

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Amended Accusation
and Statement of Charges Against:

OAH No. 2013101081

GABRIEL GALLAND,
A Permanent Certificated Employee,

Respondent.

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge, Office of Administrative Hearings, State of California, in Los Angeles on April 14 – 17 and 20 – 22, 2015.

Pursuant to a Joint Stipulation Regarding Waiver of Commission Member, the parties waived their rights to have this matter heard by a Commission on Professional Competence, pursuant to Education Code section 44944, subdivision (c)(1). The parties further stipulated that the Administrative Law Judge shall have all of the powers granted to a Commission on Professional Competence and could hear and decide this matter sitting alone.

Complainant Board of Education of the Los Angeles Unified School District was represented by Michele M. Goldsmith, Attorney at Law. Respondent Gabriel Galland was present throughout the hearing and represented by Ronald C. Lapekas, Attorney at Law.

During the hearing, complainant presented documentary evidence and the testimony of several administrators, teachers, staff, and students. Complainant also moved to amend the Amended Accusation and Statement of Charges to conform to the proof presented during the hearing. Complainant's motion was granted and the Amended Accusation and Statement of Charges was amended on page 2, at paragraph 1(c), line 16, by adding the word "hitting" between the words "door" and "almost hitting." Respondent testified and presented documentary evidence.

At the request of respondent's counsel for written argument, the Administrative Law Judge directed the parties to file written arguments by certain dates. On May 18, 2015, complainant timely filed a Closing Brief, which was marked for identification as Exhibit 87. On June 8, 2015, respondent timely filed a Closing Argument, which was marked for identification as Exhibit AA. On June 12, 2015, complainant timely filed a Rebuttal, which was marked for identification as Exhibit 88.

Oral and documentary evidence having been received and oral argument heard, the Administrative Law Judge submitted this matter for decision on April 22, 2015, and finds as follows:

FACTUAL FINDINGS

1. On November 1, 2013, the Accusation, Case Number 2013101081, was made and filed by Vivian K. Ekchian in her official capacity as the Chief Human Resources Officer of the Los Angeles Unified School District (District). On June 13, 2014, the Amended Accusation was made and filed by Michele M. Goldsmith in her capacity as the attorney for the District and on behalf of the Board of Education of the District. With administrative offices located at 333 South Beaudry Avenue in Los Angeles and schools throughout the Los Angeles area, the District is one of the largest and most diverse comprehensive school districts in the nation.

2. At all times relevant herein, respondent has been employed as a permanent certificated employee of the District. He attended El Camino College and California State University Long Beach where he majored in fine arts and art education. He obtained his Cross-Cultural, Language, and Academic Development certificate after completing classes at the University of Phoenix. In or about 1999, respondent was hired by the District; he began teaching art and industrial arts for the District at Carson High School. Later in 1999, and continuing through June 2012, he taught art at Manual Arts High School. For the fall semester of the 2012-2013 school year, respondent transferred to and taught art at South Region High School 12-B (South Region High School).

District Policies

3. In September 1998, the District adopted an Employee Code of Ethics. The District revised the Employee Code of Ethics in December 2000 and February 2003. Under the Employee Code of Ethics, the District is committed to three core ethical principles: commitment to excellence, district and personal integrity, and responsibility. For the core ethical principle of commitment to excellence, the District and its employees are committed to being the best school district and to educating students to their maximum potential. The Employee Code of Ethics provides that everything employees do has an impact in the classroom. Employees must be committed to creating an environment of trust, care, and respect. Discriminatory or harassing behavior of students or colleagues is not tolerated. For the core ethical principle of integrity, the District and its employees are committed to ensuring that employee-student relationships are positive, professional, and non-exploitative. For the core ethical principle of responsibility, the District and its employees are responsible for their performance. The District and its employees must ensure that power and authority are used in an appropriate and positive manner that enhances the public interest and trust.

The goal of the Employee Code of Ethics is, in part, to create a culture that fosters trust, commitment to excellence and responsibility, and personal and institutional integrity.

4. On July 1, 2010, the District promulgated a Code of Conduct with Students in which the District resolved that the most important responsibility of all District employees is to ensure the safety of its students. While the cultivation of positive relationships with students is encouraged, employees, and all individuals who work with or have contact with students, are expected to use good judgment and are cautioned to avoid situations, including engaging in any behaviors with students or in the presence of students, which are unprofessional, unethical, illegal, immoral, or exploitative. District employees are also cautioned against making statements or comments in the presence of students which are not age-appropriate, professional, or which may be considered sexual in nature, harassing, or demeaning.

5. In a Resolution adopted on October 10, 1988 (Board Resolution for respectful treatment of all persons), the Board of Education of the District reaffirmed its policy that students and adults in both schools and offices should treat all persons equally and respectfully and should refrain from the willful or negligent use of slurs against any person on the basis of race, language spoken, color, sex, religion, handicap, national origin, immigration status, age, sexual orientation, or political belief.

6. (A) In a Policy Bulletin dated March 27, 2007, and entitled "Discipline Foundation Policy, School-Wide Positive Behavior Support," the District established a framework for developing and implementing a culture of discipline conducive to learning and teaching by requiring a consistent school-wide positive behavior support and discipline plan. School-wide positive behavior support is based on research that indicates the most effective discipline system uses proactive strategies designed to prevent discipline problems. A school-wide positive behavior support and discipline plan is to include teaching school rules and social-emotional skills, reinforcing appropriate student behavior, and using effective classroom management and positive behavior support strategies that provide for early intervention for misconduct and appropriate use of consequences.

(B) The implementation of this policy contemplates participation by every person in the District. For example, students are expected to learn and follow all school and classroom rules and to demonstrate appropriate social skills when interacting with both adults and peers. When behavioral expectations are not met, students are expected to work to improve behavior. Students are also encouraged to take leadership roles in modeling appropriate behaviors and attitudes for peers. Under this policy, teachers have a fundamental role in supporting a positive classroom and school, including utilizing effective classroom management strategies to create an environment conducive to learning and to prevent misconduct. Teachers are required, in part, to acknowledge and reinforce appropriate student behavior, provide corrective feedback and re-teach the behavioral skill when misconduct occurs, and report behavior to the school administrator or person responsible for discipline of a student who engages in ongoing misconduct.

7. In a Policy Bulletin dated May 18, 2009, entitled, "Ethics Policies," the District stated that all certificated and classified employees are to be knowledgeable about the District's ethics policies and must take an active role in promoting an organizational culture that encourages ethical conduct. The District has four ethics policies approved by the Board of Education, including the Employee Code of Ethics. Each District employee is responsible for setting a good example of ethical conduct in his or her work, being familiar with the ethics policies and participating in annual training activities, contributing to a proactive and transparent management of potential ethics concerns, seeking guidance from a supervisor or other trustworthy source if unsure of the most ethical and responsible course of action, and recognizing that he or she is a role model to peers but, equally important, to the students of the District.

8. In a Policy Bulletin dated February 23, 2010, entitled, "Abolition of Corporal Punishment," the District reaffirmed its policy prohibiting the use of corporal punishment, in any form, as a disciplinary option or measure at any grade level and with any student. Corporal punishment is defined as the willful infliction of, or willfully causing the infliction of, physical pain on a pupil. Under this policy, corporal punishment refers to the intentional application of physical pain as a method of changing behavior. In this Policy Bulletin, the District encourages the use of positive approaches to discipline and classroom management to ensure that students conform to proper and expected standards of behavior so that they may derive greater benefits from the educational program.

9. In a Policy Bulletin dated June 25, 2010, entitled, "Bullying and Hazing Policy (Student-to-Student, Adult-to-Student, and Student-to-Adult)", the District reaffirmed its policy against bullying in all areas of the District's jurisdiction and its commitment to providing a safe and civil learning and working environment. The District takes a strong position against bullying, hazing, or any behavior that infringes on the safety or well-being of students, employees, or any other persons within the District's jurisdiction or interferes with learning or the ability to teach. Bullying is defined as a comprehensive term that encompasses the deliberate antagonistic action or creation of a situation with the intent of inflicting emotional, physical, or psychological distress.

10. The District's Employee Code of Ethics, Code of Conduct with Students, the Board Resolution for respectful treatment, Discipline Foundation Policy, Ethics Policies, the policy for the Abolition of Corporal Punishment, and the Bullying and Hazing Policy constitute reasonable regulations prescribed for the governance of the schools of the District by its governing board. As a permanent certificated employee of the District, respondent was required to abide by these policies or regulations of the District. As established by his testimony and the testimony of administrators, respondent has receiving training in and is familiar with these District policies at all times relevant herein.

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Manual Arts High School

11. From the 1999-2000 through the 2011-2012 school years, respondent taught at Manual Arts High School. Manual Arts High School is a large, urban secondary school with approximately 3,000 pupils and 130 teachers. It is a diverse campus with Latinos constituting 75 percent and African Americans constituting 25 percent of the pupil population. At the beginning of each school year, Manual Arts High School had a faculty meeting where teachers receive training and information on the District's policies and were given a handbook containing the policies. Teachers were reminded to behave appropriately and respectfully around students and school staff and not to make disrespectful comments. Respondent attended the training sessions every year that he was assigned to the school.

12. Respondent taught five or six periods of art at Manual Arts High School each semester. He had generally "good skills" and academic knowledge as an art teacher. Students completed art projects in his classes and were generally on task with their assignments when observed by administrators. On the other hand, respondent was known by Assistant Principal Todd Engle to have a temper and anger management issues. Engle supervised respondent during the 2009-2010 school year. Engle found that respondent was easily provoked or agitated by students and would get mad and upset with them. The assistant principal observed respondent become red-faced and angry with students in his classes and speak to them in a "strong voice." The assistant principal could hear respondent's voice from outside his classroom. Many students complained to the assistant principal that respondent yelled and cursed at them in class and had confrontations with students. Respondent disputed the students' complaints and stated to the assistant principal on several occasions that the students were the ones who confronted him. Engle had ongoing issues with respondent having confrontations with students, removing students from his classroom and sending them to the school office, and calling the school office for assistance or security to help manage his classroom. Engle advised respondent not to let the students "to get to him" and not to respond to the students.

13. (A) On November 3, 2010, when student A [REDACTED] V. refused to put away a ruler, respondent called student A [REDACTED] V. "lazy."¹ Respondent then made fun of or mocked student A [REDACTED] V.'s weight by puffing up his cheeks and spreading his arms apart to simulate the student's appearance or physique. Student A [REDACTED] V. and another student reported the incident. A [REDACTED] V. was upset and insulted by respondent's conduct. Respondent's conduct was inappropriate and disrespectful.

(B) It was not established that respondent called student A [REDACTED] V. "fat." Nor was it established that respondent told the student, "Get the fuck out, you fucking shit" after the student purportedly cursed at him. No probative evidence was presented on these allegations.

¹ Students' last names are omitted to protect their privacy.

(C) On November 4, 2010, Assistant Principal Engle held a formal conference with respondent to discuss his interaction with student A [REDACTED] V. Respondent denied the allegations. Engle offered respondent the following assistance: attend anger management classes, do not enter into verbal exchanges with students, and do not respond with profanity or inappropriate comments when students make inappropriate remarks to him. The assistant principal also gave respondent copies of the Board Resolution for the respectful treatment of all persons, Code of Conduct with Students, and Employee Code of Ethics. Respondent was also directed not to use profanity during work hours under any circumstances and not to make comments or gestures belittling students. The assistant principal kept student A [REDACTED] V. and the other student who reported the incident in his office for a couple of days until respondent "had time to cool down from this incident." Two months later, in January 2011, respondent completed the anger management classes.

14. (A) On January 25, 2011, respondent had an argument or altercation with a member of the campus security staff at Manual Arts High School. Respondent called the security staff member a "Big Gorilla." The security member is African-American. Respondent's comment was offensive, inappropriate, and disrespectful.

(B) On February 4, 2011, Joni Boykins, another Assistant Principal at Manual Arts High School, held a conference with respondent to discuss his argument with the school security staff member. Respondent did not deny making the inappropriate comment to the security staff member. He was remorseful and indicated that he wished that he had handled the situation differently. The assistant principal directed respondent to maintain a high level of professionalism in his conversations and exchanges with persons on the school campus, to avoid altercations with adults and students at all times, and to refrain from any negative interactions with the school security staff member. The assistant principal also told respondent to read and follow the District's Employee Code of Ethics and Code of Conduct with Students.

15. (A) In January 2012, Assistant Principal Mistie Ann Barela became respondent's supervisor at Manual Arts High School. On her first day as assistant principal, Barela met respondent in a school hallway. Respondent was upset and loudly complained to her about a fellow teacher. The assistant principal took respondent into her office so that students would not hear respondent's complaints. In the office, respondent asserted that the colleague should not be teaching history about the Olmecs, the ancient Mexican civilization, because the teacher is black. Respondent raised his voice and said that the teacher did not know history and should not be teaching Latino students. The assistant principal's first impression of respondent was concerning to her.

(B) Over the course of the remainder of the 2011-2012 school year, Barela found respondent was disrespectful of her. He did not respond to her greetings when they passed each other at school. In class, the assistant principal also found that respondent was not warm or welcoming to his students and that he tended to raise his voice at students. On one occasion, she heard him yelling in his classroom and informally counseled him to speak respectfully to the students. He tended to remove students from his classroom and,

sometimes, he did not want the students to return. The assistant principal reminded respondent that the students were entitled to an education. Barela also found that students did not want to return to respondent's class and complained to her that respondent was disrespectful to them.

16. (A) On January 7, 2012, a fight broke out between two male students during a passing period in the second floor hallway of Doolittle Hall near respondent's classroom. Respondent was standing at the door to let pupils into his classroom when pupils started screaming and running to the fight. One student had the other in a headlock and began hitting the other student in the head with an object, causing the other student to bleed. Respondent yelled at the boys and stopped the fight. There was blood on the floor of the hallway.

(B) When students began stepping on the blood, respondent grabbed and opened a packet of paper towels and a bottle of Windex glass cleaning solution. He poured the Windex solution on the blood on the floor and began cleaning up the blood with the paper towels. Assistant Principal Barela was present in the hallway at the time. When she saw respondent cleaning up the blood, the assistant principal directed respondent to stop what he was doing and to return to his classroom. Barela opened or was going to open the door to respondent's classroom. The passing period was over and instructional time had begun. Students were in respondent's classroom. Barela also told respondent that she would handle the clean-up of the blood. The assistant principal was aware that teachers had received training that they were not to touch blood for health and safety reasons and that the school's custodial staff was required to perform this task. The assistant principal again directed respondent to return to his classroom. In response to Barela's directive, respondent yelled at the assistant principal in a loud voice, stating, "Don't touch my door. Don't talk to me." Students were present when respondent yelled at the assistant principal. Respondent failed to abide by Barela's directive and continued cleaning the blood for two more minutes. Barela was shocked by respondent's comments and reported his conduct to the principal. Respondent's conduct in refusing to follow the assistant principal's directive and his yelling and making of comments to her were insubordinate and disrespectful.

17. (A) On January 30, 2012, Robert Whitman, Principal of Manual Arts High School, held a conference with respondent to discuss respondent's conduct and statements to the assistant principal in the aftermath of the student fight, as set forth in Finding 16 above. Respondent was present for the conference along with a representative from the teachers' association. Assistant Principal Barela was also present. Respondent denied telling Barela not to touch the door to his classroom or not to speak to him.

(B) At the conference on January 30, 2012, Principal Whitman provided respondent with copies of the Board Resolution for respectful treatment of all persons and the Employee Code of Ethics and advised respondent that he could seek assistance from the principal and the Employee Assistance Program. Respondent was directed not to be aggressive or disrespectful to any student or employee and was told that he had a

professional responsibility to treat all persons with respect and to follow the District's policies

18. It was not established that, on or about March 15, 2012, while instructing pupils in his classroom, respondent used his cellular telephone to make a loud and shrill sound of a dog whistle and refused to turn off the sound after several students complained and asked him to stop making the sound. No probative evidence was presented to show that it was respondent, rather than a student or another person, who caused or made the sound. It was not explained or demonstrated how such a sound could be emitted from a cellular telephone.

19. (A) On or about March 16, 2012, student I [REDACTED] A. entered respondent's classroom and delivered a summons for students from the College Center. The College Center is a program or office at Manual Arts High School that assists pupils in obtaining admission to and financial aid from colleges. Student I [REDACTED] A. was a student helper at the College Center.

(B) On or about March 16, 2012, student I [REDACTED] A. gave the summons to respondent and asked whether the students named in the summons were present in the classroom. In response, respondent told I [REDACTED] A. to get out of his classroom. I [REDACTED] A. asked respondent again if the students named in the summons were there because he had to take the summons back to the College Center. Respondent stated to the student, "Just get out of my class." Student I [REDACTED] A. then told respondent that he was a "rude white ass" and he walked out of the classroom. As student I [REDACTED] A. was leaving his classroom, respondent made and directed sounds imitating a monkey or gorilla at the student, who is African American. The student heard the sounds and became mad. Respondent's conduct in making the sounds was offensive, inappropriate, and disrespectful.

20. (A) On or about May 14, 2012, respondent removed student A [REDACTED] S. from his classroom. While doing so, respondent muttered under his breath, and was heard by another student J [REDACTED] M. to say, that student A [REDACTED] S. was a "mayate." Mayate is a derogatory term or slang used by Mexican-Americans or Latinos in reference to black or dark-skinned persons. In addition, respondent yelled at A [REDACTED] S. as the student was walking the hallway that he "was not going to make it in life." Respondent's remarks to student A [REDACTED] S. were offensive, inappropriate, and disrespectful.

(B) It was not established that, on or about May 14, 2012, respondent told the student that he was a "shit" or a "piece of shit" or that the student "would never amount to anything because he is black." These allegations were not established by the statement of student J [REDACTED] M. and were not corroborated by any other student.

21. On undetermined date in or about March 2012, student E [REDACTED] C. entered respondent's class at Manual Arts High School after the bell had already rung. The student was late to respondent's art class but he had a tardy slip from the office. E [REDACTED] C. sat down in his chair. Upon seeing the student, respondent yelled, "Why are you wasting your time

coming to school. All you are going to do is sell oranges on the street.” Student E [REDACTED] C. was made to feel insulted and upset by respondent’s comment and left the classroom. He did not return to respondent’s class. Student E [REDACTED] C. is Latino. Respondent’s comment to student E [REDACTED] C. was offensive, inappropriate, and disrespectful.

22. On or about May 1, 2012, and during his first period art class, respondent made fun or light of Assistant Principal Barela by referring to her as “the mi hija lady” to the students and stating that she should not disturb his class again. In Spanish, “mi hija” means my daughter. Barela apparently was known to use the term when referring or talking with female students at the high school. Respondent’s description or comment about the assistant principal to his classroom of pupils was inappropriate and disrespectful. It was not established that respondent stated to his classroom that the assistant principal should be selling tamales.

23. (A) On May 21, 2012, Principal Whitman held a conference with respondent to discuss students’ complaints about his conduct described, in part, in Findings 18 – 23 above. Respondent was present for the conference along with a representative from the teachers’ association. Respondent asserted that all of the students’ complaints were false and that he would not make denigrating remarks to a Latino student because he himself was undocumented person when he first came to this country.

(B) On May 21, 2012, Principal Whitman provided respondent with copies of the Board Resolution on the respectful treatment of all persons and the Employee Code of Ethics and advised respondent that he could seek assistance from the principal and the Employee Assistance Program. Respondent was directed not to be aggressive or disrespectful to any student or employee and was told that he had a professional responsibility to treat all persons with respect

24. At the end of the 2011-2012 school year, respondent was not among the teachers at Manual Arts High School who were rehired or re-elected to teach at the high school for the following school year. Respondent began searching for a new teaching position within the District. He applied for an opening for an art teacher at the District’s South Region High School Number 12A, a new high school for technology, arts, and design that was opening in the fall 2012 semester.

25. (A) Based on Findings 14, 16, and 22 above, respondent engaged in inappropriate, disrespectful, and unprofessional conduct when he called a campus security staff member a “Big Gorilla,” yelled at and refused to follow the directives of the assistant principal in the aftermath of a student fight, and referred to the assistant principal as the “mi hija lady” to the students in his classroom. Respondent’s conduct constituted violations of the District’s Employee Code of Ethics and Ethics Policies, and the Board Resolution for the respectful treatment of all persons.

(B) Based on Findings 13(A), 19, 20(A), and 21 above, respondent engaged in inappropriate, disrespectful, and unprofessional conduct when he mocked student A [REDACTED] V.,

directed inappropriate and offensive sounds at student I [REDACTED] A., yelled at and made a racial comment about student A [REDACTED] S., and yelled at and disparaged student E [REDACTED] C. Respondent's conduct constituted violations of the District's Employee Code of Ethics, Code of Conduct with Students, Ethics Policies, and the Board Resolution for the respectful treatment of all persons.

South Region High School

26. In July 2012, the District assigned Candace Lee to be the principal of South Region High School Number 12A (South Region High School). Lee was the sole administrator for the new high school and had to hire a certificated staff of 13 teachers and a counselor as well as classified staff before instruction began in approximately six weeks on or about August 14, 2012. Lee received respondent's resume and interviewed him on the high school campus. She offered the position of art teacher to respondent and he accepted the job. Lee did not obtain respondent's personnel file or any of his evaluations from Manual Arts High School. Nor did she speak to Principal Whitman at Manual Arts High School about respondent before offering a position to him.

27. On July 24, 2012, respondent signed a Mutual Consent Agreement 2012-2013 to teach at South Region High School for the 2012-2013 school year.² By signing this so-called election agreement, respondent acknowledged that he read all of its provisions and agreed to all of its terms. South Region High School was described as a small campus within the District that was bound by District and union policies. Among the core values of the high school was the promotion of respectful relationships among all "stakeholders" and the focus on continuous improvement and accountability. Teachers were expected to create an environment that was safe and secure for all students, staff, and community members and to maintain respectful relationships among all stakeholders. Teachers were also expected, in part, to establish a progressive discipline protocol in their classrooms that supported positive student behavior and adhered to school discipline policies.

28. (A) South Region High School had 13 classrooms and approximately 300 pupils. Sixty-five percent of the pupils were Latino and 35 percent of the pupils were African American.

(B) On August 6 through 8 and August 13, 2012, professional development was provided to the new teachers and staff at South Region High School. Training was given in the areas of curriculum, instruction, and operations. Respondent attended all four days of professional development.

(C) Beginning on August 14, 2012, respondent was assigned to teach five periods of art and had a homeroom period. The high school had a staggered class schedule

² After the 2012-2013 school year, South Region High School Number 12A was merged with South Region High School Number 12B to form Mervyn Dymally High School.

wherein teachers taught the three odd periods (1, 3, 5) on Mondays and Thursdays, the even periods (2, 4, 6) on Tuesdays and Fridays, and the seventh period every day. Respondent had approximately 35 to 42 pupils in each of his classes

(D) Respondent taught at South Region High School from August 14, 2012, until September 7, 2012, of the fall 2012 semester. During these four weeks, Principal Lee visited respondent's classroom approximately two or three times per week. The principal was also summoned to respondent's classroom because respondent was having problems with students. The principal had to take the students from respondent's classroom to the school office to have discussions with them.

(E) When she observed respondent's classroom, Principal Lee found that there was more disruptive behavior by students in his classroom than in other classrooms. Students were talking with each other and were not on task with the class assignments. It did not appear to the principal that respondent had a behavior support plan in place, an effective classroom management style, or control of the pupils. Principal Lee assigned a special education aide to help respondent in his classroom.

29. (A) Florida Herrera, also known as Florida Morales (Morales), was the school counselor at South Region High School for the first three weeks of the fall 2012 semester and assigned pupils to classes. Respondent had approximately 34 to 42 pupils in each of his art classes. Respondent's classes were full, like all of the other classes at the high school, but were not crowded. On four or five occasions during the first three or four weeks of school that fall semester, Morales was called by respondent or dispatched by the school secretary to go to respondent's classroom to provide him with support. On one occasion, Morales found students in respondent's classes to be "out of control" and she told the students to respect respondent. Almost every day, respondent removed students from his classroom. He sent them to the Counselor Morales or the school office frequently without referral slips. Morales reminded respondent several times to give signed referral slips to the students if he was going to remove them from his classroom. Students complained to the counselor about being assigned to respondent's classes.

(B) Anthony Andrada (Andrada) became the school counselor at South Region High School after Morales was re-assigned to another school site. Andrada observed respondent interact with students in his classroom and found that respondent had a difficult time with them. He tried to take charge of his classroom but had arguments with the students. On two occasions, Andrada heard respondent speak harshly to students.

30. (A) In August 2012, Shquita Williams, also known as Shquita Thomas (Williams), a special education assistant, was assigned by Principal Lee to be an aide in respondent's classroom so that she could help him to maintain order and calm as well as manage the students' behaviors. Williams assisted respondent two or three times per week for part or all of his teaching periods. She found that respondent always had an assignment or lesson plan on the board but he did not have all of the necessary art supplies to teach his

classes. In Williams' view, respondent tended to vent his frustrations by yelling at the students.

(B) On the first day in respondent's classroom, Williams observed that respondent appeared unhappy and aggravated by his teaching assignment. Two students approached respondent and asked him for help on an assignment. Respondent refused to help them or to explain the assignment. He stated to the two students, "I'm not going to help you. I'm not doing anything else." The two students returned to their seats and looked discouraged, stating to their peers that they had tried. Respondent refused to help a third student. He had an unpleasant tone to his voice. He did not try to hide from Williams or the students that he was dissatisfied and frustrated with the state of the new high school due to the lack of art supplies and what he perceived as over-crowded classrooms and unruly students. In Williams' presence, respondent raised his voice and yelled at the students. The special education aide found that the students in respondent's classes were likewise frustrated by the lack of instruction.

(C) On an undetermined date in August 2012, and while Williams was in his classroom, respondent confronted student D [REDACTED] L. who was not doing the work that had been assigned to the class. D [REDACTED] L. was sitting quietly at his desk or table area. Respondent asked the student what he was doing. D [REDACTED] L. replied that he was doing nothing. Respondent became upset. He pointed his finger at the student's face and stated to the student, "You are not going to sit there and do nothing." Student D [REDACTED] L. told respondent to take his finger away from his face. Respondent became more upset and began yelling at the student while continuing to point his finger at him. Student D [REDACTED] L. became angry. He got up from his chair and stood face-to-face with respondent. He told respondent to take his finger out his face and to stop yelling at him. At that moment, Principal Lee walked into the classroom and shouted out the student's name, ending the confrontation. The principal removed the student from the class.

31. On August 24, 2012, Principal Lee held an informal conference with respondent to discuss his classroom management and lesson planning. The principal recommended to respondent that he prepare lesson plans beforehand by downloading lesson plans from the school computer, that he divide the lesson plans into shorter time segments to keep the students' attention, and that he shorten his lectures. The principal also recommended that respondent greet students as they entered his classroom before each period and rearrange the desks and chairs in his classroom so that the students faced the front of the classroom.

32. On or about September 4, 2012, respondent had a confrontation in his classroom with student J [REDACTED] L. during a fourth period class. The student was sitting in the class and then got up from his seat just before the bell was going to ring to signal the end of the period. While standing, the student began putting items into his backpack. Respondent told J [REDACTED] L. to sit back down in his seat, grabbed the student by his shirt collar, and forced him to sit down. J [REDACTED] L. stated to respondent, "Don't touch me." Respondent then yelled at the student, "Stop bitching like a little girl." Respondent continued shouting at the student.

J■■■■L. got up again and left the classroom. Other students in the class appeared shocked by the incident. Respondent's physical contacting student J■■■■L and yelling at him in an insulting manner was inappropriate and disrespectful.

33. (A) On or about September 5, 2012, respondent lost his temper with student L■■■■C., a pupil in his seventh period art class. L■■■■C. was a freshman and had a less than an ideal attitude about school and authority figures. On this date, she was not performing the art project assigned to the class. Respondent asked her why she was not doing the assignment and told her to take out her paper. L■■■■C. replied that she was getting out her paper. Respondent stated to the student that she was not retrieving her paper. The student said, "Yes, I am." Respondent then yelled at L■■■■C. to get out of his class.

(B) Next, student L■■■■C. stood up from her chair and began walking to the rear door to the classroom which was closer to her seat. Respondent grabbed the student's left arm and stated, "Not that way." While holding onto her arm, respondent pushed the student towards the front door of the classroom. L■■■■C. became embarrassed and upset by respondent's physical action. She pulled her arm away from respondent's grip and stated to him, "Don't put your hands on me." She turned and walked to the back door to exit the class. As she was leaving, respondent imitated the student's reply or voice so as to mock or make fun of her. Respondent's physical conduct in grabbing the student's arm and his verbal mocking of the student were inappropriate and disrespectful.

34. (A) On September 7, 2012, which was a Friday, respondent had an altercation in his classroom with student A■■■■C. during the seventh period art class. The student had a history of behavioral problems in the classroom. On this particular day, A■■■■C. kept moving around the classroom and talking with other pupils. He did not heed respondent's instructions to sit down in his chair and work on a drawing. Respondent told A■■■■C. several times to sit down. Finally, respondent became fed up and lost his patience with A■■■■C. He yelled at the student, grabbed his arm, and told him to leave the classroom. A■■■■C. yelled back at respondent and left the class through the door at the front of the classroom.

(B) Shortly, A■■■■C. returned to the front door. From outside the classroom and through the window in the front door, the student began looking into the classroom and making faces. Students in respondent's classroom saw A■■■■C. acting silly through the door window and were distracted by him. Respondent looked at the window in the front door and became angry when he saw the student there. He went to the door and pushed the metal bar to the door with force. As a result of respondent's action in forcibly pushing the door bar, the door swung open into the hallway and struck A■■■■C. in the face. Students in the classroom did not see A■■■■C. being hit by the door but heard a loud bang when the door was opened. A■■■■C. became upset and yelled out to respondent, "Why did you hit me!" Respondent, who was standing in the area of the door, stated to the student that he did not hit him. A■■■■C. then hit or punched respondent in the shoulder or chest three times. Students in the class heard respondent and A■■■■C. arguing just outside the classroom. Afterwards, A■■■■C. left the area and went to the counselor's office where he made a

complaint and wrote a statement about the incident. Respondent re-entered the classroom and continued teaching the assignment or lesson.

35. It was not established that, on September 7, 2012, respondent left student A [REDACTED] C. outside of his classroom unsupervised for 15 minutes. Nor was it established that respondent pushed the student in the chest after opening the classroom door or hitting the student with the door.

36. On September 7, 2012, the counselor at South Region High School informed Principal Lee about the incident involving respondent and student A [REDACTED] C. Principal Lee filed a suspected child abuse report with the police and the social services department and directed the counselor to obtain statements from other pupils in respondent's seventh period art class about the incident. That same day, the counselor spoke to respondent about the incident. Respondent reported to the counselor that he accidentally hit A [REDACTED] C. with the door and that he had a rough day. Respondent added that he wanted to file charges against the student for hitting him in the shoulder area. The counselor advised respondent to file a report with the school police of the District.

37. On the morning of the following Monday, September 10, 2012, when respondent came to South Region High School to begin teaching his classes, Principal Lee directed respondent not to go to his classroom but to report to a school office. Instead, respondent went to the office of the Los Angeles School Police Department at South Region High School and reported that student A [REDACTED] C. had hit him on the shoulder and ribs after respondent had accidentally hit the student with a door. Respondent reported to the school police that he had told the student that he had not seen him. Respondent told the school police that he wanted the student to be prosecuted. The school police interviewed student A [REDACTED] C. and other students. It was not established whether criminal charges were filed against the student. Subsequently, Principal Lee investigated the incident involving respondent and student A [REDACTED] C., conferred with the field director of the District's Office of Staff Relations, and reviewed the statements obtained from ten students in respondent's class. Upon the recommendation of the principal and with concurrence by the District, respondent was not allowed back into his classroom and directed to stay in a District office. Respondent's last day teaching students in a classroom at South Region High School was Friday, September 7, 2012.

38. On November 30, 2012, Principal Lee conducted a conference with respondent to discuss his conduct with students D [REDACTED] L., J [REDACTED] L., L [REDACTED] C., and A [REDACTED] C. A representative from the teachers' association was also present. During the conference, Principal Lee advised respondent that he had the professional responsibility to use appropriate disciplinary techniques and that it was against the District's policy to use corporal punishment. The principal reviewed the Board Resolution on the respectful treatment of all persons and the Employee Code of Ethics and directed respondent not to forcefully open a door "into a student" or to push or grab a student on the chest or arm. Respondent stated that he would file a written response to the allegations after the conference but he did not do so.

39. (A) Three months later, on March 5, 2013, Principal Lee held a conference with respondent and issued a Notice of Unsatisfactory Acts of Certificated Employee to him, which stated that respondent's services were considered to be unsatisfactory based on his conduct with students D[REDACTED] L., J[REDACTED] L. L[REDACTED] C. and A[REDACTED] C. in August and September 2012 at South Region High School. Principal Lee recommended that respondent be dismissed from the District. The principal's recommendation was approved by the Director of Operations for the District. The causes for dismissal, charges, and the assistance and guidance given to respondent were outlined in a Revised Notice of Unsatisfactory Acts dated March 26, 2013.

(B) At the conference on March 5, 2013, Principal Lee also issued a Notice of Suspension of Certificated Employee to respondent, indicating that respondent was to be suspended for 15 days without pay based on his conduct with students D[REDACTED] L., J[REDACTED] L., L[REDACTED] C., and A[REDACTED] C. in August and September 2012 at South Region High School. The causes for suspension, charges, and the assistance and guidance given to respondent were outlined in a Revised Notice of Suspension dated March 26, 2013. Sergio Franco, Field Director of Employee Performance Accountability, was also present at the March 5, 2013 conference and took notes.

(C) Respondent received the Notice of Unsatisfactory Acts of Certificated Employee and the Notice of Suspension of Certificated Employee on March 5, 2013. On the notices, he wrote that he "categorically den[ied] and refute[d] absolutely everything in [the] document[s]." Respondent appealed the dismissal and suspension decisions.

40. In a letter dated March 7, 2013, the District's Administrator of Operations notified respondent that a meeting had been scheduled for March 18 to discuss his appeal of his possible dismissal and suspension. Respondent was notified that the purpose of the meeting was to permit him to present statements or documents in response to the charges contained in the Notice of Unsatisfactory Acts of Certificated Employee and Notice of Suspension of Certificated Employee and to explain why he should not be suspended and dismissed from his employment with the District. Respondent was later notified that the appeal meeting had been re-scheduled to March 21.

41. On March 21, 2013, Alfredo Montes, District Operations Coordinator, Intensive Support and Innovation Center, met with respondent and his former counsel to discuss respondent's appeal of the Notice of Unsatisfactory Acts of Certificated Employee and the Notice of Suspension of Certificated Employee. Sergio Franco, Field Director of Employee Performance Accountability, was also present on behalf of the District and took notes of the meeting. Respondent's conduct in connection with the classroom incidents involving students D[REDACTED] L., J[REDACTED] L., L[REDACTED] C. and A[REDACTED] C. were reviewed and discussed during the appeal meeting. Respondent read from a prepared statement and denied all of the charges contained in the notices. He stated that he apologized to A[REDACTED] C. after opening the door and told the student that he did not see him. He stated that he did not push or grab student L[REDACTED] C. but moved her. He denied the allegations regarding students J[REDACTED] L. and D[REDACTED] L. Respondent added that many of his students were upset due to the lack of

instructional materials and complained that his classroom was overcrowded and lacked basic classroom equipment and supplies. Based on his review of the information and documents, Operations Coordinator Montes issued a letter dated March 26, 2013, in which he sustained the determination of Principal Lee to dismiss and suspend respondent. Montes found that, based on his outbursts, respondent was a poor role model and had created a negative and hostile school environment.

42. (A) By a letter April 5, 2013, the District notified respondent that an administrative review meeting or hearing on his proposed dismissal was to be held on April 17th. Respondent was subsequently notified that the date of the administrative review meeting or hearing was changed to April 22nd.

(B) On April 22, 2013, the District conducted an administrative review meeting or hearing on the recommendation to dismiss and suspend respondent pursuant to Education Code sections 44932 and 44939. Administrator of Operations Daryl Narimatsu conducted the meeting. Respondent was present along with a representative from the teachers' association. Field Director Franco was present and took notes. During the administrative review meeting, the teachers' association representative presented argument. Regarding the incident involving student A [REDACTED] C., respondent stated that he reported the incident to the counselor and a school police officer and filed an act of violence report. Respondent contended that there were racial problems between African American and Latino students at South Region High School and that the high school was "out of control." He also asserted that he did not hit the student with the door and read from the summary of the November 30, 2012 conference prepared by Principal Lee.

(C) On April 29, 2013, Administrator of Operations Narimatsu issued a written letter. Based on his review of respondent's statements and concerns and the documentation, Narimatsu concluded that the recommended disciplinary action of dismissal should be forwarded to the Board of Education. Respondent was notified that, if the Board of Education approved the recommendation, then he would be immediately suspended without pay and, within 30 days of his receipt of the notice of the Board of Education's decision, he would be dismissed from the District, unless he exercised his rights under Education Code section 44939.³

43. (A) On September 27, 2013, Vivian K. Ekchian, Chief Human Resources Officer, made and issued the Statement of Charges, seeking the immediate suspension without pay and the dismissal of respondent from his employment with the District. Ekchian verified on information and belief that the charges were true and correct.

³ Because the Amended Accusation and Statement of Charges does not request a decision on the suspension without pay and neither party addressed the issue of the suspension during the hearing, the Administrative Law Judge makes no legal conclusions or order regarding the District's suspension of respondent from his employment.

(B) On October 8, 2013, the Board of Education considered the Statement of Charges and determined to immediately suspend without pay and to dismiss respondent. On October 9, 2013, respondent was notified of the Board of Education's intention to place him on immediate unpaid suspension and to dismiss him from the District. Respondent was advised that he would be dismissed within 30 days unless he demanded a hearing and was served with a copy of the Statement of Charges and a blank Request for Hearing form.

(C) On October 18, 2013, respondent's counsel filed a Notice of Representation and Request for Hearing. Respondent acknowledged receipt of the Notice of Intention to Dismiss and the Statement of Charges, demanded a hearing on the Statement of Charges, and requested certain information from the District.

(D) On May 2, 2014, respondent filed a Notice of Inability to Designate Panel Member and Request for the Office of Administrative Hearings to Designate Panel Member. On May 2, 2014, complainant filed a Notice of Non-Designation of Panel Member. On June 13, 2014, the Amended Accusation was made and filed. On September 2, 2014, the scheduled hearing on the Amended Accusation was continued because the Los Angeles County Office of Education was unable to designate panel members for the Commission on Professional Competence under Education Code section 44944, subdivision (b)(1).

(E) On February 10, 2015, complainant filed a Notice of Inability to Designate Panel Member for the continued hearing. On February 10, 2015, respondent filed a Notice of Inability and Request that the Office of Administrative Hearings Designate a Panel Member. On March 26, 2015, the parties filed an Amended Joint Stipulation re: Waiver of Commissioner Member wherein both complainant and respondent agreed that an administrative law judge from the Office of Administrative Hearings could hear this matter and render a decision in lieu of a Commission on Professional Competence pursuant to Education Code section 44944, subdivision (c)(1). The hearing in this matter then ensued.

44. Based on Findings 31(C), 33, 34, and 36 – 39 above, respondent engaged in inappropriate, disrespectful, and unprofessional conduct when he yelled and pointed a finger at student D [REDACTED] L.; grabbed, pushed, and yelled at student J [REDACTED] L.; grabbed, pushed, and mocked student L [REDACTED] C.; and hit student A [REDACTED] C. with the classroom door. Respondent's conduct with these students constituted violations of the District's Employee Code of Ethics, Code of Conduct with Students, and Ethics Policies and the Board Resolution for the respectful treatment of all persons. In addition, respondent's conduct in hitting student A [REDACTED] C. with the classroom door constituted a violation of the District's Policy for the Abolition of Corporal Punishment. Respondent willfully inflicted physical pain on the student A [REDACTED] C. by forcibly opening and hitting the student with the classroom door and thereby precipitating a physical altercation with the student.

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Respondent's Evidence

45. (A) In this matter, respondent has argued that he is not prejudiced against African American students or staff. He claimed that he was born in Venezuela to a mixed race family and that he has descendants who were of Yoruba or African descent. Respondent's testimony did not mitigate or excuse his conduct when he made gorilla sounds to student I [REDACTED] A. when he referred to a student as a "mayate," or when he called the security staff member a "Big Gorilla."

(B) On an Employment Information form that he completed in August 1999 under penalty of perjury near the time when he was first hired by the District, respondent identified his ethnicity as "White, not Hispanic," and not as "Black, not Hispanic" and not as "Hispanic." Regardless, however, of his background or ethnicity or how he may classify himself, respondent's making of the sounds and comment to the African American students and security staff member were offensive and disrespectful. His actual conduct carries more weight than his testimony and belies a lack of sensitivity and understanding of what a teacher can do or say in this diverse and multi-cultural society that is California. That a teacher may have or share a similar ethnicity or background with students or other persons is irrelevant and does not mean that the teacher is allowed to make or may be excused for making racially inflammatory and inappropriate comments to students or staff.

46. Respondent also explained that he told students that they would end up selling oranges or fruit in the streets in order to motivate them. Respondent testified that, when he was 17 years old and had been in this country for three years, he had to live in a car and in a garage and sold oranges and cherries on the street to earn money. When students in his classes did not do their assignments, respondent testified that he spoke about his own hardships and warned that they would be selling fruit, like he did, if they did not get an education. However, respondent's purportedly cautionary tales were negative and insulting to the pupils who also heard the loud and disrespectful tone of respondent's tirades in the classroom. Respondent admitted that he always spoke very loudly in class in the manner of an athletic coach. As they testified in the hearing, students found that respondent yelled at them a lot.

47. (A) Respondent testified that he was "shocked" by the incident with student A [REDACTED] C. He admitted that he sent the student out of the classroom because the student was moving around the class and would not stop talking. He admitted that he shouted at the student "like a drill sergeant." He admitted that he hit the student with the door but that he did not purposely or intentionally push the classroom door into the student. Respondent further testified that a female student asked to go to the restroom and he opened the door for her because it was hard to open the door. As he had previously stated in conferences and meetings with the District, respondent implied that he accidentally hit A [REDACTED] C. when he opened the door. Respondent testified that A [REDACTED] C. then hit or punched him five times "like a boxer." Respondent added that he said to the student, "You're hitting me. You're hurting me." Respondent testified that, after the incident was over, the female student stated that she did not have to go to the restroom any longer and he tried to use the telephone in the

classroom. Respondent further contended that students in his classroom could not have seen A [REDACTED] C. at the front door because their views were blocked by an emergency shower fixture or wall.

(B) Respondent's testimony was not credible. No other witness or student testified that it was difficult to open the classroom door or that a female student had asked to go to the restroom at the time of this incident. His admission that he shouted at the student A [REDACTED] C. showed that he was upset with him and was likely to retaliate against the student for peering into the classroom and disrupting the class. Finally, respondent did not relate or mention many of those additional details about the incident with student A [REDACTED] C. set forth in Finding 49 (A) above in any earlier meetings with the District or school police. His embellishment of the incident had a tendency in reason to lessen his credibility. Finally, there was insufficient evidence to support respondent's contention that the shower fixture blocked the students' views of the front door or window. The students' statements and testimony about the incident were persuasive. A [REDACTED] C.'s reaction and comment after respondent opened the classroom door have a tendency in reason to show that he was, in fact, hit by the classroom door.

48. Respondent admitted that he is aware of the District's Bullying and Hazing Policy and Abolition of Corporal Punishment. He watched videos and received training in these policies. Respondent testified that he was given the Employee Code of Ethics and Code of Conduct with Students by Assistant Principal Engle at Manual Arts High School. He acknowledged that he has read and is familiar with the Code of Conduct with Students and that students are entitled to a safe learning environment at school. Respondent further acknowledged that he received the conference memoranda prepared by the school administrators following his formal conferences with them.

49. Respondent testified that he apologized to the school security staff member for his offensive comment. He did show remorse to the assistant principal for his comment. On the other hand, during the hearing in this matter, respondent did not acknowledge or admit any other wrongdoing and did not admit that he violated any of the District's policies. Moreover, respondent did not express any remorse for his conduct or the statements that he made to students and staff at Manual Arts High School and South Region High School. He did not demonstrate that, since he was removed from the classroom on September 10, 2012, he has undertaken any training or coursework to improve his classroom demeanor, classroom management and pupil disciplinary skills, or skills and knowledge about teaching and ethics. Respondent presented no letters of reference in which he is commended for his teaching ability and classroom demeanor.

50. (A) On June 10, 2010, respondent received a satisfactory Final Evaluation of Instructional Personnel for the 2009-2010 school year from the principal at Manual Arts High School. He met the standards of performance for the support of student learning, planning and designing instruction, classroom performance, developing as a professional educator, and punctuality, attendance, and record-keeping. The principal noted that

respondent needed to continue developing his skills in non-confrontational conflict resolution.

(B) On June 26, 2009, respondent received a satisfactory Final Evaluation of Instructional Personnel for the 2008=2009 school year from the assistant principal at Manual Arts High School. He met the standards of performance for the support of student learning, planning and designing instruction, classroom performance, developing as a professional educator. In the area of punctuality, attendance, and record-keeping, he needed improvement in the performance standard of regularly arriving on time and starting class on schedule and met the standard for regular attendance and maintaining accurate and timely records. The assistant principal noted that respondent should continue to post a daily agenda in his classroom that was complete and met teaching standards.

(C) On or about May 23, 2007, respondent received a satisfactory Final Evaluation of Instructional Personnel for the 2006-2007 school year from Assistant Principal Engle at Manual Arts High School. He met the standards of performance for the support of student learning, planning and designing instruction, classroom performance, and developing as a professional educator. In the area of punctuality, attendance, and record-keeping, he needed improvement in the performance standard of regularly arriving on time and starting class on schedule and met the standard for regular attendance and maintaining accurate and timely records. The assistant principal commented that respondent should have student work on display in his classroom, reduce the number of complaints by parents, and reduce the number of times that he was tardy in arriving at school.

(D) Respondent's evaluations carry less probative weight in this matter than the evidence presented by the District showing that he violated the District's policies in the school years in question.

51. Allegations contained in the Amended Accusation and Statement of Charges or raised during the hearing for which there are no specific findings in this Decision were deemed unproven or considered irrelevant or surplusage upon consideration of all of the evidence.

* * * * *

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

LEGAL CONCLUSIONS

1. Complainant has the burden of proof in this matter because the District is seeking to dismiss respondent from his employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional*

Competence (1985) 164 Cal.App.3d 1035, 1038-1039.) Preponderance of the evidence means that “the evidence on [the District’s] side outweighs, preponderates over, is more than, the evidence on the other side.” (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325.)

2. Cause exists to dismiss respondent from his employment with the District pursuant to Education Code section 44932, subdivision (a)(7), for his persistent violation of or refusal to obey reasonable regulations prescribed for the governance of the schools of the District by its governing board, based on Findings 3 – 10, 11 – 14, 16 – 20, 21 – 23, 25, 26 – 33, 34, 36 – 39, and 44 above.

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

On a number of occasions over the course of two school years, from November 3, 2010, through September 7, 2012, respondent violated the District’s policies at two high schools despite having been counseled and directed in conferences with administrators to follow the District’s policies. For example, at Manual Arts High School, respondent violated the Employee Code of Ethics requiring that teachers create an environment of trust, care, and respect and ensure positive relationships with students and the Board Resolution calling for the respectful treatment of all persons as follows: respondent mocked student A [REDACTED] V.’s weight or appearance, he called a security staff member a “Big Gorilla,” he angrily yelled at an assistant principal in the presence of students, he made gorilla or monkey sounds at student I [REDACTED] A., he referred to an African-American student by a Spanish-language slang word that was pejorative and demeaning, denigrated a Latino student by saying he would sell oranges on the street, and mocked an assistant principal in front of students by referring to her by an unflattering nickname.

Furthermore, at South Region High School, from August 14, 2012, through September 7, 2012, respondent violated the Employee Code of Ethics requiring that teachers create an environment of trust, care, and respect and ensure positive relationships with students, the Board Resolution calling for the respectful treatment of all persons, and other District policies in the following respects: respondent yelled and pointed a finger at student D [REDACTED] L. and caused a confrontation with the student; grabbed the shirt collar of student J [REDACTED] L. and forced him to sit down, and directed inappropriate language at the student; grabbed student L [REDACTED] C.’s arm and mocked her reply or voice; and yelled at student A [REDACTED] C., forcibly opened the classroom door and hit student with the classroom, causing a physical confrontation with the student.

Respondent's conduct also constituted violations of the District's Ethics Policies, which requires that all school staff take an active role in promoting an organizational culture that encourage ethical conduct. His conduct was not ethical. In addition, respondent's conduct did not comply with the Code of Conduct with Students inasmuch as respondent failed to ensure the safety of students when he physically handled the students and had confrontations with students.

On the other hand, respondent's conduct did not necessarily constitute violations of the District's Bullying and Hazing Policy. Respondent is not necessarily a bully but a man who has anger management issues and tends to lash out verbally at students and staff and sometimes handles students physically and inappropriately. Nor was it established that respondent violated the District's Discipline Foundation Policy, School-Wide Positive Behavior Support.

Respondent's violations of the aforementioned policies and regulations of the District were persistent and ongoing during the 2010-2011 and 2011-2012 school years and the first month of the 2012-2013 school year. He continued disregarding and violating these policies and regulations despite having been counseled and directed to comply with the policies and regulations in conferences with school site administrators. Respondent did not comply with the administrators' guidance and directives and the fact that he continued to violate the District's policies showed that he is unable to reform his conduct.

3. Cause exists to dismiss respondent from his employment with the District pursuant to Education Code section 44932, subdivision (a)(1), for unprofessional conduct, based on Conclusion of Law 2 and Findings 3 – 10, 11 – 14, 16 – 20, 21 – 23, 25, 26 – 33, 34, 36 – 39, and 44 above.

In this matter, the preponderance of the evidence showed that respondent engaged in unprofessional conduct at South Region High School by yelling at student J [REDACTED] L. grabbing his shirt collar, and pushing him to his seat; by yelling at and grabbing the arm of student L [REDACTED] C.; and by yelling at student A [REDACTED] C., grabbing his arm, and pushing the classroom door at and hitting the student with the door. Respondent's physically aggressive and disrespectful treatment of these three students constituted unprofessional conduct.

Education Code section 44938, subdivision (a), provides that the governing board of a school district shall not act upon any charges of unprofessional conduct, unless at least 45 calendar days prior to the date of the filing, the governing board or its authorized representative has given the employee written notice of the unprofessional conduct, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. Thus, Education Code section 44938, subdivision (a), requires a school district to give a 45-day written notice of the charges of unprofessional conduct against a permanent certificated employee. Here, the District gave respondent the requisite prior written notice of charges of unprofessional conduct in the March 5, 2013 Notice of Unsatisfactory Acts of Certificated Employee, which set forth charges of

unprofessional conduct and specific instances of respondent's behavior at South Region High School. Respondent did not receive prior written notice of any charges of unprofessional conduct in connection with his conduct or assignment at Manual Arts High School for the 2011-2012 school year or for any other school year as required by Education Code section 44938, subdivision (a).

4. As one of the specific grounds for which a permanent certificated employee may be dismissed from employment under Education Code section 44932, unprofessional conduct has a broad import, for it refers generally to conduct demonstrating unfitness. However, a particular act or omission on the part of a teacher may constitute not only unprofessional conduct but also evident unfitness for service and a persistent violation of or refusal to obey prescribed rules and regulations. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174-1175; *Board of Education v. Swan* (1953) 41 Cal.2d 546, 551.) Unprofessional conduct may be viewed as a lesser included form of proscribed behavior within evident unfitness for service. Conduct constituting evident unfitness for service will often constitute unprofessional conduct, but the converse is not true. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1445.)

5. Cause exists to dismiss respondent from his employment pursuant to Education Code section 44932, subdivision (a)(5), for evident unfitness for service in that respondent engaged in conduct which demonstrated that he is not fit to be a teacher due to a defect in temperament that cannot be remedied, based on Findings 3 – 10, 11 – 14, 16 – 20, 21 – 23, 25, 26 – 33, 34, 36 – 39, and 44 above.

Evident unfitness for service means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th at pp. 1444-1445.) Unlike unprofessional conduct, evident unfitness for service 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 p. 1444.)

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

In the *Morrison* case, the California Supreme Court held that where charges of immorality or unprofessional conduct are raised in a teacher dismissal case, the applicable standard is whether the person is fit to teach. (*Morrison v. State Board of Education, supra*, 1 Cal.3d. at p. 229.) The terms immoral or unprofessional conduct have been held too vague, standing alone, and must be applied to a specific occupation and given context by reference

to fitness for the performance of that occupation. (*Basset Unified School Dist. v. Commission on Professional Competence* (1988) 201 CalApp.3d 1444, 1453.) The *Morrison* case requires that the determination whether a person is fit to teach be based on an objective and analytical approach consisting of a review of the teacher's conduct and an assessment of a variety of specific criteria which include: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the respondent; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher. These factors assist a board of education in determining whether a teacher's fitness to teach, and whether the teacher's future classroom performance and overall impact on his or her students are likely to meet the standards of the board of education. (*Morrison v. State Board of Education*, *supra*, 1 Cal.3d at pp. 229- 230.)

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

6. Discussion—The preponderance of the evidence showed that, during the 2010-2011 and 2011-2012 school years at Manual Arts High School and the first month of the 2012-2013 school year at South Region High School, respondent engaged in inappropriate and disrespectful conduct with students, a school staff member, and an administrator, which violated the District's policies and codes for ethical and respectful conduct towards others. Respondent engaged in his unprofessional conduct on multiple occasions at two schools and even after he was given assistance, guidance, and directives by administrators not to engage in such conduct and to follow the District's ethical and code of conduct policies.

A review of respondent's acts under the *Morrison* factors demonstrates that his conduct was unprofessional and that he is unfit for service as a teacher with the District. First, respondent's conduct in the classroom adversely affected students. For example, student A [REDACTED] V. became upset and was insulted when respondent mocked his weight or physique. Student I [REDACTED] A. became mad when he heard respondent direct gorilla sounds at him. Student L [REDACTED] C. became embarrassed and upset when respondent grabbed her arm and pushed her to the front door. An assistant principal was shocked by respondent yelling at her and found him to be insubordinate. Students complained about respondent and were made to feel sad and scared by respondent's yelling.

Second, respondent's conduct was proximate in time, having occurred over the course of three school years from November 2010 through September 2012. His last incident, which involved student A [REDACTED] C., was approximately three years ago.

Third, respondent holds a credential to teach art at the secondary school level, which allows him to continue to teach and affect students. Fourth, there were aggravating factors to respondent's conduct. He made racially discriminatory or insensitive comments to or about African American students and staff, which were inflammatory and not conducive to creating a respectful and positive environment for learning. He denigrated students by mocking one student's weight or their responses to him and by telling them that they had no future. He yelled at and made fun of an administrator, which constituted insubordination. Respondent made students feel bad about themselves and their chances to learn and improve their lot in life.

Fifth, respondent's motives for engaging in his unprofessional conduct were not at all praiseworthy but self-centered and short-sighted. At South Region High School, respondent received a second chance to redeem himself after he was not elected to return to Manual Arts High School after the 2011-2012 school year. Rather than being helpful and cooperative at the new high school, which only had a principal and a counselor as administrators and lacked art supplies, and instead of showing that he could follow District policies as previously directed, respondent chose to display and vent his frustrations and unhappiness with the state of the school and the behaviors of the students. He continued his conduct of yelling and belittling students. He frequently removed students from his classroom and had confrontations with them. He physically handled three students and got embroiled in a confrontation with a student that led to that student hitting respondent. In just short four weeks at the new high school, respondent succeeded in coming under the scrutiny of the new principal for his classroom style and inability to deal with problematic students. He then demonstrated by his confrontations with students that he could not control his frustrations or anger. He allowed himself to become angry and disrespectful towards the students when he was required as a matter of District policies to be respectful and a role model for pupils.

Sixth, it is very likely that respondent's unethical and disrespectful conduct would recur or continue despite the passage of time or even with additional assistance and guidance or professional development. On four occasions at Manual Arts High School, respondent had formal conferences with administrators and was given guidance and assistance. On November 4, 2010, Assistant Principal Engle advised respondent, in part, not to make comments or gestures belittling students and ordered that he complete anger management. On February 4, 2011, Assistant Principal Boykins directed respondent to be professional in his interactions with persons on campus, avoid altercations, and follow the Employee Code of Ethics and Code of Conduct with Students. On January 30, 2012, and May 21, 2012, Principal Whitman gave respondent copies of the Board's Resolution for the respectful treatment of all persons and the Employee Code of Ethics and told him not to be aggressive or disrespectful to any student or employee. At each of those conferences and in the hearing in this matter, respondent denied the complaints and allegations and did not take responsibility for his actions. Respondent did not demonstrate remorse for his conduct and failed to show any understanding of the effect that his conduct had on students and staff. Moreover, he did not show that he has changed in the three years that he has been out of the classroom or how he would change his demeanor if given another chance to teach children.

Seventh, it was not shown that disciplinary action would have an adverse impact or chilling effect on respondent's constitutional rights.

Based on the foregoing analysis under the factors set forth in the *Morrison* case, the preponderance of the evidence demonstrated that respondent's conduct was indicative of unfitness for service as a teacher for the District. By his conduct, respondent showed that he is prone to angry outbursts and physical reactions in response to students' behaviors and has no compunction to yelling at, mocking, and physically handling students and insulting teachers and school staff. He lacks patience and sensitivity. He shows no understanding how his conduct adversely affects students and reflects badly on his abilities and disposition to be an effective teacher in a diverse society, such as the one served by the District. In other words, the evidence demonstrated that respondent is evidently unfit to serve as a certificated employee for the District and must be terminated from his employment with the District.

7. Cause does not exist to dismiss respondent from his employment pursuant to Education Code sections 44932, subdivision (a)(1), and 44939, in that it was not established that respondent engaged in immoral conduct, based on Findings 1 – 51 above.

In general, immoral conduct has been defined as that which is hostile to the welfare of the general public and contrary to good morals. Immorality is not confined to sexual matters but also includes conduct indicative of corruption, indecency, depravity, dissoluteness, willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community and an inconsiderate attitude towards good order in the public welfare. (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811.) Respondent yelled at students and made inappropriate and offensive comments and sounds to students and school staff. He did grab two students by the arms, grab another student by his shirt collar and pushed him, and forcibly pushed open a door that almost hit another student. While these instances of respondent's conduct were certainly inappropriate and disrespectful, the conduct did not constitute immoral conduct. Rather, the preponderance of the evidence showed that respondent engaged in his inappropriate conduct, not because he is corrupt, indecent, depraved, immoral, or violent, but because he has problems with his temperament and controlling his anger.

8. Cause does not exist to dismiss respondent from his employment with the District pursuant to Education Code sections 44939, in that it was not established that respondent willfully refused to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the District, based on Findings 1 – 51 above. The preponderance of the evidence did not demonstrate that respondent refused to perform his regular teaching assignments at two District high schools. Respondent did not manage his classrooms or the students' behaviors well, allowed his temper to get the better of him, and failed to follow administrators' directives to follow District policies and treat persons with respect, but, nevertheless, he did, in fact, perform his assignment or duties in teaching art. The conferences that respondent had with his school site administrators and the Notice of Unsatisfactory Acts of Certificated Employee involved respondent's inappropriate

conduct with students and school staff and not with his performance of his regular assignment as an art teacher. Respondent received satisfactory evaluations of his teaching performance at Manual Arts High School.


* * * * *

WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

Amended Accusation and Statement of Charges, Case Number 2013101081, filed against respondent Gabriel Galland, is sustained, based on Conclusions of Law 1 – 6 above, jointly and for all. Respondent Gabriel Galland is therefore dismissed or terminated as a permanent certificated employee of the Los Angeles Unified School District.

Dated: July 24, 2015



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings