

**BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
FOR THE SANTA ANA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DEBBY HAZELWOOD,

Respondent.

OAH No. 2010020487

DECISION

The Commission on Professional Competence (Commission) heard this matter in Santa Ana, California, on October 4-6, 2010. The Commission consisted of Barbara Christensen, Catherine Fong, and Administrative Law Judge Amy C. Lahr, Office of Administrative Hearings, State of California, who presided.

Eric Bathen, Attorney at Law, represented the Santa Ana Unified School District (District). Carlos R. Perez, of Reich, Adell & Cvitan, represented Debby Hazelwood (Respondent). The parties submitted the matter for decision on October 6, 2010.

District employed Respondent as a middle school teacher. District alleged that Respondent demonstrated immoral conduct and evident unfitness for service, based on two incidents with students. The first incident involved Respondent accidentally pulling a student's hair; the second incident involved Respondent inadvertently placing her hands on a student's chest. Respondent disputed the District's characterization of the events, claiming that the incidents were accidental and justified.

District failed to establish that Respondent demonstrated immoral conduct and evident unfitness for service. Respondent presented justifiable explanations for her conduct. Accordingly, District's Accusation and Statement of Charges are dismissed, as explained below.

FACTUAL FINDINGS

1. Jane Russo, District Superintendent, made and filed the Accusation and Statement of Charges in her official capacity.

2. Respondent is a permanent certificated employee of District. Her most recent position was that of English teacher at Spurgeon Intermediate School. Respondent holds a clear single subject credential.

3. The District filed the Accusation and Statement of Charges on January 19, 2010. Respondent timely filed a Notice of Defense and requested an administrative hearing.

Hair-pulling Incident

4. On March 12, 2008, Respondent kept her students five minutes after dismissal as a punishment for misbehaving in class. N.G., a District female student, but not in Respondent's class, knocked on Respondent's door. N.G. wanted to know whether her friend remained in Respondent's class. Instead of opening the unlocked door, N.G. began to pound and kick the door, causing a great disturbance. Respondent initially tried to ignore the banging, however, the knocking became too disruptive. Respondent opened the door to see who was banging on it. Respondent taught in a detached bungalow, and the door opened outward. As she opened the door, Respondent saw N.G. run away and duck underneath the railing of the entry way. Respondent placed her hands on the rail and accidentally caught N.G.'s hair.

5. Respondent instructed N.G. to go into her classroom, where Respondent wrote N.G. a referral because she disrupted the class. Respondent then accompanied N.G. to the office with the referral form. At no time did N.G. indicate to Respondent that she had been hurt.

6. Lillian Soto, Principal, and Chad Hammitt, Executive Director of Human Resources, testified regarding their investigation into the matter. The evidence showed that District's investigation was not complete; for example, it did not ask Respondent to write a statement regarding the hair-pulling incident. Respondent chose to write a statement of her own volition. Respondent told District administrators that she accidentally pulled N.G.'s hair, as N.G. jumped under the railing and her hair got trapped. District cited no evidence to the contrary in its Letter of Reprimand dated April 4, 2008, and suspended Respondent for three days.

7. Student N.G. testified at the hearing, and her testimony was not persuasive to show that Respondent purposefully pulled her hair. N.G. never saw Respondent touch her hair. N.G. felt her hair pulled from behind, but she did not see exactly what happened because she faced away from Respondent. N.G. stated that she felt her hair pulled for less than four seconds. N.G. stated that Respondent did not touch her anywhere else.

8. District did not show that Respondent purposefully or maliciously pulled N.G.'s hair; the student's hair was accidentally pulled. District did not present any eyewitnesses to the hair-pulling incident. No other direct evidence was received regarding the incident.¹

¹ District submitted two student statements which were received, over timely objection, as administrative hearsay. As such, the statements contained within are not sufficient to support a finding by themselves. (See Government Code Section 11513, subdivision (d).) District also presented one written statement, from a teacher-on-special-assignment,

9. District failed to establish that Respondent demonstrated immoral conduct, evident unfitness for service, and willful refusal to protect students, with regard to the hair-pulling incident.

Physical Contact Incident

10. Students M.C. and M.B. arrived late to Respondent's class on December 1, 2009. Respondent required the students to sign the "tardy book." Student M.C. carried a gift bag which contained a birthday present that another student gave her. M.B. wanted to play a prank on M.C., and decided to hide the gift bag. M.B. walked behind Respondent's desk, where she was seated, and placed the gift bag on the floor between Respondent's filing cabinet and desk drawer. The area was a small, crowded space where no student had ever entered before. Respondent's desk drawer was open, and it contained her purse and other personal belongings. Respondent did not initially see M.B. go behind her desk. Respondent was startled when she saw a shadow out of the corner of her eye. For a moment, Respondent thought that someone might be trying to steal her purse. She quickly turned in her chair, raised her hands up, and began to stand. As she stood up, M.B. came from the small space behind her desk, and Respondent's hands made contact with M.B.'s chest area. Respondent told M.B. that she thought he was trying to steal her purse, and M.B. denied that was his intent.

11. M.B. testified that Respondent grabbed him by the neck and pushed him. He also stated that Respondent's hands made contact with his body for less than ten seconds, and that she didn't push him hard. M.B. admitted that Respondent was surprised when he went behind her desk. He acknowledged that it was a bad idea to stand behind Respondent's chair. When asked how tall he was, M.B. gave a range from five-feet, six-inches, to five-feet, eight-inches. M.B. appeared taller and larger than Respondent. M.B. stated that he did not want to press charges against Respondent for the incident; he held no ill feelings toward Respondent.

M.B. also acknowledged that he had a history of poor behavior in school. His grades were primarily failing. He had a criminal record. Respondent was aware of these circumstances, and had reason to be wary of M.B. M.B. admitted that he was already in a lot of trouble, and he did not want to get in trouble because of this incident. After the incident occurred, Respondent immediately called the office and told M.B. to wait until security arrived. M.B. did not follow Respondent's instruction, but instead walked out of class with M.C. Together, they went to the office to report their version of what had occurred. M.B. and M.C. discussed the incident with each other. M.C. testified at the hearing. She stated that Respondent placed her hands near M.B.'s neck for about four seconds. M.C. also had behavioral issues in school, and failing grades.

Margaret Mayes, which was received as administrative hearsay. Essentially, she saw Respondent grab the student by the hair as the student went through the railing. Ms. Mayes's statement does not indicate that Respondent acted with malice.

12. M.G. was another student in Respondent's class on the date of the incident. He recalled that M.B. went behind Respondent's desk, and that when Respondent turned around, she placed her hands on his chest and pushed him away. According to M.G., Respondent did not have her hands on M.B.'s neck, but rather her hands were flat open, against his chest below his shoulders. Respondent did not appear angry, but rather "precautious." M.G. testified that M.B. was a "troublemaker," that he was rude to Respondent, that he wouldn't pay attention, and would fall asleep in class. M.C. was also a troublemaker, but not to the same extent as M.B.

M.G.'s testimony is credited over M.B. and M.C.'s testimony, because M.G. was a disinterested witness with no motive to influence his testimony. In addition, other written student statements corroborated M.G.'s testimony that Respondent pushed M.B. in the chest area. For example, R.D.'s statement indicates that Respondent "hit [M.B.] on his chest."

13. Felipe Zamudio, Assistant Principal at Spurgeon Elementary School, testified at the hearing. He was absent on the day of the incident, and did not speak to M.B. about what had occurred. Mr. Zamudio was familiar with M.B.'s previous disciplinary issues, which included insubordination, not following teacher's instructions, truancy, classroom disruptions, and uniform violations. M.B. was in danger of failing, and Mr. Zamudio placed him in strategic classes to provide him with additional support. M.B. needed a lot of redirecting; M.B. had received approximately 9-12 referrals from the beginning of the 2009 school year through the incident date in December. M.B. had also been suspended at least twice for continuous insubordination in the classroom.

Respondent explained to Mr. Zamudio that she had problems with M.B. In response, Mr. Zamudio told Respondent "not to put up with his negative behavior"; and to refer M.B. to the office. Mr. Zamudio had observed Respondent teach on several occasions; he was pleased with her performance, and thought that she was professional.

14. Samuel Perla was an administrator at Spurgeon Elementary School during the 2009-2010 school year. He acknowledged that M.B. and M.C. had a history of disruptive behavior, and that M.B. had to be re-directed and monitored. M.B. and M.C. went to Mr. Perla's office on December 1, 2009, after they had left Respondent's class. Mr. Perla did not personally observe the incident between Respondent and M.B. Mr. Perla listened to M.B. and M.C.'s version of the story, and had them write statements. Thereafter, Mr. Perla decided to suspend M.B. because he left Respondent's class without permission, and M.B. had been warned earlier in the day to be on his best behavior.

15. Ms. Soto learned of the incident from Mr. Perla. Ms. Soto called the campus police because she thought that a possible theft had occurred. She did not discuss the incident with M.B. because he was suspended. When the campus police officer arrived, he took statements from M.B. and M.C. The officer also questioned Respondent.

16. District failed to thoroughly investigate this incident before reaching their conclusions regarding Respondent's actions. The evidence shows that Respondent had good

reason to be startled by M.B.'s presence behind her desk, an area off-limits to students, where no student had ever gone before. Although Respondent touched M.B., she did not act maliciously, but rather because she was startled and instinctively protecting herself and her belongings. District did not properly consider Respondent's version of what had occurred. District relied primarily on M.B. and M.C.'s stories, which were less credible than other available evidence.

Yelling and Name-calling

17. The District alleged that "[d]uring the process of reviewing the student statements, it was discovered that [Respondent] repeatedly yelled at the students and demeaned them [,] calling the students 'stupid' throughout the 2009-2010 academic year." The evidence did not support this contention. Moreover, District presented no evidence that Respondent yelled at students or called them "stupid."

Character Evidence

18. Respondent began teaching at District in 2002. She is a dedicated teacher who spends countless hours at home and after school working on the curriculum and other school-related activities. She cares about the students and their academic success. Respondent recognizes that District students face difficult challenges. She is also aware that her time with students is precious, and she does her best to maximize it; for example, Respondent uses classroom management strategies such as placing student handouts at the door, in order to reduce talking and other disruptions. Respondent was sincerely remorseful about both the hair-pulling and physical contact incidents with students.

19. Respondent presented two character witnesses, John McGuinness and Tammy Manske. Both witnesses worked at Spurgeon Intermediate School with Respondent. As established by the testimony of Mr. McGuinness, Respondent's demeanor was mild-mannered and nice; she never showed anger or frustration. Respondent was a strong staff member who was very well-liked; a team player who was well-regarded. Mr. McGuinness taught M.B. and found that he was difficult to have in class; for example, he would throw objects and cause constant disruption. Mr. McGuinness opined that M.B.'s behavior thwarted instruction and interfered with other student's learning process. Regarding the physical contact incident, the staff was upset that Respondent was disciplined because they thought M.B. was the problem, not Respondent. Mr. McGuinness is a union representative, and after the incident, Respondent approached him right away to explain what happened. Mr. McGuinness could not understand why District Administration had called the police without talking to Respondent first. The police would not allow him to represent Respondent during questioning.

20. Ms. Manske and Respondent collaborated to work on their curriculum. They also worked closely on numerous trainings and development for the "Pathways Project," which is designed to help English language learners develop writing and reading skills, to put them on a pathway to college. Ms. Manske had numerous opportunities to observe Respondent in the classroom, and she found her to be very professional, supportive,

extremely organized, and actively engaged in teaching. Ms. Manske thought that Respondent's demeanor was kind and friendly toward the students. Respondent made extra efforts beyond expectations; for example, she was willing to go to staff development meetings. As established by Ms. Manske's testimony, Respondent is a consummate professional, and a joy to work with. Ms. Manske has never seen Respondent raise her voice or lose control. With regard to the hair-pulling incident, Ms. Manske observed N.G.'s friends joke that they were going to get a teacher fired, and their attitude appalled her.

LEGAL CONCLUSIONS

1. Cause does not exist to dismiss Respondent as a certificated employee of the District under Education Code section 44932, subdivision (a)(1), (immoral conduct) based on Factual Findings 1 through 17, and Legal Conclusions 3 through 6.

2. Cause does not exist to dismiss Respondent as a certificated employee of the District under Education Code section 44932, subdivision (a)(5), (evident unfitness for service) based on Factual Findings 1 through 17, and Legal Conclusions 3 through 6.

3. "Immoral conduct" has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. Or, it can be conduct that is willful, flagrant, or shameless, conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

4. "Evident unfitness for service requires that unfitness for service be attributable to a defect in temperament . . ." (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1445.) Such temperamental defect "connotes a fixed character trait, not remedial upon receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.* at 1444).

5. Even where immoral conduct or evident unfitness for service are established, it must also be established that such immoral conduct or evident unfitness renders Respondent unfit to teach. Such determination unfitness requires an analysis based on criteria set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. In *Morrison*, the Supreme Court of California held that the determination of whether a person is fit to teach must be based on an objective and analytical approach, consisting of a review of the teacher's conduct and an assessment of a variety of specific factors including: (1) the likelihood of recurrence of the questioned conduct; (2) the presence of extenuating or aggravating circumstances; (3) the effect of notoriety and publicity; (4) the likelihood that the conduct adversely affected students or fellow teachers; (5) the disruption of the education process; (6) the motive underlying the conduct; and (7) the proximity or remoteness in time of the conduct.

6. District did not establish that Respondent demonstrated immoral conduct. Regarding the hair-pulling incident; Respondent's actions were accidental. With regard to the physical contact incident, Respondent felt intimidated in that moment, and acted to protect herself. Nor did District did not show that Respondent possesses a temperamental defect that would render her unfit to teach.

An analysis of the Morrison factors supports these conclusions: first, District did not show that Respondent's conduct adversely affected students; the only exception being N.G., whose hair was pulled, but this was an isolated incident. Moreover, the fact that N.G.'s friends joked about getting Respondent fired shows that students were not adversely affected. The fact that N.G. had been disturbing Respondent's class by pounding on the door for several minutes, even though the door was unlocked, was an extenuating circumstance that weighs in Respondent's favor. District also did not demonstrate that M.B., who was involved in the physical contact incident, was adversely affected. The evidence showed that M.B. was more concerned about getting in trouble himself, rather than the fact that Respondent made physical contact with him. This is underscored by the fact that M.B. did not press charges against Respondent, and that he stated that he held nothing against her. The fact that M.B. had a history of discipline problems, that he was physically larger than her, and that he snuck behind her desk, and caught Respondent off-guard, show extenuating circumstances that justify Respondent's conduct. District did not show that Respondent had an untoward motive with regard to both incidents. With regard to the proximity of the incidents, they occurred within two years of each other, but were isolated instances in Respondent's eight-year teaching career. Respondent demonstrated sincere remorse, and the likelihood of a similar incident reoccurring is negligible. In sum, the *Morrison* factors as applied in this case do not support Respondent's dismissal.

ORDER

The Accusation and Statement of Charges are dismissed.

DATED: _____

AMY C. LAHR
Administrative Law Judge
Office of Administrative Hearings

DATED: _____

BARBARA CHRISTENSEN
Commission Member

DATED: _____

CATHERINE FONG
Commission Member