

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
HUENEME ELEMENTARY SCHOOL DISTRICT
COUNTY OF VENTURA, STATE OF CALIFORNIA

In the Matter of the Accusation Against:

VINCENT DeYOUNG,

Respondent.

Case No. 2011010180

DECISION

This matter was heard before the Commission on Professional Competence, Hueneme Elementary School District, County of Ventura, State of California (Commission), in Port Hueneme, California, on June 23, 27, 28, and 29, 2011. The Commission consists of the following members:

Nancy Beezy Micon, Chairperson
Administrative Law Judge
Office of Administrative Hearings

Yvette Stein, Commissioner
Selected by the Hueneme Elementary School District

Julie Witter, Commissioner
Selected by Respondent

Nitasha K. Sawhney and Cecilia Brennan, Attorneys at Law, of the law firm GCR, LLP, represented the Hueneme Elementary School District (District).

Daniel J. Kolodziej, Attorney at Law, of the law firm Trygstad, Schwab & Trygstad, represented Vincent DeYoung (Respondent), who was also present. Mr. Kolodziej was assisted by attorney Lillian Kae on June 28, 2011, the third day of the hearing.

The District seeks to dismiss Respondent on the grounds of evident unfitness for service, refusal to obey the school laws, and immoral conduct. Respondent disputes the factual allegations and denies that grounds for dismissal exist.

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To maintain confidentiality, this decision identifies students and their parents by their first name or their initials, or their first name and first initial of student's surname. Further, it was ordered that all documents in the record containing student names shall be placed under seal, and shall be opened for public inspection only pursuant to the order of a court of competent jurisdiction.

Oral and documentary evidence was received at the hearing, and argument was heard. The matter was submitted for decision at the conclusion of the hearing on June 29, 2011. The Commission deliberated on June 29, 30 and August 2, 2011. After consideration of the entire record, the Commission makes the following factual findings and legal conclusions:

FACTUAL FINDINGS

Jurisdictional Findings

1. Respondent is a permanent certificated employee of the District.
2. On November 3, 2010, the District gave notice to Respondent pursuant to Education Code¹ sections 44934 and 44936 of its intent to dismiss him. At the same time, the District served Respondent with notice of immediate suspension pursuant to section 44939. Respondent thereafter made a request for hearing.
3. On December 13, 2010, the District served an amended Accusation (Accusation) pursuant to section 44944 and Government Code section 11507 seeking Respondent's dismissal. Respondent filed a Notice of Defense. The District moved for dismissal, arguing that Respondent's filing of the Notice of Defense was not timely. The motion was denied. Respondent thereafter moved for a dismissal of the entire proceedings, arguing lack of jurisdiction due to the District's failure to follow the requirements of section 44934. That motion was also denied.
4. All prehearing jurisdictional requirements have been met.

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¹ All further statutory references are to the Education Code, unless otherwise specified.

Respondent's Background and Hiring by the District

5. Respondent is 49 years old. He was raised in Oceanside, California. Respondent received a Bachelor's degree, with a major in Spanish Literature, from the University of California, Santa Barbara (UCSB) in 1986. In 1987, he completed his training at the UCSB graduate school of education to qualify for a teaching credential. Respondent obtained a multiple-subject bilingual credential, with an emphasis in Spanish.

6. Respondent began his teaching career in Lindsay, California, in 1988. He relocated to begin employment with the District in 1990. Respondent explained that he chose the District because he wanted to live by the beach, and the District had a good reputation for fair treatment of teachers, high salaries, and good benefits.

7. Respondent is divorced and has two adult children. Respondent has been an Assistant Boy Scout Master and a Scout Master. He is involved in his church. Respondent is also a piano teacher; he gives piano lessons out of a studio in his home.

8. Respondent has been an elementary school teacher for his entire career in the District. He began teaching third and fourth grades at Haycox Elementary School. He then transferred to Hueneme Elementary School, where he taught a fourth and fifth grade combination bi-lingual class. He then transferred to Parkview Elementary School (Parkview), where he started in a first and second grade combination bi-lingual class. He then taught for five years in an English-only third grade class. He obtained certification to teach in the District's gifted (G.A.T.E.) program. During the 2009-2010 school year, Respondent taught a combination second and third grade class with students who are English learners.

9. The teachers at Parkview collaborated for English Language Development (ELD) and Language Arts instruction. During the 2009-2010 school year, Respondent and another teacher, Irma Flores (Flores), who taught a first and second grade combination bi-lingual class with English learners, arranged to exchange students during their ELD and Language Arts classroom periods. Flores sent approximately ten of her higher level English learning students to Respondent's class, and Respondent sent seven to ten of his lower-level English learning students to Flores' class. The ELD time period took place between 12:15 and 1:15 p.m.

10. At the end of April or beginning of May, 2010, as a result of the District's investigation into the conduct at issue in this matter, Respondent was notified by the District that he was being removed from his classroom teaching assignment, and being placed on administrative leave. Respondent has not taught since his removal from the classroom.

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The March 25, 2010 Incident

11. On March 25, 2010, Respondent was working in his usual assignment as a teacher of a combination second and third grade classroom with students who are English learners. Respondent was instructing the ELD class period on the topic of character traits. Respondent and Flores had exchanged the English learner students in accordance with their arrangements; the English learner students from Flores' classroom were therefore in attendance during Respondent's ELD class session. There were 20 or less students in Respondent's classroom. Respondent began the class session with a graphic organizer containing different elements of character, including persistence, honor, responsibility and respect. The graphic organizer was used to prepare the students for vocabulary to be used in a movie Respondent was about to show the class during the class session on the same topic.

12. It is undisputed that when the class session began, a few of the children were talking. According to Respondent, the children quieted at his signal for silence. The children again began talking during the movie; some of the children were laughing. Respondent became annoyed and frustrated. He expressed anger at students whom he perceived to be misbehaving. At one point, Respondent yelled at the class, using words to the effect: "Shut up, you stupid kids." Respondent, who is a fluent Spanish speaker, knew or should have known that the word "stupid" is a particularly offensive cross-cultural slur to children who were raised speaking Spanish. Respondent's choice of words left an impression on the students, many of whom noted his use of this "bad" word.

13. At some point during the March 25, 2010 ELD class period, Respondent went to his desk and saw three students, J [REDACTED] H., J [REDACTED] D., and E [REDACTED]²; the girls had not yet moved to the area where the movie was playing. Respondent wanted the girls to move their seats. J [REDACTED] H. was sitting in her chair. Respondent asked J [REDACTED] H. to stand up, which she did. Respondent then took the chair J [REDACTED] H. had been sitting in and threw it in the direction of where the movie was playing. Seven-year-old student M [REDACTED] P. was hit in the inner-sole of her foot when the chair landed where she had been walking to throw some paper in the classroom's trash receptacle. Respondent forcibly pushed E [REDACTED]'s chair to the area where the movie was playing. During his attempts to re-locate the three girls within the classroom, Respondent used a yardstick to hit E [REDACTED] and J [REDACTED] H. on the top of their heads. He grabbed them on their arms and physically escorted them to the area where the movie was playing. At some point, Respondent also hit M [REDACTED] P. on the top of her head with a "metal stick," which was actually one of the legs which had come off the teacher desk.³ Respondent

² It was undisputed that E [REDACTED] is a quiet student who did not disrupt class.

³ The metal leg of the desk had become dislocated from the desk on an earlier occasion. It could be removed from the desk without disturbing the balance of the desk. Respondent had not advised school administration of the need for repair of the desk.

told at least one of the girls that she was “stupid.” Respondent was visibly angry. His face turned red.

14. During the March 25, 2010 ELD class session, Respondent also threw an object at seven-year-old student O■■■■F., which hit O■■■■F. on the top of his head. According to O■■■■F., the object was a pencil and being hit on the head “hurt a little.” The student statements indicate that Respondent also hit student J■■■■J. in the neck with a pen, which “hurt [him] a lot,” and hit student J■■■■B. on the foot.

15. O■■■■F., J■■■■H., J■■■■D., E■■■■, and M■■■■P. credibly testified that they were frightened as a result of Respondent’s conduct during the March 25, 2010 ELD class session, and did not want to return to Respondent’s classroom. A■■■■C., who was another student present during the March 25, 2010 ELD class session, was afraid of Respondent as a result of observing Respondent’s conduct, even though A■■■■C. was not one of the children with whom Respondent made physical contact. M■■■■’s foot was hurt by the chair thrown by Respondent. She convincingly testified that her foot hurt for several weeks after the incident. The strike on the head also caused M■■■■P. to experience some pain.⁴

16. Written statements were taken by school administrators from students in Respondent’s March 25, 2010 ELD class. The statements were written independently when the students went to the school office. The students wrote the statements and then spoke with the principal. Students were interviewed by Parkview and District administrators. While there were some differences in the students’ accounts, the written and oral statements corroborate that Respondent yelled at students, which included use of the phrases “shut up” and “stupid,” forcibly moved students, hit a few of the students on the top of the head with a wooden or metal stick, and threw objects, including the writing instrument that struck O■■■■F. and the chair that struck M■■■■P.

17. Teacher Flores, who was found to be a credible witness, relayed that, as soon as her students returned from Respondent’s ELD class on March 25, 2010, they told her words to

⁴ Factual finding numbers 11 through 14 are based on the credible testimony of O■■■■F., J■■■■D., A■■■■H., M■■■■P., and A■■■■C. The testimony was corroborated by written statements that were taken from students in Respondent’s March 25, 2010 ELD class. While there were some differences in the students’ accounts, these are attributed to non-material differences in perception and recollection, not to fabrication. In addition, the students’ testimony was consistent with their written statements prepared close in time to the incident. M■■■■P.’s foot injury was corroborated by the credible testimony of her mother, A■■■■P., who testified at the hearing, and by Flores, who acknowledged that M■■■■P. complained that her foot hurt because it had been hit by a chair thrown by Respondent.

the effect: "Please, we don't want to go back there." The students, who included M■■■■ P., M■■■■, J■■■■, and O■■■■ F., spoke with Flores immediately after Respondent's class, before they went to recess. The students told Flores that Respondent had gotten angry, that he had thrown chairs, and hit students with a stick. They told Flores they were afraid of Respondent and did not want to go back to his class for ELD and language arts. In response, Flores spoke with Respondent, suggesting that they should stop exchanging students for awhile.

18. Respondent is approximately five feet, eleven inches tall, and weighs approximately 235 pounds.

Parent Complaints

19. On March 26, 2010, the day following the incident, O■■■■ F.'s father contacted the principal about his concerns over Respondent's conduct toward his son. On April 1, 2010, L■■■■ F., O■■■■ F.'s mother, filed a formal complaint, which stated that Respondent hit her son on the head with a pencil. O■■■■ F.'s father came to the school on April 2, 2010 to complain to the principal about Respondent's conduct. O■■■■ F.'s parents wanted Respondent sent to a different school. They wanted their son's school to be safe. O■■■■ F.'s father was willing to meet with Respondent as part of the complaint process.

20. The Monday following the incident, A■■■■ P., M■■■■'s mother, met M■■■■'s teacher (Flores) at the gate when she was taking her children to school. A■■■■ P. was upset and did not want M■■■■ to return to Respondent's classroom. A■■■■ P., who was a credible witness with excellent demeanor, explained that when M■■■■ returned from school on March 25, 2010, M■■■■ told her that a teacher had hit her. She was concerned that if her daughter remained in Respondent's class, Respondent might do something worse. On April 2, 2010, A■■■■ P. filed a formal written complaint about Respondent's conduct. When she met with the principal, A■■■■ P. asked the principal whether it was acceptable at their school for teachers to hit the children.

Other Student Interactions that Took Place Before the March 25, 2010 Incident

21. During the 2009-2010 school year but before the incident on March 25, 2010, Respondent had thrown a pencil at V■■■■, who was one of Respondent's students. The pencil hit V■■■■ on his hand.

22. In the past, Respondent had used the word "idiot" toward his students when he became angry with them. The student statements show that it was not uncommon for Respondent to raise his voice at the students.

23. In approximately September 2009, when returning from a field trip with his students, Respondent became angry with his student V■■■■, who had misbehaved during the

field trip. Respondent sprayed V [REDACTED] on the shirt with water from a full water bottle. While spraying V [REDACTED] on the shirt with the water from the water bottle, Respondent said: “That’s your punishment.”

Respondent’s Statements After the March 25, 2010 Incident

24. Heidi Haines, the principal at Parkview, spoke with Respondent on March 26, 2010, in the presence of a union representative. Haines also spoke with Respondent on March 31, 2010, and at the end of April, 2010. When Haines initially asked Respondent what happened in his ELD class the day before, Respondent paused, and then responded with words to the effect: “I don’t know what you’re talking about.” When speaking with Haines, Respondent admitted using the word “stupid” out of frustration. He told Haines that he does not go around calling his students stupid. He admitted that he “re-directed” E [REDACTED] to a different chair to be with the group of students, and that he raised his voice. Respondent denied throwing any chairs. He denied that he hit any of the students. Respondent did not explain to Haines that he had lost his composure or his temper, that he had tapped two to three children on the head with a yardstick, or that the metal leg of the desk had fallen off and that he had pushed a chair out of the way (and it fell over). During the week following the incident, Respondent did not accept culpability for anything other than raising his voice and using the word “stupid” on one occasion out of frustration with his students’ behavior.

25. On March 31, 2010, Respondent and Flores met to discuss an assignment given to the second graders. During this meeting, Respondent told Flores that he was not sure what was going on. He explained to Flores that children said he hit them. Respondent wanted Flores to know that he had not hit any children. Respondent told Flores that one of the children was being disrespectful and that she did not listen when he tried to get her to stop the disrespectful behavior. Respondent told Flores that, at that moment, he “lost it.” Respondent admitted that he raised his voice at the children. Based on her discussions with the children immediately following the March 25, 2010 incident, Flores did not believe Respondent’s statements, including his statement that he had not hit any of the children.

26. Deborah De Smeth, an Assistant Superintendent with the District, met with Respondent sometime at the end of April, 2010, to discuss the incident. At that time, Respondent denied that he threw anything, hit any students, or called them names.

27. At the hearing, Respondent explained that on March 25, 2010, the students came into the ELD class session noisy and rowdy. He considered “backing them up” but wanted to give them the benefit of the doubt. Respondent claimed that he settled the students by raising his hand, “the quiet signal.” Respondent stated that at the last ELD class session earlier in the week, the students had behaved badly. He responded to their behavior by not allowing the entire class to go to recess. Respondent relayed that after he quieted the students at the beginning of the class on March 25, he went over the graphic organizer for the next 10 to 15

minutes. When getting ready to see the movie, Respondent had the students move their chairs closer to where the movie would be shown. According to Respondent, the students became “chatty and talkative” while moving. Respondent claimed that he quieted them once again. According to Respondent, while the movie was playing, the students became restless and began talking; they were inattentive. Respondent admitted that he said: “shut up.” According to Respondent, this is not something he normally does. The students became more rowdy while the movie was playing. According to Respondent, some students began making “little animal noises” and other students joined in. Respondent described that the situation “began to escalate” in that students were talking, being inattentive, and rowdy. Respondent was frustrated and annoyed. According to Respondent, he raised his eyes to the ceiling and uttered the English word “stupid.”⁵ The students responded by saying he said a bad word. Respondent acknowledges that the Spanish word for stupid is a particularly bad put down in Spanish speaking culture. Respondent described that J [REDACTED] B. next went to the back of the class, brushed his leg against the teacher desk, which caused the metal desk leg to clatter to the floor. The students laughed. Respondent claims that he then went to re-attach the desk leg. Respondent explained there was a chair blocking his way. According to Respondent, he pushed the chair out of the way and it slid across the tiles several feet; it created a commotion. However, according to Respondent, there were no children nearby. Respondent asserted that while he was fixing the desk leg, J [REDACTED] H. and J [REDACTED] D. came to the area to watch. He told the girls to go back to their seats; twice. Respondent admitted that he touched the upper arms of J [REDACTED] H. and J [REDACTED] D. to escort them back to their seats.

28. According to the version of events described by Respondent at the hearing, Respondent saw E [REDACTED] drawing pictures at her desk instead of watching the movie. Respondent claimed he stood over E [REDACTED] to use his proximity as a cue for her to join the activity. Respondent explained that he told E [REDACTED] she needed to pay attention to the movie but she did not respond. Respondent stated that he asked E [REDACTED] to stand up but E [REDACTED] just looked at him. Respondent again asked E [REDACTED] to stand up; she stood. Respondent admitted that he took E [REDACTED] by the upper arm to escort her, and that he slid E [REDACTED]’s chair four to five feet; the chair tipped over. Respondent claimed he did not see the chair hit anyone. According to Respondent, J [REDACTED] B. picked up the chair and E [REDACTED] sat down.

29. According to the description of events given by Respondent at the hearing, there was more commotion. Respondent admitted that he took the teacher ruler (a yardstick) and touched two to three students on the top of the head, saying: “You need to be quiet.” Respondent testified it was a “big mistake” to do that. Respondent also admitted that he “lobbed” a dry erasable pen at O [REDACTED] F. because O [REDACTED] had been “throwing stuff.” Respondent described that he said to O [REDACTED]: “You like throwing stuff in the classroom; I’ll throw it at you.”

⁵ The ALJ takes judicial notice of the fact that the Spanish word for stupid is estúpido. It is a common sense conclusion that a child who speaks Spanish, hearing the English word stupid, will understand the meaning.

Respondent, in retrospect, feels it was inappropriate to throw the pen at a student. He did not intend to hurt O█. However, Respondent admitted that he intended to hit O█ F. with the pen. Respondent acknowledged that he kept playing the movie even though the “chattiness” continued. The movie lasted approximately 30 minutes. After the movie ended, the students went back to their regular assignment and the class quieted down. Respondent denied using the metal desk leg to point at or strike a student. He admitted that he lost his temper and that his conduct was unprofessional.

30. Respondent claimed at the hearing that he did not realize the impact his behavior on March 25, 2010 had on the students in his ELD class until he read the student statements when they were provided to him when he was on administrative leave. Respondent asserted that he did not intend to have a negative impact on the students, or to scare them. Respondent contended he did not realize he had frightened the students.

31. At the hearing, Respondent acknowledged that he squirted V█ with water during a field trip to the Moorpark Teaching Zoo in September, 2009. Respondent explained it was a very hot day. He claimed that students asked him to squirt them with the water bottle. Respondent admitted that he playfully sprayed the water at V█, saying in a joking manner: “Take this. This is your punishment.” Respondent does not believe, even in retrospect when asked about it at the hearing, that his conduct in squirting the student with the water bottle was inappropriate.

32. Respondent contended at the hearing that discipline for this class was a challenge. Respondent explained that, at the beginning of the school year, he spoke with Flores about the discipline plan she was using. Flores told Respondent that she used a color-coded card system where one color represented a warning, another color a loss of recess time, and another color a call home or a referral to the principal. According to Respondent, the students initially responded to the color-coded system.

33. A “Skelly” meeting was held with Respondent and his attorneys on September 17, 2011, to provide Respondent an opportunity to respond to the District’s proposed action. At that time, Respondent admitted that the student’s misbehaving and laughter caused him to get frustrated and use poor judgment. Respondent admitted only that he used the word stupid and that he threw a pencil at a student.

34. Respondent was not found to be a credible witness. Respondent made contradictory statements about what happened during the March 25, 2010 class session to Flores, to principal Haines, to assistant superintendent De Smeth, and at the hearing. He appeared to be adapting his testimony to explain the children’s accounts of his conduct without acknowledging the full extent of his inappropriate actions. Respondent was initially dishonest and, even by the time of the hearing, had not fully acknowledged his misconduct. Respondent’s account of his conduct during the ELD class session on March 25, 2010 did not

ring true.

Evidence Presented By Respondent As Mitigation and Rehabilitation

35. Respondent pointed out that the 2009-2010 school year was the first time he had a combination class in five years. He asserts that the class was an immature group. Five or six of the students were six years old in second grade. Respondent did not realize the assignment would be such a challenge. He was not happy about the assignment.

36. Loretta Schieffer, a retired teacher who taught with the District for over 50 years, testified that she substituted at Parkview for several days during the 2009-2010 school year, and that she has known Respondent for the past 10 to 13 years as a colleague. From time to time, Schieffer has volunteered to read in Respondent's classroom. Schieffer never observed anything out of the ordinary in Respondent's classroom. She never heard Respondent yell, raise his voice, or scold a child.

37. Carmelita Eckhart, a third grade teacher at Parkview, knows Respondent as a colleague. Respondent was also a Boy Scout Master for her son. At times, Eckhart collaborated with Respondent as a teacher. Eckhart has observed Respondent interact with students. According to Eckhart, Respondent was professional and carried out his duties. Eckhart is aware of the allegations in this matter and they do not change her opinion of Respondent.

38. In March 2010, Respondent had been married for approximately 20 years. He was divorced in September 2010. Respondent contends he was experiencing extreme stress in March, 2010, because he and his ex-wife were living together to save money even though they knew they were going to be divorced. Respondent contends that he was also experiencing extreme physical discomfort due to digestive problems in March, 2010. In February, 2011, Respondent had emergency surgery for an acute appendicitis. In retrospect, Respondent believes his physical health and the stress caused by his marital situation affected his behavior on March 25, 2010.

39. Respondent testified that he sought counseling from a pastor in Oregon after the incident. According to Respondent, the pastor has raised his awareness. Respondent claims he has learned that he can avoid problems by stepping back and engaging in self-reflection. On April 23, 2011, Respondent enrolled in a seven-week, 45-hour online classroom management course on the topic of preventing discipline problems in the classroom. Respondent felt the online course was very helpful. At the time of the hearing, Respondent had almost completed the course. Respondent wants to continue to teach in order to influence children in a positive way. Respondent gets great satisfaction from the sense of accomplishment he feels when teaching.

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CONCLUSIONS OF LAW

Evident Unfitness for Service

1. Section 44932, subdivision (a)(5), permits dismissal of a permanent employee for “evident unfitness for service.” Evident unfitness for service under this provision is established by conduct demonstrating that the teacher is “clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” *Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444. If the teacher is found unfit for service, “the next step is to determine whether the ‘unfitness’ is ‘evident’; i.e., whether the offensive conduct is caused by a defect in temperament.” (Id., at p. 1445.)

As a threshold matter, courts require evaluation of a teacher's alleged misconduct in terms of its impact on fitness for service utilizing the following criteria first enunciated by the Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*): the likelihood that the conduct may have adversely affected students or fellow teachers; the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of teaching certificate held by the party involved; the extenuating or aggravating circumstances, if any, surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of the recurrence of the questioned conduct; and the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. The determination of fitness for service required by *Morrison* is a factual one.

Respondent's conduct on March 25, 2010, indicates unfitness to teach under the *Morrison* factors. The conduct involved young second and third grade students in his class during school hours. The students were adversely affected and the degree of adversity was significant. A teacher's use of force against students adversely impacts a school's students, teachers, staff, parents, and the learning environment. Respondent's ELD students were emotionally scarred. They were frightened; M■■■■ P. and O■■■■ F. were physically injured. The students did not want to return to Respondent's class, and at least two parents did not want their children to return to Respondent's class. Students who observed Respondent's conduct or heard about it, and other teachers at Parkview, were also adversely impacted as the conduct could diminish a students' regard for teachers at the school. Flores decided to stop exchanging her students with Respondent. The conduct occurred approximately one year and three months before the hearing. Respondent holds a teaching certificate that is appropriate for the class he was teaching at Parkview. In aggravation, the circumstances surrounding the incident establish that Respondent was responsible for the incident. A teacher does not need a written policy to know that it is unacceptable to scream at children, throw chairs, hit children on the top of their heads, throw objects at children, call students “stupid” and tell them to “shut up,” and grab

students by their arms to move them. There were no mitigating circumstances.

Recurrence of the misconduct is likely for several reasons. Respondent did not fully acknowledge his wrongdoing. When told by his principal about the reports from the students in his ELD class on March 25, Respondent did not accept that he did anything wrong. Instead, Respondent sought to blame the students for causing the misconduct due to their classroom behavior when he was solely to blame. At hearing, Respondent sought to blame his misconduct on his alleged marital and gastric problems. Many teachers go through marital problems and experience personal stress. This is not an excuse for mistreating six, seven, and eight-year-old children. Respondent was not honest about what happened. He misled Flores and the school administrators. He claims that he did not realize at the time that his conduct had an extreme negative impact on his students. If this is true, it is cause for great concern. Even at the hearing, Respondent was still misleading about the facts and he did not understand that his prior action of spraying a full water bottle on the shirt of a student was inappropriate conduct. Respondent appears to look at the incident only from his own point of view. He describes the incident as “having a bad day.” Respondent did not have awareness of the severity or the inappropriateness of his behavior. Respondent engaged in inappropriate physical contact before the March 25, 2010 incident, during the incident, and, given his lack of awareness, it is likely to recur. Respondent’s conduct and apparent lack of insight about the incidents reveal defects in temperament and character that evidence an unfitness to serve as a teacher. Respondent’s unfitness is evident, and is caused by his temperament. Respondent’s existing deficiencies are thus the result of “temperamental defects or inadequacies.” (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429.)

Respondent’s conduct adversely affected students and other teachers because it inhibited the District’s investigation of the matter. The degree of adversity is significant. His motives were blameworthy, as he sought to shield his own misconduct. Respondent has expressed some remorse for his conduct, but he has not fully acknowledged the extent of his misconduct and has not fully accepted responsibility for the incident. There was, however, no showing that the imposition of discipline against Respondent would have an adverse impact or chilling effect upon Respondent’s or other teachers’ constitutional rights.

The analysis of the *Morrison* factors demonstrates Respondent’s present unfitness for service. Accordingly, as set forth in factual finding numbers 5 through 39, cause for dismissal has been established pursuant to section 44932, subdivision (a)(5).

Immoral Conduct

2. Section 44932, subdivision (a)(1), permits dismissal of a permanent employee for “immoral or unprofessional conduct.” (*Board of Education v. Jack M.* (1970) 19 Cal.3d 691, 696-697 (*Jack M.*); *Perez v. Commission on Professional Competence* (1983) 149

Cal.App.3d 1167, 1173-74.) The term “immoral conduct” as a basis for dismissal of teachers has long been included in section 44932, subdivision (a)(1), in its predecessors, and in other provisions pertaining to teachers employed in community college districts. The term was first discussed in the context of teacher dismissal in *Board of Education v. Weiland* (1960) 179 Cal.App.2d 808 (*Weiland*), and the court’s definition in that case has often been cited by other courts. (See, e.g.: *Palo Verde v. Hensey* (1970) 9 Cal.App.3d 967 (*Hensey*).) The *Weiland* court stated:

“The term ‘immoral’ has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as wilful, 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.” (*Weiland*, supra, 179 Cal.App.2d at p. 811.) Further, whether conduct is immoral must also be analyzed in terms of the teacher’s fitness for service under the *Morrison* factors. (*Jack M.*, supra, 19 Cal.3d at pp. 696-697.)

Respondent engaged in immoral and unprofessional conduct in that his conduct was willful and showed an inconsiderate attitude toward good order and the public welfare. The students in Respondent’s ELD class were very young (ages six to eight). Respondent created an unsafe and insecure environment in his classroom that could easily have been avoided. Respondent displayed an inconsiderate and disrespectful attitude toward the welfare of his students. Without provocation, Respondent hit children, called them “stupid,” knowing that the word was a cross-cultural insult considered very bad by children who speak Spanish as their primary language, told children to “shut up,” grabbed children to physically move them, and threw objects at children. Respondent did not require prior notice to know that he cannot hit a student on the top of the head or throw an object at a student. He was angry, and willfully acted upon his anger. Respondent’s conduct was flagrant and shameless, showing moral indifference to the opinions of respectable members of the community.

The March 25, 2010 incident is serious enough, and Respondent’s conduct during the incident and after it, displays such a lack of a moral compass, that dismissal is warranted based solely on this incident. Respondent inflicted corporal punishment upon several of his students. He failed to take responsibility for the conduct.

Accordingly, as set forth in factual finding numbers 5 through 39, cause exists to discharge Respondent for immoral conduct.

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Persistent Violation of Rules

4. Section 44932, subdivision (a)(7), permits dismissal of a permanent employee for “persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.”

A violation of section 44932, subdivision (a)(7), must also be established by reference to the *Morrison* factors. If unfitness to teach is shown, then the District must further establish that Respondent’s refusal to follow the laws or regulations was “persistent,” i.e., “stubborn and continuing.” (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1183; *Governing Board of the Oakdale Union High School District v. Seaman* (1972) 28 Cal.App.3d 77, 82 (*Seaman*).) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered “persistent.” (*See, e.g.: Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317; *Seaman*, *supra*).

Education Code Section 49001

The District asserts that Respondent repeatedly imposed corporal punishment on students in violation of Education Code section 49001, subdivision (b).

Education Code section 49001, subdivision (a), defines “corporal punishment” to include the willful infliction of physical pain on a pupil. Education Code section 49001, subdivision (b), prohibits persons employed by the public schools from inflicting corporal punishment.

Respondent willfully inflicted physical pain on students in violation of Education Code section 49001, subdivision (b). Although Respondent may not have intended to hurt the students, Respondent intended to throw the objects and make physical contact with the students. Respondent intentionally threw the chair, which hit M [REDACTED] P. Respondent intentionally threw the writing implements, which hit O [REDACTED] F. in the head and, during a previous incident during the 2009-2010 school year, hit V [REDACTED] on the hand. Respondent intentionally hit J [REDACTED] H., J [REDACTED] D., and E [REDACTED] with the yardstick. He intentionally hit M [REDACTED] P. on the head with the metal leg of the desk. He may not have consciously thought that he wanted to hurt the children but he consciously made the decision to engage in the conduct that inflicted physical pain on the students. Respondent’s conduct involved the infliction of physical pain on pupils and can be considered corporal punishment within the meaning of section 49001, subdivision (a).

Respondent's violations of section 49001, subdivision (b), were shown to be "persistent" violations of "the school laws of the state." There were several incidents of corporal punishment on March 25, 2010. Respondent had also previously thrown a pen at another student during the 2009-2010 school year. Respondent had also, in September 2009, used the contents of a full water bottle to drench the shirt of a student who angered him. Respondent's conduct on March 25, 2010 was therefore not an isolated incident. Cause therefore exists, as set forth in factual finding numbers 5 through 39, to dismiss Respondent pursuant to section 44932, subdivision (a)(7).

All evidence presented in mitigation and rehabilitation has been considered. The District's dismissal of Respondent is upheld in light of the allegations established.

ORDER

Respondent Vincent DeYoung shall be dismissed from his employment with the Hueneme Elementary School District.

DATED: September 23, 2011

COMMISSION ON PROFESSIONAL COMPETENCE

NANCY BEEZY MICON, Chairperson
Administrative Law Judge
Office of Administrative Hearings

YVETTE STEIN, Commissioner

JULIE WITTER, Commissioner