] R. (M [REDACTED]) was in 11th grade and a student in one of respondent's A.P. U.S. History classes. M [REDACTED] recalled respondent as frequently joking and chatting in class.

b. Toward the end of the year, M [REDACTED] told respondent that she would be working at a children's camp over the summer. Respondent asked M [REDACTED] questions about the camp, expressing interest in potentially sending his young son there. During her deposition, M [REDACTED] described these initial exchanges as follows:

So we had a few e-mail exchanges regarding the camp. And at that point I thought it was reasonably appropriate for me to be sending my teacher information about that. But that kind of

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<sup>1</sup> To protect their privacy, students are identified by their first name and last initial.

devolved into something more complicated and less appropriate.  
(Exh. 51, p. 18.<sup>2</sup>)

c. Respondent's first e-mail to M█ read: "Give the link to the camp. Want to see if any dates are available for next Friday. Btw, sad how you're going to say goodbye today." (Exh. 29, p. 530.) After M█ responded that she would see him in class after finals, respondent wrote, "Cool. Imma miss you. Funny. Stop by tomorrow morning if you want to meet [respondent's son]." (*Ibid.*)

d. After school ended, respondent continued to e-mail M█. In a message dated June 6, 2015, respondent wrote that he was going to a children's party near the camp and asked whether M█ would be there then. He subsequently e-mailed her with his cell phone number, "if [phone communication] is easier to stay in touch." (Exh. 29.) M█ continued to communicate with respondent solely through e-mail. Regarding her choice to use email, M█ stated in her deposition: "So I didn't think that texting was a rational choice at the time. And I continued to e-mail my teacher, because I'd never texted a teacher before." (Exh. 51, p. 25.)

e. Respondent requested that M█ communicate with him by phone a second time: "Text me or call me so I can tell you about my visit to camp." (Exh. 29.) On June 8, 2015, M█ began communicating with respondent via text. M█ explained the change in mode of communication and why she chose to text respondent, rather than calling:

Q: [T]he first [text] message on here, it states, "Hi Mr. Rojas. It's M█." So I'm assuming you initiated this text message; is that correct?

A: I did. As he asked me to.

Q: Okay. Was there any other reason why you initiated this text message?

A: No. My teacher had asked me to text him, and it felt like I couldn't avoid it . . . .

[¶] . . . [¶]

Q: [T]here are e-mails from Mr. Rojas where he, essentially, gives you the option of either texting him or calling him. Was there any reason why you chose to text and not to call?

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<sup>2</sup> References to page numbers in cites to deposition transcripts are to the transcripts' internal pagination. All other page numbers are to the Bates stamp numbers within each of the parties' exhibit books.

A: Texting is less connected than calling. I didn't want to have a phone conversation with him. Texting felt more distant, and that's why I had preferred texting.

[¶] . . . [¶]

Q: Why did you want the distance?

A: I had no interest in having a phone call with him. That didn't seem like the type of relationship we had, and it didn't seem necessary.

(Exh. 51, p. 30.)

f. In the texts they exchanged, respondent continued to discuss the summer camp and introduced other subjects such as his whereabouts, that he became bored while attending a school meeting, and that a teacher who had been investigated for inappropriate contact with students had returned to the school. In reference to the returning teacher, respondent asked M█ to keep the information he had shared confidential.

g. Between June 8 - 28, 2015, respondent sent texts to M█:

- asking whether she knew any good restaurants for lunch around school;
- inviting her to text him if she was ever bored;
- twice offering her a ticket to a professional baseball game;
- asking whether she can leave the summer camp grounds after she completes her work there;
- asking her to call him by his first name;
- asking whether she would have lunch with him; and
- asking whether there was anything new or exciting.

h. M█ declined respondent's offer of a baseball ticket both times he asked. Asked about the repeated offer, M█ stated that she found it "unnecessary" and "slightly aggressive." "It's not respecting that I said no." (Exh. 51, p. 40.)

i. After the summer break, M█ returned to LACES for her senior year in the fall of 2015. In February 2016, respondent gave M█ promotional clothes he had received in connection with his work as advisor to a running club at LACES. Respondent also asked M█ to keep the gifts a secret.

j. In April 2016, M█ met E█ T. and L█ C. at "calculus camp," an intensive study session for students preparing to take the A.P. calculus exam. There, she learned for the first time that they too had been receiving messages, invitations and gifts from respondent. Seeing his actions as part of a pervasive pattern, M█ agreed to report him to the school administration. M█ also drafted a statement, which she submitted to LACES' principal.

k. During her deposition, M [REDACTED] was asked whether the statement was complete or whether she would add anything to it. M [REDACTED] replied she would add how the encounters she had with respondent made her feel and what difficult choices they forced her to make:

I think I would add that the texting felt particularly uncomfortable because he was my teacher, and because it's really difficult to say no to somebody who has power. And he had power over me. He could have made my high school experience really uncomfortable. Whether that meant pestering me more than necessary, whether that meant talking to other teachers. Whatever. He could have made things an issue if I'd made him unhappy.

And --- and it was a lot easier to, kind of, silence any discomfort and instead just please him to the extent I was - - - could. Rather than, kind of, stand up for myself. And I think by the time I wrote this statement, I was just tired of it all.

(Exh. 51, p. 70.)

*Student E [REDACTED] T.*

10 a. During the 2014-15 school year, E [REDACTED] T. (E [REDACTED]) was in 11th grade and a student in one of respondent's A.P. U.S. History classes. E [REDACTED] also recalls respondent joking a great deal in class. She felt some of his jokes demeaned and objectified women.

b. As a junior, E [REDACTED] also participated in a student club, the Student Affairs Council. During her senior year, E [REDACTED] joined the Cuba Club. Respondent served as the teacher advisor for both clubs. Students in the Student Affairs Council attend an annual dinner where speakers discuss political and scientific developments. The Cuba Club was an informal gathering of students who planned to go to Cuba. At the time, respondent was scheduled to be the faculty chaperone on the trip.

c. Respondent asked E [REDACTED] for her cell phone number, ostensibly to deliver messages regarding the annual dinner to her and the other members of the Student Affairs Council. E [REDACTED] attended the annual dinner with three other students and a former LACES teacher and administrator, Joseph Zell, serving as chaperone. As E [REDACTED] entered the hotel where the dinner was being held, respondent texted her several messages including asking whether she missed him and whether she wished he was with her.

d. During her deposition, E [REDACTED] described the text messages as "creepy" and stated that they made her feel uncomfortable. Further explaining her reaction, E [REDACTED] stated:

Just because it was not in the class setting, it was - - felt personal. It felt like it was --it just - wasn't in class. It didn't - - especially because he didn't personally talk to me in class in any

way that made me uncomfortable, so then this new platform or communication that was like personal, it – to some extent where it's like no one else could see it, it just felt different, it felt weird.

(Exh. 49, pp. 135-136.)

e. The following year, E█ participated in the Cuba Club meetings. There, students discussed how best to prepare for the trip and how to fundraise for it. Among the ideas was visiting a local Cuban bakery, Porto's, or purchasing pastries from there to sell at school. E█ expressed her fondness for Porto's Bakery. Subsequently, E█ recalled receiving a text message from her friend and classmate, S█ N. The message stated that respondent wanted E█ to come to his classroom. E█ complied and, when she arrived, respondent gave E█ a box of pastries from Porto's Bakery. He told her that the pastries were solely for her and insisted she take them.

f. S█ N. testified at the hearing. Her recollection was that she met E█ in the school hallway and there, told her about the pastries and that she believed respondent intended them for E█ alone. S█ N. did not recall texting E█ or summoning her to respondent's classroom.

*Student L█ C.*

11. a. During the 2014-15 academic year, L█ C. (L█) was in the 11th grade and a student in respondent's A.P. U.S. History class. During the 2015-16 academic year, L█ was in 12th grade and a student in respondent's A.P. Human Geography class. That same year, L█ served as the Cuba Club's treasurer, a role that included managing the club's fundraising efforts.

b. In July 2015, L█ responded to a group message where the participants, including respondent, were discussing the Cuba trip. She asked a question about visas. Respondent answered with a message only to her and, over the period of the next week, sent emails addressed only to her as follows:

- This is better. Not a group mail . . . Im so excited about this trip [to Cuba]. Been hitting the gym to lose weight.
- Remember, bet imam get more numbers than you LOL.
- We are going to celebrate your birthday. Big time LOL.
- Enjoy your summer. Just keep reading on cuba. Have you done anything interesting so far?
- all I need is someone who is willing to stay up. Lets text better.

(Exh. 23, pp. 519-523.)

c. L█ gave respondent her cell phone number. In early August 2015, respondent commenced texting her. He referred to himself as "Jose, your cuba adventure

partner, haha." (Exh. 38, p. 578.) L█████ and respondent continued to correspond about the Cuba trip. He stated that he wanted a small group attending. Subsequently, respondent changed the subject, asking L█████ the date of her birthday and stating, "Got one year to come up with something good for you." (Exh. 38, p. 579.) Respondent ended the exchange by texting, "Text me tomorrow. Imma go to bed." (Exh. 38, p. 579.) L█████ did not text respondent the next day.

d. L█████ admired respondent as a teacher and was not immediately disturbed by his communications to her. Returning to school in August 2015, she championed respondent and defended him when parents attacked the content of his curriculum during back-to-school night. L█████ was also committed to making the Cuba trip and its fundraising a success. During her deposition, L█████ noted that, for the first time, she perceived a certain strangeness in respondent's behavior the day of the back-to-school night event. The Cuba Club members had decided to sell churros during back-to-school night. As none of the students had an accessible car, respondent agreed he would drive L█████ to the grocery store to pick them up, though he did not have written permission from L█████'s parents. When the time came to go, respondent directed her to meet him a few blocks away from campus so that they would not be seen driving off together, stating that he did not want to start rumors. L█████ thought this was odd because they were simply undertaking a school-related errand.

e. In October 2015, respondent went to a training in Germany in preparation for his role as a chaperone for the Cuba trip. When he returned, he and L█████ had the following exchange via text:

Respondent: How was it?

L█████: Was what?

Respondent: Me out. And the candy sale.

L█████: Mr. Schwartz was mad!! Austin and Henry were ticking him off! But the candy is good. I got a new batch to sell. Can we sell popcorn in your class?

Respondent: Only because it is you. You know I don't like the smell. But I got you.

L█████: Turn up! If it is too smelly we can try kettle corn. Thanks Rojas.

Respondent: Don't worry. Im just going to want to hang out with you in cuba though. It be fun. Maybe let you sit next to me in the plane. Haha.

L [REDACTED]: Ayyyye fshoo! How was Germany?

Respondent: Good. Trying to find you something but nothing I thought you would have liked. Didn't hook up with anyone :(.

L [REDACTED]: Aha well you got your wife! But well talk more about your trip tomorrow.

Respondent: Im not Married. Why do you think Im not interested in a chaperone. Its only going to be you and me in cuba. The others are boring. Not going to want to be adventurous, stay out late. Im better not have to babysit you . . . though. You'll be 18!!

f. During her deposition, L [REDACTED] described respondent's comments about "hooking up" and not being married as an indication that he was "feel[ing] too comfortable with me as a student." (Exh. 53, p. 52.) His remarks about the other students on the trip, wanting to be only with her, and his reference to her turning 18 years of age confirmed L [REDACTED]'s sense that the trajectory of the conversation "wasn't going in the right direction." (*Ibid.*) Regarding his remark about her age, L [REDACTED] stated: "I don't think any older man should ever say that to a teenage girl. It always comes off creepy, like 150 percent of the time." (Exh. 53, p. 56.)

g. One month later, via text and email, respondent offered L [REDACTED] a ticket to a professional hockey game. L [REDACTED] did not respond to either the text message or respondent's email; however, at school, when respondent asked whether she had received his message, L [REDACTED] attempted to confront respondent about what she saw as his progressively invasive and inappropriate communications. As though sensing what she was about to say, respondent brushed off her request to speak to him confidentially.

h. Respondent did not directly communicate with L [REDACTED] again until May 2016. By then, respondent had been placed on administrative leave pending investigation of the students' report. In a text to L [REDACTED] dated May 11, 2016, respondent wrote, "I got pulled out of the classroom for some bs. Will be going to a meeting and most probably told not to contact parents nor students. But cuba trip is still on. If this drags on, I will contact you guys the day after the last day of school." (Exh. 38, pp. 581-582.)

#### *LACES Administration Actions*

12. Harold Boger, Jr. was LACES' principal from 2011 through 2017. His responsibilities as principal included supervising employees and ensuring safety on campus. In May 2016, after M [REDACTED], E [REDACTED], and L [REDACTED] reported respondent's communications and actions to Dr. Boger, he suspended respondent and commenced an investigation.

13. Dr. Boger recalls directing respondent not to speak to anyone connected to the school before respondent was escorted off campus but he did not put the directive to respondent in writing. He also retrieved respondent's keys to his classroom and a District-issued laptop computer. Dr. Boger arranged for District personnel to perform a forensic scan on the computer.

14. Dr. Boger also inquired into whether respondent had offered presents to any other students and determined there was one other, A [REDACTED] E., who had been offered a ticket to a sporting event.

15. During the hearing, Dr. Boger noted that respondent was known as a very good and effective teacher. His style was unorthodox and "edgy" but Dr. Boger did not believe that his manner in the classroom was anything more than a teaching tool. He saw an important distinction between making edgy, "even racy" remarks to the class in general and making them in a one-on-one communication with a student. Dr. Boger deemed the latter inappropriate and a violation of the District's conduct and ethics standards. Asked about the significance of such conduct, Dr. Boger noted that crossing the line into inappropriate behavior breaches a teacher's inherent duty of trust and responsibility to maintain moral authority.

16. Kevin Chaney, a digital forensic investigator for LAUSD, performed the forensic scan on respondent's computer. There, he found "thumb" files with pictures of scantily clad women on them. Thumb files are images stored by the computer after an uploaded image has been deleted. Thumb files are not accessible in the course of ordinary computer use. Mr. Chaney could not determine how long the pictures had been there, their original source, or whether the images could have survived an electronic "scrub" performed when the computer was re-assigned to respondent from another teacher. As such, he could not definitively determine whether respondent had stored or accessed the images.

#### *District Expert Testimony*

17. a. Dr. Vincent Carbino is a former police officer and holds educational credentials in administration and pupil and welfare services. He is the principal of independent and online studies for LAUSD.

b. Dr. Carbino is familiar with the concept of "grooming" – seemingly innocuous behavior by predators intended to wear down the defenses of potential victims. During his testimony, Dr. Carbino noted that, in a school setting, grooming generally involves behavior outside the traditional role of educator. Teachers who are groomers act more like friends or siblings than adults in positions of trust and responsibility. Their sense of purpose is also distinguishable from those of non-groomer teachers. While educators' roles and objectives are normally about the needs of their students, groomers are focused on their own needs, whether sexual or social.

c. According to Dr. Carbino, a secondary purpose to groomers' conduct is to "sort" the students. With each step toward a more personal relationship, the groomer determines whether the student is susceptible to more frankly exploitive conduct.

d. Dr. Carbino reviewed the students' deposition transcripts and recordings, the records from the District's investigation, and U.S. Department of Education publications. Applying his experience and knowledge, Dr. Carbino concluded that respondent had engaged in grooming: the classroom jokes and provocative remarks were intended to flush out the most susceptible students, the emails and texts were intended to break down barriers, and the gift-giving and offering were intended to ingratiate himself. Asking each of the students to keep secrets is also indicative of grooming. According to Dr. Carbino, this type of communication helps a groomer determine who can be counted on to remain silent even as more exploitive behavior takes place. Finally, under Dr. Carbino's analysis, invitations such as those respondent posed to M [REDACTED] to have lunch or his comment to L [REDACTED] that he anticipated it would "just be you and me in Cuba – others are boring" are attempts to isolate his victims, also typical of grooming.

18. a. The District's second expert, Detective Daniel Scott, has been a law enforcement officer for over 33 years, including working with a special victims' unit and child abuse cases. He has also served on the Los Angeles County Blue Ribbon Commission on Child Abuse and the Federal Commission on Child Abuse and Child Homicide.

b. During his testimony, Detective Scott stated that grooming is very frequently a part of sexual abuse but is not, in itself, a crime. Grooming is behavior intended to lower the inhibitions of the victim, to find out how far a perpetrator can go, and to increase access with the victim.

c. Detective Scott reviewed the District's investigation report and some of the communications between respondent and the three students at issue. Based on his review, Detective Scott came to the conclusion that respondent was engaging in "subtle" grooming. His conclusion was primarily based on the number of instances respondent tried to be alone with one or the other of the three students, the "targeted" gift-giving, and the fact that respondent's communications often occurred outside the normal confines of the school routine.

#### *Respondent's Evidence*

19. a. During his testimony, respondent denied that he had intended to lunch with M [REDACTED] alone, stating he intended to bring his wife and child. Respondent denied offering or insisting E [REDACTED] take the box of Porto's pastries and keep them all. He also denied driving alone with L [REDACTED].

b. Regarding the email and text messages, respondent did not deny that he wrote them; but denied any improper motive, explaining each one as either misconstrued, intended to be a joke, or made with an intentional educational purpose in mind.

c. Respondent addressed some of the individual messages he sent. Regarding his communications with M [REDACTED], respondent explained them as follows:

- Asking M [REDACTED] to call respondent by his first name was to reflect their evolving relationship from teacher/student to parent/camp counselor;
- Asking M [REDACTED] for restaurant suggestions stemmed from his unfamiliarity with the neighborhood where LACES is located because he rarely had time to eat off-campus and so was unfamiliar with the area.
- Writing about his fellow teacher was just something respondent “blurted out” and immediately regretted, so he asked M [REDACTED] to keep it confidential.

d. Respondent explained his communications with E [REDACTED] as follows:

- Obtaining E [REDACTED]’s number was at the recommendation of the World Affairs Council’s former advisor, Joseph Zell, and was to facilitate his work as its current advisor.
- The main purpose of respondent’s call to E [REDACTED] on the night of the cultural event the students in the club attended was to confirm that they had all arrived and were able to find Mr. Zell. Respondent’s questions about whether E [REDACTED] wished respondent was chaperoning the event and whether she missed him were jokes.

e. Respondent explained his communications with L [REDACTED] as follows:

- Referring to himself as “Jose, your cuba adventure partner” was respondent’s way to reignite the students’ enthusiasm for the trip and the result of his concern that students would forget about the trip during the summer break.
- Writing “This is better. Not a group email.” was respondent’s effort to avoid repeating himself and different members of the original group email had different levels of interest in the trip. Additionally, L [REDACTED] was the most enthusiastic about the trip and had a leadership position in it.
- Writing “Imma gonna get more numbers than you” was respondent’s effort to encourage L [REDACTED] to practice her Spanish.
- Referencing L [REDACTED]’s 18th birthday in various communications was in response to her own excitement about celebrating it in such an exotic location. His comment about needing her to be willing to stay up was to reassure her that she can count on him keeping the close cohesion of the students in class.
- Comments about wanting a small group, not wanting many boys to come, and not wanting another chaperone referenced his concern about avoiding trouble and possible transgression of the many rules and restrictions the group would have to respect while in a foreign country, particularly one as restrictive and isolated as Cuba.
- Comments about wanting to “hang out” with L [REDACTED] during the trip and “it is only going to be you and me in cuba” and “others are boring” was intended to “renew” her interest in it.
- “Maybe let you sit next to me on the plane” and “Im not married” were jokes.

f. Respondent addressed the gifts in his testimony: The Porto's pastries were intended to be for all the members of the Cuba Club; E█ appropriated them without his permission. The offers of sporting tickets were intended to thank M█ for her assistance with his questions about summer camp and to reward L█ for her enthusiasm and assistance with planning the trip to Cuba, respectively.

g. Respondent described his suspension and the resulting disciplinary action as a “wake up call” causing him to reevaluate his values and priorities as an educator. Respondent was a popular teacher, with a reputation for being fun and funny. After consulting with a spiritual advisor and a psychologist, respondent came to understand he enjoyed his students’ attention and adulation and made choices intended to increase his popularity, not necessarily to be the best teacher possible.

h. Respondent stated he felt great remorse for his actions, particularly the three students at the forefront of LACES investigation and disciplinary action. He did not intend to “hurt their feelings” and now realizes how his actions could be misconstrued and caused them embarrassment and discomfort.

i. Respondent denied storing or accessing pornographic images on his District-issued computer, and denied that Principal Boger had directed him to refrain from contacting students when the LACES administration suspended respondent.

20. Two educators who worked with respondent at LACES testified on his behalf:

a. Jeffrey Horton was a fellow teacher with respondent at LACES from 2010 and 2016. He described respondent as a generous colleague, supportive of students, and an effective teacher, particularly prolific at “softening the blow” of difficult material with his engaging personality. Mr. Horton became aware of the charges against respondent in the course of preparing for the hearing but did not know that respondent was sending the texts in question when they worked together.

b. Joseph Zell was an assistant principal at LACES between 2001 and 2010, overlapping with respondent’s tenure there by one year. Mr. Zell confirmed that he did recommend that respondent choose one student with whom to communicate while the group was at the off-campus dinner. Mr. Zell also commented on respondent’s teaching, noting that respondent was known for using humor in his teaching, and that such an approach could be particularly effective with high-performing students who enjoy sophisticated interaction with their teachers. He also stated that it was not inappropriate to discuss personal matters, including issues around dating and related subjects, with students. Some eight years after retirement, Mr. Zell remains in touch with certain students through social media and email and does not believe that is unusual or inappropriate.

21. Respondent submitted multiple letters of support from students and former students, email communications between himself and students, letters of recognitions and awards.

## *Analysis*

22. a. In the course of its deliberations, the Commission considered the two main areas where the underlying facts were in dispute – whether respondent had gifted to E [REDACTED] a box of pastries and whether he had driven L [REDACTED] to a nearby grocery store. Regarding the pastries, E [REDACTED] testified that her friend, S [REDACTED] N., had sent E [REDACTED] a text message summoning her to respondent's classroom on the day in question and that it was respondent who first told her the box was for her. S [REDACTED] N. recalled meeting E [REDACTED] in the hallway between classrooms and telling her about respondent's intentions. Respondent testified that the box had not been for E [REDACTED] alone and that she had appropriated it. Given the inconsistencies in E [REDACTED] and S [REDACTED]'s testimony about what was communicated to E [REDACTED] and by whom, the Commission concluded that there was insufficient evidence to establish that respondent had gifted the box of pastries to E [REDACTED].

b. Regarding whether respondent had driven L [REDACTED] in his vehicle, the Commission members credited her version of events. L [REDACTED] was straightforward and detailed in her explanations and she evinced no bias against, or interest in, harming respondent. Additionally, the experience stands in sharp relief in her memory as it began her reassessment of respondent's motives and intentions. There is no other explanation for how respondent was able to purchase the goods she sold at school that evening and there is no dispute that she was present there as both she and respondent recall her coming to respondent's defense when visiting parents challenged his curriculum. Accordingly, the Commission concluded that respondent had driven L [REDACTED] in his private vehicle without a parent's or guardian's written permission.

23. a. Regarding whether respondent's emailed and texted messages was, as respondent testified, either essentially innocent friendly gestures or instances of his unorthodox teaching methods, the Commission found respondent not credible. Respondent's messages are, on their face, suggestive, possibly sexual, and far past the line of any kind of informal banter appropriate for a student-teacher relationship. Respondent's explanations at the hearing simply did not ring true or logical in the face of the plain meaning of his messages.

b. The Commission did not credit the District position that respondent's actions constituted grooming – i.e., that he engaged in deliberate acts intended to lower the inhibitions of vulnerable students so that they would be open to more direct exploitive behavior. The Commission determined that there was insufficient evidence to establish that respondent's actions were part of a bigger enterprise to engage the students in planned, future behavior.

24. The Commission determined there was insufficient evidence to establish that respondent had stored or accessed pornography on his District-issued computer.

25. The Commission determined there was insufficient evidence to establish that respondent had failed to obey a direction from Principal Boger to refrain from communicating with students after LACES administration suspended respondent.

## LEGAL CONCLUSIONS

### *Jurisdiction and Burden of Proof*

1. The Commission has jurisdiction to proceed in this matter pursuant to Education Code sections 44943 and 44944. (Factual Findings 1-5.<sup>3</sup>)

2. The District has the burden of proof in this matter because it is seeking to dismiss respondent from employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

### *Grounds for Discipline*

3. Section 44932, subdivision (a), sets out the grounds for which a permanent employee may be dismissed by a school district. The grounds alleged in this case are: immoral conduct (subd. (a)(1)); evident unfitness for service (subd. (a)(5)); and persistent violation of, or refusal to obey, school laws or reasonable regulations prescribed by the employing school district (subd. (a)(7)). In addition, the District alleged the section 44939 prohibition against “willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing district” as further grounds for dismissing respondent.

4. a. Immoral conduct under sections 44932, subdivision (a)(1), and 44939 has been defined as:

Conduct which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude (correctness), or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.

(*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.)

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<sup>3</sup> Further statutory references are to the Education Code.

b. Cause exists to dismiss respondent from his employment with the District under section 44932, subdivision (a)(1), for immoral conduct, based on Factual Findings 9-11.) Respondent's actions considered in total demonstrate a pattern of disturbingly intimate and invasive conduct, an abuse of his power over, and access to, students, and near-total indifference to the students' needs and feelings and his responsibilities toward them as their teacher.

5. a. Evident unfitness to teach under section 44932, subdivision (a)(6), means “‘clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.’ Unlike ‘unprofessional conduct,’ ‘evident unfitness for service’ connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district.” (*San Diego Unified School Dists, supra*, 194 Cal.App.4<sup>th</sup> at 1462, quoting *Woodlands Joint Unified School District v. Commission on Professional Competence*, (1992) 2 Cal.App.4<sup>th</sup> 1429, 1444.)

b. In this case, respondent’s misconduct as set out in Factual Findings 9-11, was pervasive and evinced an immaturity and lack of discipline and professionalism that is consistent with a character defect and unlikely to improve with training or coaching.

6. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229, the California Supreme Court explained that ‘immoral conduct’ and ‘evident unfitness to teach’ as used in the Education Code must be analyzed in the context of whether the underlying conduct is hostile to the welfare of the school community and whether there is sufficient nexus between the conduct and teaching. To that end, the *Morrison* court set out seven factors to consider. They are:

- The likelihood that the conduct may have adversely affected students or fellow teachers and the degree of such adversity anticipated;
- The proximity or remoteness in time of the conduct;
- The type of the teaching certificate held by the party involved;
- The extenuating or aggravating circumstances, if any, surrounding the conduct;
- The praiseworthiness or blameworthiness of the motives resulting in the conduct;
- The likelihood of the recurrence of the questioned conduct; and
- The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

7. Applying the *Morrison* factors, the Commission finds as follows:

a. Likelihood of adversely affecting students. M [REDACTED], E [REDACTED], and L [REDACTED] all described experiencing discomfort and concern. M [REDACTED] testified persuasively about the clear power advantage respondent, as her teacher, had over her and how she struggled to strike the right tone in coping with his intrusions without offending or angering him.

b. Proximity or remoteness in time of the conduct. Respondent's conduct was recent, having occurred between 2015 and 2016.

c. Type of teaching certification. Respondent's has appropriate credentials for his position with LACES.

d. Extenuating or Aggravating Circumstances. None were established.

e. Praiseworthiness or blameworthiness of the motives resulting in the conduct. Respondent's explanation of courting popularity over effective teaching provides some insight into his motives. Allowing his desire to be well-liked to overwhelm his professional judgment as an educator underscores that his failings are directly related to teaching.

f. The likelihood of recurrence of the questioned conduct. Respondent's conduct occurred over an extended period of time and frequently. Under these circumstances, that is at least some indication that it is likely to recur.

g. The extent discipline may cause adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. The conduct in question is respondent's private, one-on-one communications, not his presentations in class. As such, they should not inhibit or chill teachers' speech in the classroom.

8. Considering the *Morrison* factors as a whole, it is clear that respondent's conduct is directly related to his teaching. Indeed, all of it is about and around students and could not have occurred without the access and authority respondent had as a teacher.

#### *Persistent Violation of, or Refusal to, Obey Rules and Regulations*

9. a. Under section 44932, subdivision (a)(8), a teacher may be terminated for persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by State Board of Education or by the governing board of the school district employing him.

b. Applicable rules and regulations implicated in this matter are:

- LAUSD Employee Code of Ethics – Section A(1) provides that employees are to set the example, “striving to demonstrate excellence, integrity, and responsibility in our work.” Section A(2) provides that employees are to create an environment of trust. “We will not tolerate discriminatory or harassing behavior of students.”
- LAUSD Code of Conduct with Students – Discourages extra-curricular contact with students, having private meetings, driving with students without parents’ or guardians’ written permission, and communicating with students for purposes not school-related.

- LAUSD Unified School District Policy Bulletin No. 999.10 – Provides that teachers, among others, must use data systems and computers in a responsible and education-oriented way. Inappropriate use includes accessing or transmitting pornography.
- Board Resolution Reaffirming Commitment to Respectful Treatment of All Persons – requires treating all equally and with respect.

c. Cause exists to dismiss respondent from his position in that he persistently violated the aforementioned rules, harassing female students, privately messaging them repeatedly for matters that were entirely unrelated to school and generally disrespecting his students by consistently breaching the normal professional boundaries between student and teacher.

d. Cause does not exist to dismiss respondent based on the allegation that he violated the District's computer policy as there was insufficient evidence to establish respondent stored or accessed pornography on his District-issued computer. (See Factual Finding 16.)

e. Cause does not exist to dismiss respondent based on the allegation that he disobeyed Principal Boger's directive not to contact students after respondent was suspended in May 2016. There was insufficient evidence to establish that Principal Boger had relayed the directive to respondent. (See Factual Finding 13.)

#### *Willful Refusal to Perform Regular Assignments*

10. The District alleges that respondent not only violated applicable rules, but did so in a willful manner, as though to thwart their inherent authority. Nothing in the records supports the contention that respondent acted with volition to circumvent specific rules or directives. If anything, respondent seemed to have been entirely unaware that he operated as a professional under rules and directives that were intended to limit his actions and choices. Under these circumstances, the Commission concluded that cause did not exist to dismiss respondent on the ground of willful refusal to perform regular assignments in violation of section 44939.

#### *Disposition*

11. "The Commission has broad discretion in determining what constitutes unfitness to teach . . . and whether dismissal or suspension is the appropriate sanction." (*California Teachers Assoc'n v. State of California* (1999) 20 Cal.4th 327, 343-344.) Thus, even where cause for dismissal has been established, the Commission still has broad discretion to determine whether such discipline is actually warranted. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 222.)

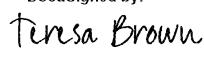
12. Taking all the evidence and the applicable law into consideration, the Commission has determined that respondent should be dismissed from his position with the District. The misconduct established is serious, injurious, against normal educational

objectives, and evinces a degree of immaturity and lack of self-awareness inconsistent with the professional responsibilities of a teacher. Under these circumstances, respondent's dismissal is the only appropriate outcome. (Factual Findings 9-25.)

## ORDER

Respondent Jose Rojas is hereby dismissed from employment as a permanent certificated employee of the Los Angeles Unified School District.

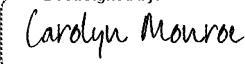
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TERESA BROWN  
Commission Member

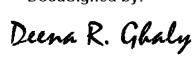
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CAROLYN MONROE  
Commission Member

DATED: February 21, 2019

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DEENA R. GHALY  
Administrative Law Judge  
Office of Administrative Hearings