

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS AND A  
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE  
WILLIAM S. HART UNION HIGH SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

EDWARD COLLEY,  
A Permanent Certificated Employee,  
  
Respondent.

Case No. 2017010228

**DECISION**

This matter came on regularly for hearing before the Commission on Professional Competence, William S. Hart Union High School District (District), County of Los Angeles, State of California (Commission), in Santa Clarita, California, on November 27, 28, 29, and December 6, 2017. The Commission consists of the following members:

Samuel D. Reyes, Chairperson  
Administrative Law Judge  
Office of Administrative Hearings

David Duffield, Member  
Selected by the Governing Board

Allen Robert Stubblefield, Member  
Selected by Respondent

Kerrie E. McNally, Attorney at Law, represented the District.

Tamra M. Smith, Attorney at Law, represented Edward Colley (Respondent), who was present throughout the proceedings.

The District seeks to dismiss Respondent on grounds of evident unfitness for service and persistent refusal to obey school laws. The District hired Respondent in August 1995 to teach in its Air Force Junior Reserve Officer Training Corps (AFJROTC or JROTC) Program. Respondent taught in the Program until June 30, 2015, when the United States Air Force (Air

Force) revoked his certification to serve as a JROTC instructor. Absent the certification, Respondent cannot teach in the JROTC program. The District relies on the decertification and the facts surrounding the decertification to argue that cause for dismissal exists. Respondent disputed some of the factual allegations and argued that grounds for dismissal do not exist.

Oral and documentary evidence was received at the hearing. The record was left open for submission of closing argument. Initial argument was received from both parties on December 29, 2017, and reply argument was received from both on January 12, 2018. The matter was submitted for decision on January 12, 2018.

## FACTUAL FINDINGS

### *Jurisdictional Findings*

1. Respondent is a permanent certificated employee of the District.
2. On November 17, 2017, the District filed a Notice of Intent to Dismiss and Statement of Charges (Accusation), seeking Respondent's dismissal. Respondent thereafter requested a hearing, and the instant proceedings followed.
3. All prehearing jurisdictional requirements have been met.

### *Respondent's Background and Employment With The District*

4. Respondent holds a Designated Subjects Special Subjects Teaching Credential (ROTC) and an Administrative Services Credential, Certificate of Eligibility, both issued by the California Commission on Teacher Credentialing. He obtained the former credential on September 1, 1995, and he received the latter on August 30, 2005.

5. Respondent attended three institutions of higher education: Onondaga Community College in Syracuse, New York, from June August 1979 to May 1980; Rochester Institute of Technology, in Rochester, New York, from the Fall of 1980 until the Fall of 1983; and, the Air Force Institute of Technology, on Wright-Patterson Air Force Base in Ohio, from May 1989 until December 1989. During his tenure at these schools, Respondent obtained credit for 28 semester units in Math and 32 semester units in Science. In addition, in order to become an ROTC instructor, Respondent received training from the Air Force and from the Ventura County Office of Education.

6. a. On August 2, 1995, the District and Respondent, a retired Air Force Captain, entered into an employment contract for Respondent to provide "certificated service," effective September 1, 1995. The agreement was to continue in effect until Respondent resigned,

abandoned his position, was laid off pursuant to Education Code section 44955,<sup>1</sup> was non-reelected pursuant to section 44882, retired from employment, was dismissed pursuant to sections 44932, 44948.3, or 44948.5, failed to maintain his teaching credential or certificate, failed to pass either the CBEST or a District-prescribed proficiency test, gave false information in the application for employment, or was terminated by any other reason authorized by law.

b. With respect to “Maintenance of Credentials,” the agreement provided, in pertinent part: “Applicant warrants and represents that he/she will, with respect to each credential recited above and any other credential subsequently obtained by Applicant: ¶ 1. Immediately register each credential with all appropriate agencies, including the County Superintendent of Schools. ¶ 2. Take and pass all examinations or continuing education courses which are now or may be required for renewal of each credential. ¶ 3. Refrain from any act or omission which is intended to or will result in suspension, revocation, or deregistration of any or all credentials. ¶ Applicant acknowledges that his/her continuing employment with the District is expressly subject to maintenance of each credential. Failure to maintain each credential may be treated by the District, at its sole option, as a material breach of this contract and as grounds for dismissal for unprofessional conduct and insubordination.” (Exh. 5, at pp. 2 and 3.)

c. The reference in the provision of the contract set forth in factual finding number 6b to the “credential recited above” was to the “R.O.T.C., Designated Subjects” credential issued by the California Commission on Teaching Credentialing (CTC). (*Id.*, at p. 1.) By its own terms, the provision pertains to “Maintenance of Credentials,” and, in the context of the employment contract for “certificated” employment, the term must refer to credentials required to be maintained for certificated employment, namely, those issued by the CTC.

d. The employment contract also contains the following requirement: “The Applicant agrees that he/she will faithfully adhere to all laws of the State of California, and the United States, the regulations of the State Board of Education, the regulations, policies, and directives of the District Board and all lawful directives of Applicant’s superiors.” (*Id.*, at p. 4.)

7. The District assigned Respondent to serve as an instructor in the JROTC program, a position he discharged until June 30, 2015.

8. Between his initial employment and June 30, 2015, Respondent was certified by the Air Force to serve as a JROTC instructor. On May 18, 2015, the Air Force revoked the certificate, effective June 30, 2015, and Respondent does not currently hold a certification from the Air Force to teach JROTC.

9. On June 30, 2015, following the decertification by the Air Force, the District non-reelected Respondent as a probationary employee. Respondent challenged his non-reelection in the Superior Court of California, County of Los Angeles. On September 26, 2016, the court

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<sup>1</sup>All further statutory references are to the Education Code.

ordered Respondent's reinstatement as a permanent employee of the District. Following his reinstatement, Respondent has been working as a substitute teacher in the District.

*The JROTC Program*

10. a. The District maintains the JROTC Program at Valencia High School (Valencia High) pursuant to a contract with the Air Force. As part of the contract, the Air Force agrees: to establish a JROTC unit; to prescribe course content; to provide all curriculum text, teaching aides, and other academic text supplies associated with the program; to provide certification/licensure training to instructors contracted by the District, provided the instructors are retired Air Force officers or non-commissioned officers; to issue Air Force uniforms, supplies, and equipment; and to reimburse the District for the Air Force portion of the instructors pay and other costs associated with District support of unit activities, such as transportation and logistical support.

b. In the contract the District agrees, among other things: to establish Aerospace Science as a separate, integral academic, and administrative department and to establish a minimum three-year course of JROTC consisting of at least 120 classroom hours per year; to teach the required JROTC courses prescribed by the Air Force; to grant academic credit applicable toward graduation requirements for the successful completion of JROTC courses; to make available to the Aerospace Science Department the necessary classroom facilities and office space for the efficient and effective accomplishment of JROTC course objectives; to provide and maintain drill area(s) at or in the immediate vicinity of the school; to provide and maintain storage facilities for the protection and care of uniforms, supplies and equipment used by the JROTC program; to provide Aerospace Science faculty access to the worldwide web; to employ, at a minimum, one retired Air Force commissioned officer and one Air Force non-commissioned officer to conduct JROTC classes and leadership activities; to conduct annual instructor evaluations, as outlined in JROTC instructions, and to submit them through Air Force channels; to provide the JROTC instructors with employment contracts meeting certain requirements; to make available to the Aerospace Science Department all instructional supplies, materials, services, furniture, and privileges afforded other academic departments at the institution; and to comply with Air Force directives governing unit operations, JROTC curriculum, cadet performance, instructor management, and logistics management.

11. Between 1995 and June 30, 2015, Respondent was assigned to JROTC Unit CA-782 at Valencia High in the District. Respondent was the Senior Aerospace Science Instructor (SASI) and commanding officer of JROTC Unit CA-782.

12. In June 2004, the District hired retired Master Sergeant Frederick D. Malcomb, Jr. (Malcomb) to work at the JROTC as an Aerospace Science Instructor.

13. a. The Valencia High principal was the District manager responsible for the direct supervision of Respondent and Malcomb. Dr. Paul Priesz (Priesz) was the principal until

June 30, 2014, and John Costanzo (Costanzo), the current principal, assumed his position in July 2014. In the JROTC program, Respondent, as SASI, unit commander, and higher ranking officer, was responsible for supervising and assigning work to Malcomb.

b. Respondent and Malcomb had a good working relationship, and the reporting relationship was an informal one. To the extent possible, Respondent and Malcomb typically divided up their responsibilities to the Air Force and the District. Thus, Respondent was primarily responsible for accounting, finances, and fundraising. Malcomb was primarily responsible for Air Force equipment and other property, logistics, curriculum, and organizing community events and fundraisers.

c. To meet Air Force requirements, Respondent appointed Malcomb as the primary Information Technology Equipment Custodian (ITEC), responsible for ordering and conducting inventory of computer and other electronic equipment, and as the Military Property Custodian (MPC), responsible for ordering and conducting inventory of all other Air Force property, such as cadet uniforms. Respondent was the alternate ITEC.

14. Respondent deemed Malcomb to be a competent non-commissioned officer, and trusted him to discharge his duties. Respondent tended to be hands-off in areas of Malcomb's responsibilities, including, as pertinent to this matter, handling of IT equipment and IT matters. However, as SASI, Respondent was responsible for oversight of Air Force Automated Data Processing Equipment (ADPE) compliance.

15. Air Force ROTC units were under the direction and supervision of a command structure based at Holm Center, located in Maxwell Air Force Base in Alabama (Headquarters). Respondent was responsible at the unit level for compliance with the directives from Headquarters.

#### *Communications with JROTC Unit CA-782*

16. Respondent and Malcomb had two separate electronic mail (email) accounts, one for contacts with the District and one for contacts with the Air Force. They were each part of three Air Force email distribution groups, one at the unit level, one as the regional level, and one at the national level.

17. Except for the period of September 2014 through May 2015, when he did not have access to his email JROTC account, it was Respondent's custom and practice to check his email about once per week. It was Malcomb's custom and practice to check his JROTC email account three to four times per week.

18. WINGS is a JROTC website and database that also serves as a communications vehicle within the JROTC. JROTC email accounts can be accessed through WINGS. WINGS is used to exchange information between Headquarters and JROTC units.

19. Respondent's primary work computer was a District-issued desktop computer, whose operating system was Windows XP. He used the computer to check his emails, both from the District and from the Air Force, and to perform his school administrative duties. Matters pertaining to instruction, curriculum, and student information were handled through a separate Air Force-issued computer.

20. Effective September 15, 2014, the Air Force restricted WINGS access for computers using Windows XP because the operating system would no longer receive security updates or other support from Microsoft Corporation. As a result, Respondent lacked the ability of accessing WINGS from his computer until he obtained a new computer in March or April 2015.

21. Malcomb's computer did not have the outdated operating system, and he had access to WINGS at all relevant times. He did occasionally experience difficulties locating certain modules and uploading some information.

22. Except as otherwise noted, Respondent and Malcomb received all electronic communications sent to the Valencia High JROTC unit from Headquarters via email or WINGS. The emails were sent through regularly established channels of communication in the regular course of business. Respondent and Malcomb testified that they regularly checked their email accounts and WINGS, with the noted exception for Respondent during the period of September 2014 to May 2015. Even when Respondent was without access to his emails or to WINGS through his computer, it was Malcomb's custom and practice to print important emails and provide them to Respondent. Moreover, Respondent and Malcomb specifically acknowledged receiving specific emails. While both Respondent and Malcomb asserted numerous times that they did not recall receiving a particular communication, this lack of recollection is insufficient to negate receipt of communications made through regular channels.

#### *Data Processing Equipment and Air Force Instructions*

23. As authorized by federal law, the Secretary of the Air Force publishes "Instructions," including some that exclusively apply to AFJROTC, all of which prominently state "COMPLIANCE WITH THIS PUBLICATION IS MANDATORY," to govern management of the JROTC units. AFJROTC Instruction 36-2002, issued October 11, 2013, requires AFJROTC instructors, among other things: (1) to perform duties, accept responsibilities and meet standards as prescribed by applicable Department of Defense (DoD), Air Force, Holm Center, and AFJROTC instructors; (2) log into their WINGS and their email accounts at least weekly to ensure they remain current on all announcements, perform all required system updates, and meet all required suspenses; and (3) comply with all Air Force directives governing AFJROTC. (Exh. 19, at pp. 4 and 11.)

24. As part of the JROTC Program, JROTC Unit CA-782 uses the Air Force's ADPE. The Air Force requires accountability and safekeeping of the ADPE. As set forth in AFJROTC Instruction 36-2001, dated September 8, 2010, the ITEC is required to maintain an inventory of all

ADPE. (Exh. 7, at p. 622.) In addition, the ITEC must conduct an annual AIM inventory, which includes accounting for all computers, projectors, digital cameras, and other electronic equipment, and revise the annual inventory any time there are changes in the equipment count. (*Ibid.*) A signed copy of the AIM Inventory must be returned to Headquarters. (*Ibid.*) Letters setting forth the Primary and Alternate ITEC must also be prepared annually, but the Instruction does not specifically require providing a copy to Headquarters. Respondent and Malcomb testified that all that was required was for the ITEC letters to be kept locally. These tasks must be accomplished between January 1 and April 30 of every year. (*Ibid.*) The sanction for failure to submit required documentation to Headquarters was described as follows: “Failure to comply with the Holm Center/SDCS suspense [or deadline] for submitting an updated IT equipment custodian letter or completing an AIM inventory will result in the unit’s AIM account locked and ineligible to obtain IT equipment refreshes.” (*Ibid.*)

25. AFJROTC Instruction 36-2001, dated May 28, 2014, made certain changes and clarification. For instance, it made clear that “New ADPE equipment custodian letters and AIM inventories will be accomplished and signed every year whether there have been ADPE equipment custodian changes of not.” (Exh. 40, at p. 10.) Moreover, in stating that “Failure to comply with the Holm Center for submitting an updated ADPE equipment custodian letter or completing an AIM inventory will result in the unit’s AIM account being locked and the unit declared ineligible to obtain ADPE equipment refreshes,” the Instruction made clear that the ITEC letters also had to be submitted to Headquarters in order to obtain new equipment. (*Id.*, at p. 11.)

26. The Air Force also maintains an Air Force Manual (Manual). Manual 33-153, dated March 19, 2014, which like the Instructions prominently states “COMPLIANCE WITH THIS PUBLICATION IS MANDATORY,” pertains to Communications and Information. (Ex. J., at p. 1.) In pertinent part, the Manual requires (1) ITEC “Appointment letters will be reviewed annually and a new appointment letter will be accomplished if there have been any changes.” (Ex. J., at p. 13); (2) the equipment control officer must conduct training of ITECs within 30 days of initial appointment and annually thereafter; (3) ITECs are required to perform, at a minimum, an annual inventory of all assets in the AIM account; (Exh. J., at pp. 13, 14.)

#### *Pertinent School Rules*

27. Board Policy 4100 requires, in pertinent part: “The Governing Board recognizes that teachers and other certificated personnel work closely with students in carrying out the district’s educational goals. The superintendent or designee shall ensure that the duties, responsibilities, and district’s expectations for certificated positions are clearly defined and made known to each member of the certificated staff. [¶] Each certificated staff member shall be held accountable for duties assigned to him/her and shall undergo regular performance evaluations in accordance with law and negotiated agreements. [¶] The Board strongly encourages certificated staff to continually improve their skills and pursue excellence within their profession. [¶] . . . [¶]” (Exh. 60.)

*Submission of ADPE Documentation Before the 2013-2014 School Year*

28. ROTC units had the opportunity to request new equipment on a scheduled, yearly basis, a process known as the “IT Refresh.” Requesting the equipment required completion and submission to Headquarters of an ITEC Appointment Letter and an AIM Inventory. Submission could be done via facsimile or email transmission. In addition, those responsible for the equipment had to complete training, which consisted of reviewing power point slides, and sign a training certification.

29. Malcomb, the ITEC for Unit CA-782, testified that if there was no need for new equipment there was no need to submit the documents to Headquarters. His testimony was consistent with AFJROTC Instruction 36-2001, set forth in factual finding 25, and a January 4, 2012 email from Amy Frasier (Frasier), the electronic control officer at Headquarters responsible for Unit CA-782. In the January 4, 2012 email, Frasier reminded recipients that the ITEC appointment letters and AIM inventories were required “In order to be eligible to request new equipment in WINGS in May . . . .” (Exh. 8, at p. 936.) The deadline, or “suspense” date, was April 23, 2012.

30. Malcomb testified that the unit did not need new equipment during the 2012-2013 school year, and he did not send the documents to Headquarters. He nevertheless kept inventory of the equipment and kept the list in a folder.

31. On November 14, 2012, Malcomb was notified that the ADPE/AIM Inventory account had been locked for three years, precluding the ordering of equipment until the account was unlocked. Instructions for unlocking the account were provided. As part of the process, an annual inventory had to be provided to the Headquarters electronic control officer. Malcomb and Respondent discussed the email, and decided to take no action to unlock the ADPE account because the unit did not need new equipment.

32. On January 2, 2013, Frasier sent another email to units in her area of responsibility, including unit CA-782, about the annual IT Refresh, with the reminder that in order to be eligible to request new equipment in WINGS in May 2013 the ITEC Appointment letters and signed AIM Inventory documents would have to be submitted by January 25, 2013.

33. Respondent and Malcomb discussed the January 2, 2013 email, and they agreed that inventory and ITEC appointment letters should be sent for the unit to be eligible to procure new equipment. As was his custom, and consistent with prior direction from Headquarters, Malcomb faxed the ITEC appointment letter and the AIM Inventory to Frasier. The documents were approved, on January 17 and 28, 2013, respectively, and Frasier uploaded them to the WINGS system.

34. On February 20, 2013, Malcomb wrote to Frasier that WINGS showed the unit was not IT-refresh compliant. Frasier replied on February 21, 2013: “That’s still showing last

year; if you look at your letter and inventory it shows they are 2013 and you are compliant for 2013.” (Exh. 14.)

35. a. On February 22, 2013, Headquarters sent an email to all JROTC Units, which stated, in part: “[2.] Have all currently appointed Primary and Alternate IT Equipment Custodians take the below noted training and provide a signed training certificate to their appointed Equipment Control Officer (ECO) [No Later Than] **15 March 2013**. (The ECO contacts are contained in the training slides) **Failure to provide your training certificate by the 15 Mar suspense date will cause your ADPE account to be locked as non-compliant.**” (Exh. 15, at p. 432; emphasis in original.)

b. The February 22, 2013 email communicated a change in the past practice, and clearly required submission of the training certificates to Headquarters. The communication did not, as the District argues, require annual submission. It did not expressly state that the documents would be required every year, and referred to only one deadline. Respondent and Malcomb read the printed copies of the power point slides and signed the ITEC Training Certification on February 25, 2013. Malcomb emailed or faxed both documents to Frasier on or about February 23, 2013.

#### *Submission of ADPE Documentation During the 2013-2014 School Year*

36. In order to get a head start on the 2014 IT Refresh, on January 14, 2014, Malcomb sent the MPC appointment letter to Headquarters, and received confirmation of receipt on January 24, 2014. In the email acknowledging receipt of the MPC letter, an unidentified Headquarters staff person wrote that the letter had been uploaded to WINGS and provided instructions on how the letter could be viewed on the system.

37. a. Malcomb was unable to locate the MPC letter on WINGS and requested clarification, writing: “I’m lost. I went there last year and many other times and I have no tabs to upload anything under that tab. I’ve used Mozilla-google chrome-internet explorer 8-9-10 etc . . . I’ve also tried my pc at home and 3 at school. [¶] Am I missing something?” (Exh. 20.)

b. The January 27, 2014 reply email from Headquarters stated: “I am sorry for the confusion. HQ-Logistics has to upload the MPC letter at this time. I have uploaded the letter. You can go to Unit Management/Maintain Unit Data/Unit Correspondence and see the MPC letter. At this time HQ-Logistics has to do the uploading. So if there are any changes in the primary, alternate or principal for the MPC letter – just send it to us and we will upload it. . . .” (*Ibid.*)

38. Malcomb testified that in January 2014 he also faxed an inventory list to Frasier. Neither the copy of the inventory or a contemporaneous written account of its being sent or received was submitted at the hearing. WINGS did not reflect that the document was received, an indication that Frasier did not receive it or that, if she did, did not upload it.

39. On March 7, 2014, Headquarters sent an email to all JROTC units regarding the “Annual IT equipment account compliance.” It states in part:

“ADPE accountability is an Air Force requirement. ALL units must be compliant by 10 April 2014. \*A word of caution: The process may take up to 7 days to complete; . . .

“SD has created a new module in WINGS to help units keep EC, Training Certification and ADPE inventory current. Units will no longer email or fax items to ECO, but will work within the new IT Refresh Account Information Module in WINGS . . . and will be able to see the status of their unit at any time. [¶] . . . [¶]

“Four documents are required for an account to be compliant:

- “1. [ITEC] apt letter
- “2. ITEC training certificate for Primary ITEC
- “3. ITEC training certificate for Alternate ITEC
- “4. An Inventory listing signed by the commander/director and ITEC

“A quick overview of the process is as follows (use the attached info guide for detailed information):

“1. Use the IT Refresh ->Account Information page in WINGS to generate ITEC appointment letter. Print, sign, scan and upload into WINGS.

“2. Have the appointed primary and alternate ITEC click the ‘Training Slides’ link in WINGS to review the ITEC training slides. The primary and Alternate ITECs need to print, sign and date the training certificate (the last slide). Scan and upload training certificates into WINGS.

“3. Upon receipt of the signed ITEC appointment letter and both training certificates, the ECO office will generate a current AIM Inventory with the ITEC names and load a copy into WINGS.

“4. The appointed ITECs must then review the AIM Inventory listing for accuracy. The appointed ITEC and Commander/Director must sign the last page of the inventory listing. Scan and upload the complete AIM Inventory listing into WINGS.

“All documents are required to be uploaded into WINGS to be compliant. The IT Refresh-> Equipment Request page will open on 1 May for all compliant ADPE accounts so that the unit may request IT equipment. The Equipment Request page will not open for non-compliant accounts. [¶] . . . [¶].” (Exh. 21, at p. 159; emphasis in original.)

40. a. Respondent and Malcomb received and read the March 7, 2014 email, but did not provide any information in response. Respondent testified that he believed they had complied, and that he relied on Malcomb to do anything required for compliance. Malcomb testified that he believed he had already provided the information in January 2014. They had completed the training on February 25, 2013, and had submitted it to Headquarters. There had been no changes since the last ITEC letter he provided, and he did not believe a new one was required unless the primary or alternate ITEC changed.

b. The March 7, 2017 email clearly communicated a change in procedure, and a prudent equipment custodian or his unit commander should have, at a minimum, inquired if already submitted documents were compliant with the new rules.

41. By email dated April 7, 2014, Retired Air Force Colonel Peter Gray, the Headquarters Director responsible for the region that included the Valencia High unit, notified Unit CA-782 and other units: "Wings shows the Units listed on this email have not started the 10 April IT Refresh Suspense that the director said was extremely important! You may already be behind the power curve to make the suspense since it normally requires up to 7 days of lead time to complete the required coordination/review from your ADPE POC. [¶] Please start on this Air Force level suspense ASAP to avoid any possible negative impacts to instructors/units not making this suspense that has general officer interest." (Exh. 22; emphasis in original.) Malcomb received the April 7, 2014 email after his return from spring break.

42. By email dated April 11, 2014, Retired Air Force Colonel Cameron Gilbert (Gilbert), Headquarters JROTC Director, notified several JROTC units, including CA-782, that they had not met the April 10, 2014 suspense for their respective ADPE accounts. The email stated: "[B]oth instructors are responsible for the management and administration of their AFJROTC program which includes meeting headquarters' suspenses. If you have not completed the suspense by 18 Apr, both instructors at your unit will be placed on probation until the unit's ADPE account is fully compliant. If you fail to bring the ADPE account within compliance by 30 Apr, both instructors will be considered for decertification." (Exh. 23.) Malcomb received the email.

43. Respondent testified he did not recall receiving the April 7 or April 11, 2014 emails. However, Malcomb received the documents, and because they were important emails, it is concluded that, pursuant to his custom and practice, Malcomb printed a copy of the emails and showed them to Respondent.

44. Neither Respondent nor Malcomb took any action in response to the April 7 or 11, 2014 emails. The emails constituted Headquarters directives. Malcomb did not submit any documents or make any inquiries of Headquarters staff to confirm his belief or to seek clarification about why Unit CA-782 was on the email of non-compliant units. Respondent did not direct Malcomb to take any action in response to the emails. Malcomb explained his failure to act on the basis that he believed the unit was already compliant. Respondent explained that he had generally

directed Malcomb to do his job and had trust in the master sergeant's abilities. Malcomb's belief the unit was compliant and Respondent's failure to take action to ensure compliance are not reasonable in light of the repeated emails containing contrary information, their failure to verify information in WINGS, and their failure to seek clarification about the emails' accuracy.

45. On April 22, 2014, the Air Force placed Respondent on probation. An email from Gilbert, sent at 5:26 a.m. to the responsible District administrator at Valencia High, Priesz, with a copy to Respondent, stated: "Effective immediately I am placing your AFJROTC instructors on probation for failing to meet a critical Headquarters suspense. I have sent personal requests to your instructors on March 7, 2014 and April 11, 2014 to provide the required documents to maintain accountability of your unit's Automated Data Processing Equipment (ADPE). This is in addition to numerous attempts by the Regional Director and other Headquarters staff have made to your instructors.<sup>[2]</sup> Accounting for ADPE is a strict Air Force compliance requirement. This is an annual recurring requirement. As of April 18, 2014 both instructors failed to respond to repeated attempts from my headquarters to close the suspense. [¶] Both instructors are responsible for the management and administration of their AFJROTC program which includes meeting headquarters' suspenses. Your instructors will remain on probation until the unit's ADPE account is fully compliant. If the instructors fail to bring the ADPE account within compliance by April 30, 2014, we will initiate decertification actions for both instructors. Please monitor this situation closely and ensure your instructors are fully aware of the seriousness of this situation. [¶] My staff is ready to provide any assistance your instructors may need to take care of this matter. . . . (Exh. 24)

46. Respondent received the April 22, 2014 email. He testified that he was surprised about the email because he did not know the Air Force had concerns about the unit's performance. Part of his surprise stemmed from the fact that Malcomb had been conducting inventory earlier in January. Respondent met with Priesz, informing the principal that he did not know what the problem was and assuring him that the matter would be taken care of.

47. Respondent spoke with Malcomb, who reiterated his belief that the unit was compliant and professed confusion about the Air Force directives. Respondent directed Malcomb to correct the problem. Respondent and Malcomb completed the training and completed the ITEC Training Certifications, both of which were signed April 22, 2014. Both signed the ITEC appointment letter, which was also dated April 22, 2014. Malcomb uploaded the documents into WINGS. Malcomb was unable to open a link to WINGS to generate an inventory list, and submitted an inventory list to Frasier for her to upload to WINGS.

48. On April 22, 2014, at 11:19 a.m., Malcomb replied to Gilbert's email as follows: "Both [Respondent] & I completed the training module, and it's been uploaded. I've uploaded the

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<sup>2</sup>Except for the written communications set forth in this Decision, no evidence was presented at the hearing regarding additional communications by other headquarters staff regarding this matter.

new EC letter. Our inventory is completed, and we just need to have access to the link to generate a new inventory listing to ensure there is [sic] no new items unaccounted for. [¶] As a heads up I completed an inventory in Jan 2014 when we sent in the MPC letter. My understanding was that we were current on our inventory. I'd had communications with Amy Frasier via e-mail and phone. We discussed my confusion on what documents were needed and how to upload them into Wings. I'd previously faxed them and e-mailed them. I do believe at that time it was my understanding that the documents were received, and during one of our conversations I was instructed on how to upload the letter into Wings. I actually thought we were ahead of the game." (Exh. 29, at p. 1004.)

49. The ITEC appointment letter submitted by Malcomb was rejected on April 22, 2014, because it lacked Respondent's signature. Malcomb obtained Respondent's signature and re-submitted the document on April 28, 2014.

50. The AIM Inventory was processed by Frasier and was ready for download, review, and signature on April 23, 2014, after 4:58 p.m. Malcomb thereafter downloaded the document. Respondent and Malcomb signed the document on April 29, 2014, and Malcomb submitted to Frasier, who uploaded it to WINGS.

51. Respondent stayed in touch with Malcomb to ensure compliance with the Air Force directive. When Malcomb reported that the matter was resolved, Respondent communicated the information to Priesz.

52. Respondent's probation was terminated following submission of the documents. By email dated May 2, 2014, which was also sent to the respective ROTC units, including CA-782, Gilbert notified individuals at several schools with JROTC programs, including Priest, as follows: "I'm pleased to inform you that your instructors have met the April 30, 2014 deadline to account for all Air Force ADPE and I have removed them from probation for failure to meet a critical Headquarters suspense. Accounting for ADPE is a mandatory annual Air Force compliance requirement. [¶] Please encourage your instructors to continue to adhere to AFJROTC directives and deadlines and to stay engaged with us through consistent monitoring of their AFJROTC email account in WINGS, our primary means of communicating with your instructors." (Exh. 39.)

#### *Submission of ADPE Documentation During the 2014-2015 School Year*

53. Malcomb testified he tried to be proactive for the 2014-2015 school year and avoid the problems of the prior year. In January 2015, the month he had been told by Frasier that the new inventory module would be ready in WINGS, Malcomb completed an inventory list. Respondent corroborated that he had seen Malcomb conducting inventory in January 2015. Malcomb faxed the inventory list to Frasier, anticipating that she would upload it to WINGS.

54. Malcomb testified that he did not upload the inventory to WINGS because she had told him to wait for her to update the unit's inventory in WINGS during an exchange in October 2014. On October 23, 2014, after receiving a new computer, Malcomb wrote to Frasier: "I received our new PC. Where in Wings do I show it received? I looked in the Logistics/receive orders, and I didn't see anything there. Do I simply add it to my ADPE?" (Exh. N.) Frasier replied: "You don't do anything in WINGS at this point until I load your updated inventory after all the equipment has been shipped out." (*Ibid.*) Frasier loaded the AIM inventory into WINGS on March 26, 2015. (Exhs. 45 and 47.)

55. On March 14, 2015, R. Wayne Barron (Barron), the new Headquarters Director responsible for the region that included Unit CA-782, sent a "Helpful Reminders" email to units in the region, reminding instructors to submit EC letters, training certificates, and AIM Inventory lists by the IT Refresh April 10, 2015 deadline. Malcomb received the email, and provided a printed copy to Respondent.

56. On Friday April 17, 2015, at 4:53 p.m., JROTC Headquarters sent an email to Unit CA-782, to the Valencia High Principal, and to other units and their school administrators who had missed the April 10, 2015 deadline for submission of ADPE documentation, informing them of the missed deadline and stating: "[Y]ou MUST complete this tasking by [NO LATER THAN] April 24, 2015 or you and your unit will certainly be placed on probation for failure to comply with HQ-Director guidance and considered for Decertification. Again, Decertification consideration will be given to those who fail to complete this tasker by 24 April based on the importance. [¶] The attached documents walk you through the required steps in the WINGS IT Refresh Module that are required to complete the compliance items. [¶] . . . [¶]." (Exh. 43, at pp. 26-27; emphasis in original.)

57. Costanzo testified that he spoke to Respondent the week after receiving the April 17, 2015 email, before the April 24, 2015 deadline, about submission of the ADPE documents. Respondent denied having such conversation. In light of Respondent's denial, Costanzo's testimony is insufficient to establish that the conversation took place.

58. Between the March 14, 2015 email and April 24, 2015, Respondent did not ask Malcomb if he had submitted documents, checked the WINGS database, or otherwise followed up on whether Malcomb had complied with ADPE reporting. Rather, Respondent continued to rely on Malcomb's ability to properly discharge his ITEC tasks. In light of the prior year's probation and the emails of March 14 and April 17, 2015, Respondent's failure to make or direct any inquiry to confirm compliance is not reasonable. By the end of the 2013-2014 school year, it should have been clear that despite any past custom or practice, the ITEC appointment letters, the training certificates, and the inventory lists had to be uploaded to WINGS on an annual basis. Respondent's argument that neither the Instructions nor the Manual direct annual submission of the training certificates is not persuasive, as the Manual did not actually prohibit such submission, and the emails directing submission of training certificates constituted proper directives from Headquarters.

59. On Friday, April 24, 2015, at 5:59 p.m., Barron wrote an email to Respondent and Malcomb, which noted, "We still show that your unit has not started it's [sic] IT compliance documents. Would you please call me on my cell at . . . and advise." (Exh. 44, at p. 177.) Respondent received the email. He called Barron about the matter, but was unable to make contact. On Sunday, April 26, 2015, at 9:26 a.m., Respondent wrote to Malcomb: "Please try to remember to talk about this. What is the issue?" (*Id.*, at p. 178.) Malcomb was out of town, and did not see the emails until Monday, April 27, 2015, at 4:08 a.m. He replied to Barron and Respondent: "I'm out of the office & out of the area. I'll be returning late tonight and will finish the inspection & upload documents tonight when I return. I'll make sure it's completed by Tuesday." (*Ibid.*)

60. On Tuesday, April 28, 2015, Malcomb completed, signed, obtained Respondent's signature on the document, and uploaded the AIM Inventory to WINGS. On the same date, Malcomb completed, signed, and had Respondent sign, the ITEC appointment letter. At 9:53 a.m., Malcomb sent an email to Barron, stating: "Sir. Everything is complied with." (Exh. 44, at p. 178.)

61. Neither Respondent nor Malcomb submitted ITEC Training Certificates with the other documents on April 28, 2015. Malcomb testified that he did not realize they were also due on a yearly basis. On May 7, 2015, Respondent and Malcomb signed and submitted the 2015 ITEC Training Certificates.

62. Respondent's actions with respect to ADPE documentation requirements, even if viewed in the aggregate, do not constitute intentional disregard of Air Force orders or directives. As noted above, Respondent's actions at various times were not reasonable and may have even been negligent. But considering the evidence in its entirety, it is concluded that Respondent's actions or inaction do not rise to the level of intentional misconduct. While a prudent ROTC officer may not have made some of the assumptions Respondent made and may have more actively sought or direct his non-commissioned officer to seek guidance, the fact remains that in both early 2014 and early 2015 Malcomb attempted to comply with what he understood the requirements to be. The existence of past practices that differed from new requirements communicated via email and the understood sanction for failure to submit documents to Headquarters, namely the inability to obtain new equipment, while not excusing non-compliance with the new directives, provide insight into Respondent's state of mind. Also pointing away from arrogance, defiance, or other intentional disregard of duty is the fact that Respondent had delegated the IT compliance duties to Malcomb, a person he considered competent and trustworthy.

63. On May 18, 2015, the Air Force removed Respondent's certification as an AFJROTC instructor. In his action memorandum, Bobby C. Woods, Jr, Colonel, USAF, Director, Headquarters, AFJROTC, explained that his action was based "upon performance that does not meet the standards expected of an Air Force officer and an Air Force Junior ROTC instructor." (Exh. 54.) The following was set forth as the basis for the decision: "[L]ast year you were placed on probation following the failure to complete the 2014 Air Force ADPE suspense in the specified

time. This year, once again, you have failed to meet the specified suspense for 2015, despite personal direction and phone calls from your Regional Director.<sup>3</sup> Your inability to comply with AFJROTC requirements even after direct Headquarters involvement and reminders more than warrant decertification and are clear indicators of unsatisfactory performance. [¶] . . . [¶]. (*Ibid.*)

#### *Additional Evidence Offered in Mitigation and Rehabilitation*

64. On May 26, 2015, Costanzo completed an “Air Force Junior ROTC Instructor Evaluation Report,” rating Respondent’s performance as “Outstanding.” In the evaluation, Costanzo referred to Respondent as “an outstanding educator who loves teaching and mentoring his cadets.” (Exh. R, at p. 1.)

65. Respondent submitted ten letters and declarations of support from former students, family members of former students, educators, and members of other ROTC units attesting to Respondent’s good character and to the excellence of the ROTC program at Valencia High.

#### *Respondent’s Fitness to Teach*

66. Respondent’s conduct is not related to his fitness to teach, as determined by an analysis of the pertinent factors.<sup>4</sup> Thus, his failure to submit documents required by Headquarters, did not potentially or actually adversely impact students or fellow teachers. While failure to comply with the documentation requirements resulted in the temporary freezing of Unit CA-782’s account, students were not deprived of any necessary equipment and the documents necessary for unlocking the account were ultimately submitted in the event any equipment was actually desired.

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<sup>3</sup>No evidence of personal direction give or phone calls made by Barron to Respondent or Malcomb was received in evidence.

<sup>4</sup>Courts require evaluation of a teacher's alleged misconduct in terms of its impact on fitness for service utilizing the following criteria first enunciated by the Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*): the likelihood that the conduct may have adversely affected students or fellow teachers; the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of 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. Not all factors may apply in each case and only the pertinent ones need to be examined. (*West Valley-Mission Community College District v. Conception* (1993) 16 Cal.App.4th 1766, 1777; *Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384 (*Haar*).) The determination of fitness for service required by *Morrison* is a factual one. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 698, fn. 3 (*Jack M.*); *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 220-221 (*Fontana*); *Haar* (1994), *supra*, 28 Cal.App.4th at p. 384).

Despite the lack of prudence evidenced in his conduct, the extenuating circumstances predominate. Respondent relied on the person he believed to have expertise in IT documentation. Respondent relied on appropriate past customs and practices, albeit ones that were changing in 2014 and 2015; the changes were communicated to Respondent via email directives and not by the use of the established methods, namely, Air Force Instructions or the Manual. In light of the severity of the decertification sanction levied upon Respondent and the legal proceedings surrounding such decertification, Respondent is not likely to fail to timely submit documents required by Air Force personnel if he ever returns to teaching JROTC. The conduct in question occurred in the relatively recent time, and Respondent possessed a teaching credential and an Air Force certification at the time of the conduct in question. Respondent's motives were neither praiseworthy nor blameworthy.

## CONCLUSIONS OF LAW

1. Section 44932, subdivision (a)(6), permits dismissal of a permanent employee for "evident unfitness for service." Evident unfitness for service under this provision is established by conduct demonstrating that the teacher is "clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*).) As a threshold matter, the *Morrison* criteria must be examined to ascertain whether the conduct in question indicates unfitness for service. "If the *Morrison* criteria are satisfied, the next step is to determine whether the 'unfitness' is 'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Id.* at p. 1445.)

In *Woodland*, during the span of approximately one year, the teacher in question had failed to follow proper instructions for disciplining students, had written sarcastic and belittling notes about students, had insulted students in class, had used profanity in class, had behaved rudely and contemptuously toward parents, had made sarcastic remarks about other teachers in the hearing of students, had displayed insubordination and disrespect toward administrators, had threatened other teachers, and had disrupted the grading process by interfering with the grading policy of a substitute who took over one of his classes. The court concluded that the teacher's conduct demonstrated unfitness to teach and that the conduct was traceable to a defect in temperament, namely, the contempt for fellow teachers and the administration.

As set forth in factual finding number 66, the *Morrison* criteria were not satisfied, and Respondent's unfitness for service was not established. Therefore, there is no need to ascertain if any such unfitness for service was "evident" under *Woodland*. In any event, Respondent's conduct does not demonstrate that he is "not fit, not adapted or suitable for teaching." The *Woodland* case is instructive because it shows the type of conduct courts have found to constitute evident unfitness for service. Unlike the teacher in the *Woodland* case, Respondent did not display arrogance, defiance, or contempt toward students, teachers, administrators, or Air Force personnel. Nor was it established that any shortcoming in the compliance with ADPE paperwork requirements was the result of any temperament defect or inadequacy.

2. The District argues that Respondent is unfit to teach under section 44932, subdivision (a)(5), because he lacks the Air Force certification to teach the ROTC courses he was hired to teach. It argues unsuitability for service is not limited to instances of temperamental deficiencies and relies on the phrase in *Woodland*, cited legal conclusion 1 above, that the unsuitability is “ordinarily” due to a temperamental defect or inadequacy. The District argues that court’s use of “ordinarily” necessarily means that in exceptional circumstances a defect in temperament is not required. In Respondent’s case, the District maintains, the exceptional circumstance is Respondent’s failure to possess the Air Force certification. This argument is unpersuasive and is rejected.

The District has not cited any case in which section 44932, subdivision (a)(6), has been held not to require a defect or inadequacy in temperament or a case that construed the provision to apply to a situation such as Respondent’s. More importantly, *Woodland* does not stand for the proposition urged by the District. The *Woodland* court carefully considered the text of the statute and several cases which had construed the statute before concluding that subdivision (a)(6), as one of several grounds for dismissal, was intended to refer to acts or omissions not necessarily included in the others. What made section 44932, subdivision (a)(6), unique was the concept of a character or temperament deficiency. As the court noted, in the sentence immediately following the one relied upon by the District, distinguishing evident unfitness from another grounds for dismissal: “[U]nlike ‘unprofessional conduct,’ evident unfitness for service’ connotes a fixed character trait, presumably not remediable merely by receipt of notice that one’s conduct fails to meet the expectations of the employing district.” (*Woodland*, *supra*, at p. 1444.) Similarly, the court concluded: “[‘E’]vident unfitness for service’ requires that unfitness for service be attributable to a defect in temperament –a requirement not necessary for a finding of unprofessional conduct.’”

3. Section 44932, subdivision (a)(8), permits dismissal of a permanent employee 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 the State Board of Education or by the governing board of the school district employing him or her.” A violation of section 44932, subdivision (a)(8), must also be established by reference to the *Morrison* factors. If unfitness to teach is shown, then the District must further establish that Respondent’s refusal to follow the laws or regulations was “persistent,” i.e., “stubborn and continuing.” (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1183; *Governing Board of the Oakdale Union High School District v. Seaman* (1972) 28 Cal.App.3d 77, 82 (*Seaman*).) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered “persistent.” (See, e.g., *Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317; *Seaman, supra*.)

The District has not established that Respondent violated or failed to obey “the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or the governing board of the school district employing him or her.” The only regulation adopted by the District’s governing board arguably violated, Board Policy 4100,

provides, in the pertinent language relied upon by the District, that “The Board strongly encourages certificated staff to continually improve their skills and pursue excellence within their profession.” The District argues that Respondent violated this policy by not maintaining his Air Force certification. However, failing to follow directives to submit the ADPE documentation does not have to do with the improvement of skills or maintaining excellence in the teaching profession. Moreover, the revocation of Respondent’s Air Force certification was not related to his skills or excellence as a teacher. Board Policy 4100 therefore does not apply to Respondent’s alleged misconduct.

The District also argues that the employment contract signed by Respondent constitutes a reasonable regulation of the governing board. It argues that the contract requires Respondent to maintain Air Force certification and to adhere to directives from Respondent’s superiors, including the Air Force staff. Since Respondent has failed to meet both requirements, grounds for dismissal exist. However, as set forth in factual finding number 6, the contract requires Respondent to maintain CTC-issued credential or certificates, which he has done. Moreover, the District has not cited any authority to support its construction of an employment contract as a governing board regulation, and such construction would be contrary to the common sense meaning of the words “reasonable regulations prescribed for the government of the public schools by the . . . governing board of the school district . . .” in section 44932, subdivision (a)(8). The District’s argument is therefore rejected.

Moreover, even if Respondent’s conduct were found to constitute a violation of or the failure to obey a valid school regulation, his conduct, as set forth in factual finding number 66 does not demonstrate unfitness to teach pursuant to the *Morrison* criteria. Such failure obviates the need to determine if the violation or refusal was “persistent.” In any event, the facts that Respondent’s deficiencies occurred in a single area of contention and that he believed, albeit not entirely reasonably, that he was complying with applicable directives would preclude a conclusion that his conduct was “stubborn” or “continuing.”

4. The District has not established that cause exist for Respondent’s dismissal, by reason of factual finding numbers 1 through 66 and legal conclusion numbers 1 through 3.

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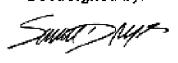
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## ORDER

Respondent Edward Colley shall be retained as a permanent certificated employee of the William S. Hart School District.

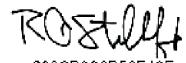
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SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative hearings

DATED: March 15, 2018

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ROBERT ALLEN STUBBLEFIELD  
Commission Member

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## PARTIAL CONCURRENCE AND DISSENT

I concur in factual findings numbers 1 through 65, but would uphold the District's dismissal of Respondent pursuant to section 44932, subdivisions (a)(6) and (a)(8). Respondent's lack of an Air Force certification renders him unfit to teach AFJROTC. His failure to meet ADPE requirements for two consecutive years constitutes arrogance and disregard for Air Force JROTC regulations, which also renders him evidently unfit for service. In addition, Respondent's failure to comply with ADPE documentation requirements constitutes a breach of his employment contract and, therefore, is a violation of District school laws and rules.

DATED: March 13, 2018

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DAVID DUFFIELD  
Commission Member