

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND THE
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
SAN DIEGO UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Proceeding to Dismiss:

RICHARD DEL PRINCIPE, Respondent

OAH No. 2022050601

DECISION

This matter came on regularly for hearing before the Commission on Professional Competence (commission) on September 12 and 15, 2022. The commission was comprised of the following members: Administrative Law Judge (ALJ) Marion J. Vomhof, Thomas Lawrence, and Luciano Ortiz. This hearing was held via telephone and videoconference.

Michael Sullivan, Paul, Plevin, Sullivan & Connaughton LLP, represented the San Diego Unified School District (district).

Fern M. Steiner, Smith Steiner Vanderpool, APC, represented respondent Richard Del Principe, who was present throughout the hearing.

On September 27, 2022, the commission met to deliberate, and the matter was submitted.

CASE SUMMARY

Mr. Del Principe was employed as an elementary school teacher for district. The district required teachers to get the COVID-19 vaccine and Mr. Del Principe failed to provide proof of vaccination. The commission found that Mr. Del Principe's actions constituted persistent refusal to obey the school laws of the state or reasonable regulations prescribed by the state board or school district. Based upon the evidence presented, the commission concluded that this allegation was sustained and warranted Mr. Del Principe's dismissal from the district.

Procedural Background

1. Mr. Del Principe is a certified elementary school teacher who was employed by the district as a fifth-grade teacher at Jerabeck Elementary School.

2. In a March 6, 2020, letter, the district notified Mr. Del Principe that he was being placed on paid administrative leave pending the outcome of an investigation unrelated to this matter. At all times relevant to the facts and allegations in this matter, Mr. Del Principe was a district employee on paid administrative leave.

3. On September 29, 2021, the district sent an email to all employees notifying them that, on September 28, 2021, the Board of Education (board) voted unanimously to require all district employees to be fully vaccinated on or before December 20, 2021.

4. Beginning October 1, 2021, through December 17, 2021, the district sent emails to Mr. Del Principe that included dates, times, and locations to obtain vaccination, how to provide the district with proof of vaccination, and how to request an accommodation.

5. Mr. Del Principe failed to comply with the vaccination mandate by the December 20, 2021, deadline. Because he continued to fail to comply, on January 28, 2022, the district notified Mr. Del Principe that he had been recommended for termination.

6. On April 5, 2022, the district served Mr. Del Principe notice of its intent to dismiss him from his employment with the district on the grounds of "persistent violation or refusal to obey regulations and district policies" and "evident unfitness for service," for his failure to comply with the district's COVID-19 vaccine mandate. Mr. Del Principe timely appealed and this hearing ensued.

Motions in Limine

7. The district filed two motions in limine. Respondent filed oppositions thereto and the parties were allowed to orally argue their positions at the start of trial. The commission preliminarily denied the district's motion to exclude evidence of a February 22, 2022, medical note obtained by Mr. Del Principe, and preliminarily granted the district's motion requesting judicial (official) notice of six articles from various agencies regarding the COVID-19 vaccine. The preliminary rulings are upheld. The medical note received by Mr. Del Principe was considered but given little weight as it was never provided to the district. The articles and facts regarding the COVID-19 vaccine were considered but given little weight as these were not relevant to the cause for dismissal.

Evidence Presented by District

TESTIMONY OF ACACIA THEDE, CARA MARSHALL, AND TOREN ALLEN; DISTRICT COMMUNICATIONS WITH MR. DEL PRINCIPE

8. Acacia Thede is currently employed by the district as the Chief Human Resources Officer. Her duties include supervision of all personnel matters for the district, including recruitment, retention, monitoring, and discipline of teachers.

Cara Marshall is a Human Resources Officer for the district. Her duties include staffing, facilitating ADA meetings, and supporting principals to ensure they are supporting their staff.

Toren Allen is Executive Director of Information Technology (IT) for the district, where he oversees all operational, instructional, and classroom IT issues.

Ms. Thede, Ms. Marshall, and Mr. Allen testified at the hearing and the following factual findings are made based on their testimony and supporting documents received in evidence.

9. In a letter dated March 6, 2020, Ms. Marshall notified Mr. Del Principe that he was being placed on paid administrative leave pending the outcome of an investigation. Mr. Del Principe was advised that during his administrative leave, his "points of contact" with the district were Ms. Marshall and Dr. Watkins, the Jerabeck Elementary School principal. The letter reminded Mr. Del Principe that he continued to be a district employee and that "all current applicable work rules and procedures apply."

10. Ms. Thede testified that as a result of COVID-19 pandemic, all district school sites closed in March 2020 and did not completely return in person until April

2021. When the schools reopened, the district worked diligently to get district employees vaccinated.

11. On September 29, 2021, the district sent an email to all employees notifying them that, on September 28, 2021, the board voted unanimously to require all district employees, partners, contractors and other adults who work directly with students and district employees on district property to be fully vaccinated on or before December 20, 2021. The email included the following:

This mandate is a condition of employment for employees, and the district may take disciplinary action, up to and including termination for employees who do not comply with this mandate.

The district sent out a media advisory, and there was extensive media coverage regarding the district's mandate.

12. Communications to district employees about the vaccination mandate began immediately and continued through the end of December 2021. The following emails were sent to Mr. Del Principe:

- An email dated October 1, 2021, with the subject line "Vaccination Proof Needed," included instructions for uploading proof of vaccination as well as dates, times, and locations for vaccination.
- An email dated October 8, 2021, with the subject line "Vaccination Proof Needed," provided instructions for uploading proof of vaccination.
- An email dated October 16, 2021, with the subject line "COVID Vaccination Card, Testing, and Accommodation Circulars," included instructions for

uploading proof of vaccination and hyperlinks to Administrative Circulars on the district's website that explained the ADA process to request accommodation and the process for religious accommodation.

- An email dated November 18, 2021, with the subject line "Urgent Reminder – Friday is the last day to file a Medical or Religious Accommodation," included hyperlinks to medical and religious exemption/accommodation forms and locations for vaccination and instructions on how to submit proof of vaccination.
- An email dated December 3, 2021, with the subject line "Do you need help uploading your COVID-19 Vaccination Card," provided a link to an authorization form which, if signed by the employee, would allow the district to confirm the employee's vaccination status through the San Diego Immunization Registry and upload the information employee.
- An email dated December 17, 2021, with "Subject: Urgent Reminder – We do not have proof of COVID Vaccination document(s) on file," stated, "You are running out of time, December 20, 2021, is the last date to provide proof of vaccination." The email included options for submitting proof of vaccination.

13. Ms. Thede summarized that the accommodation process required employees to complete an intake form, stating the reason for and the type of accommodation they were seeking, and obtain a signed letter from a physician explaining why the employee was unable to take the vaccine. The information was reviewed, and a meeting was scheduled with the employee, where the district offered the employee an opportunity to test weekly in lieu of vaccination. If the employee agreed, the district provided him or her with documentation of the accommodation.

14. The district notified the employee's union of the initial implementation of the mandate, and, on November 9, 2021, an agreement was created between San Diego Education Association (SDEA) and the district, retroactive to September 28, 2021. The agreement provided that non-compliant employees could voluntarily resign, with no disciplinary action and with the ability to apply for reemployment with the district if and when the individual complied with the vaccination requirement. The agreement stated that the district "intends to terminate non-compliant employees who do not meet the vaccine requirement, do not receive a reasonable accommodation, or do not voluntarily resign."

15. In January 2022, Ms. Marshall was directed to call all employees on paid administrative leave who had not provided proof of vaccination. On January 4, 2022, she called Mr. Del Principe, and the call went to his voicemail. She left a message, stating that the district had not received his proof of vaccination and that he needed to provide proof of vaccination or voluntarily resign. She asked him to contact her as soon as possible. When she had not heard from Mr. Del Principe, she called him again on January 12, 2022, and again he did not answer.

16. On January 27, 2022, Ms. Marshall sent an email to Mr. Del Principe with a letter stating that he had been recommended for termination effective January 25, 2022. The letter was also mailed to Mr. Del Principe. Ms. Thede acknowledged that the letter was in error and was only a recommendation for termination. On January 28, 2022, Ms. Marshall forwarded a second letter to Mr. Del Principe. The letter stated in part:

As of January 18, 2022, you have failed to provide proof of
COVID-19 vaccination.

Your conduct constitutes "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 or by the governing board of the school district employing him or her." Education Code Section 44932 (a)(8).

The letter informed Mr. Del Principe that he was entitled to a disciplinary conference, also known as a *Skelly* hearing,¹ to allow him an opportunity to respond to the recommendation for discipline.

17. On January 31, 2022, Mr. Del Principe sent an email to Ms. Marshall from his personal account. He questioned his status with the district and told her that his district email had been deactivated. Ms. Marshall confirmed that he was an employee in active status, and she explained that the letter was not a termination but rather a recommendation for termination with an offering for a *Skelly* hearing before anything

¹ In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain "preremoval safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The Supreme Court's directive gave rise to an administrative procedure known as a *Skelly* hearing, which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.

was final. She reached out to IT regarding his email status. She gave him dates for a *Skelly* hearing.

18. A *Skelly* hearing was held on February 7, 2022, conducted by Ms. Marshall and attended by Mr. Del Principe and his attorney. Mr. Del Principe's attorney represented that Mr. Del Principe would obtain his first dose of vaccine on February 8, 2022, and his second dose by March 10, 2022. After the hearing, Ms. Marshall determined that there was a reasonable basis to sustain the recommendation that Mr. Del Principe be terminated. Ms. Thede directed her to offer Mr. Del Principe a "last chance" agreement – a resignation settlement agreement that allowed him to resign in lieu of termination. Mr. Del Principe was offered this agreement, but he refused to sign.

19. Mr. Allen testified that each district employee has an email account, and the district frequently communicates with employees by email. Each employee is given an ID which is used to access their district email. If an employee forgets their password, they can ask IT to have it reset. Employees can look at their email inbox and see the number of emails, the dates they were sent, and the sender. Employees can change the status of an email, marking it as read or unread. There is no way for IT to tell if this has been changed. IT is able to determine if access to an email account is a district issue, and if so, they can fix it. IT is able to determine if an account has been disabled and provide logs of emails that were sent to that address.

Accounts are deactivated when an employee is terminated. Mr. Del Principe lost access to email on January 25, 2022, because his name was on a list of terminated employees. IT was notified of the error and his access was restored in February 2022, and he had access through the time of his termination on April 5, 2022.

Mr. Allen provided documentation of Mr. Del Principe's contacts with IT and IT's responses. Mr. Allen confirmed that Mr. Del Principe did not view his district emails from July 2021 through March 2022.

Testimony of Mr. Del Principe

20. Mr. Del Principe wanted to be a teacher since he was in the sixth grade. He has several family members who were teachers. He loves teaching kids. He worked for the district for almost 25 years. On March 6, 2020, he received a letter from Ms. Marshall, notifying him that he was being placed on paid administrative leave pending the outcome of an investigation unrelated to the vaccination issue that is the subject of this matter. He was not to talk with district employees, other than Ms. Marshall or Dr. Watkins. He was not to report to work or appear at Jerabeck Elementary School until he was officially notified by Human Resources.

21. He did not see the district's September 29, 2021, press release. He did not see any emails that were sent from the district from October 1, 2021, through the end of 2021. He did see the November 9, 2021, agreement between the district and SDEA regarding the vaccine mandate. He is familiar with the district's website, but he did not access the website "because I was too busy teaching." This response was confusing because Mr. Del Principe testified had not been teaching since he was placed on administrative leave on March 6, 2020. He thought that he had been reviewing his emails but according to the IT log, it appears he had not.

Mr. Del Principe said, "I thought I was" looking at district emails, "but I didn't know I was supposed to." He later said, "I wasn't reading my emails like I should have there for a few months." The last thing he received from the district was a letter, so he thought the district would reach out to him in the same way. He did not watch the

news during the period beginning September 28, 2021, because he said, "It's depressing."

He did not hear Ms. Marshall's January 4, 2022, voicemail message because his phone was turned off due to the use of a wrong credit card. He first heard her message on January 18, 2022. He was not aware of the vaccine mandate until that time. He had not been contacted by the district or sent a notice that vaccination was required. When he heard Ms. Marshall's message, he tried to call the union to get more information, but he did not hear from the union until January 25, 2022.

He did not receive the January 27, 2022, email from Ms. Marshall because his district email was down. The letter that had been attached to the email was mailed to him and he received it the next day. After reading the letter, he thought it meant he had been terminated on January 25, 2022. He used his personal email to contact Ms. Thede, inquiring about his employment status and his district email. Ms. Marshall responded. She confirmed that he was in active status with the district and said she would contact IT as to why his email was deactivated. He asked why he had not received his January pay warrant and she reached out to payroll. His February 1, 2022, pay warrant was deposited on February 10, 2022. He was told by the district's benefits department that a human resources entry caused his benefits to terminate effective March 1, 2022. This error was resolved with no lapse in benefits.

22. On February 7, 2022, he participated in the *Skelly* Hearing, led by Ms. Marshall. "Options" were discussed but there was no offer of accommodations. He agreed to get "the shot" the next day (February 8, 2022.) Ms. Marshall said that "was good," but the district was going forward with termination. She later told him she could "make a deal," and she gave him the resignation settlement agreement. The agreement would have allowed him to voluntarily resign while releasing the district

from liability. He refused to sign the agreement. He said, "I didn't think I should be punished because I didn't do anything wrong." He did not get vaccinated on February 8, 2022, as he agreed. As of this hearing, he has not been vaccinated.

23. On February 22, 2022, he saw a physician "regarding the vaccination situation." The physician was recommended by friends. He brought no medical records to the appointment. He met with the physician for 45 minutes. The physician provided him a letter stating that he had a medical condition and should not receive the COVID-19 vaccination. Mr. Del Principe acknowledged that he never sent this letter to the district and never notified the district that he had received the letter from the physician. He did not provide the letter to the district "because I thought I had passed the deadline."

24. On cross-examination, Mr. Del Principe said that in October 2021, his password was reset quickly, restoring his email access. The SDEA sent emails to his personal email in August 2021; they sent emails regarding the union to his district email. He was aware that accommodations were available, but he did not ask for any before or at the *Skelly* hearing. He acknowledged that during the period March 6, 2020, through April 5, 2022, he was able to use his password to access his district email through the district's website. He continued to review the district's website during 2021, he accessed "human resources and payroll a lot." While he "was an employee," he received regular email communication from the district. He understood that he was a district employee while he was on paid administrative leave. The March 6, 2020, letter from the district informing him that he was being placed on paid administrative leave, stated that "all current applicable work rules and procedures apply." He was aware that he should read and review district emails but admitted, "I didn't check (district email) very often."

LEGAL CONCLUSIONS

Applicable Code Sections Regarding Dismissal Actions

1. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44934, 44944.)

2. Education Code section 44932 provides the grounds for dismissing a permanent employee. Subdivision (a)(6) authorizes dismissal for evident unfitness for service. Subdivision (a)(8) authorizes dismissal 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 or by the governing board of the school district employing him or her.

3. Education Code section 44944 establishes the right to a hearing. It also sets forth the process for selecting the three-member commission and the commission's authority regarding its final decision.

4. Education Code section 44938 outlines the procedures the district's governing board must follow before acting on any charges brought against a permanent employee.

Burden and Standard of Proof

5. The "burden of proof" means the obligation of a party to convince the trier of fact that the existence of a fact sought to be proved is more probable than its

nonexistence. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1128.) The district has the burden of proof to establish cause to dismiss its employee.

6. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) A preponderance of the evidence means that the evidence on one side of an issue outweighs, preponderates over, and is more than, the evidence on the other side of the issue, not necessarily in number of witnesses or quantity, but in the convincing effect the evidence has on those to whom it is addressed. In other words, the term refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Relevant Judicial Authority

7. A violation of Education Code section 44932, subdivision (a)(8), must also be established by reference to the *Morrison* factors.² If unfitness to teach is shown, then the district must further establish that the employee'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.) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered "persistent." (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.)

8. The word "persistent" is defined by lexicographers as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly

² *Morrison v. State Board of Education* (1969) 1 Cal.3d 214.

repeated." (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82.) Education Codes section 44932, subdivision (a)(8), pertains to unintentional as well as intentional transgressions, and hence the Legislature has decreed that a single violation is not sufficient to warrant dismissal, apparently to allow for correction; "it is the persistent disregard" of school rules that the subdivision is designed to regulate. (*Id.* at p. 84.)

9. An employee can be dismissed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher. The inquiry is whether any adverse inferences can be drawn from the teacher's conduct as to his teaching ability, or as to the possibility that publicity surrounding the past conduct may in and of itself substantially impair his function as a teacher. (*Morrison, supra*, at p. 235.)

10. An employee's actions on a given day may suggest a lack of judgment and discretion or may be an isolated act precipitated by an unusual accumulation of pressure and stress. An absence of any other incidents in the employee's teaching career suggestive of lack of judgment or discretion can further distinguish the aberrant character of the act at issue. In such a case, a fact finder could reasonably conclude that the isolated incident of poor judgment was outweighed by years of demonstrated teaching competence, and that on balance the employee possessed the qualities of character necessary for teaching fitness. (*Board of Education v. Jack M.* (1977) 19 Cal. 3d 691, 696-701.)

Morrison Factors

11. In *Morrison, supra*, the Supreme Court identified seven factors to consider when evaluating whether the school employee should be dismissed: (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 teacher; (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 the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

12. The *Morrison* factors may be applied to the charges in the aggregate. When a camel's back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. A trier of fact is entitled to consider the totality of the offensive conduct. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.)

13. Only the pertinent *Morrison* factors need to be analyzed. (*Broney v. California Com. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 476.)

EVALUATION USING THE *MORRISON* FACTORS

14. Mr. Del Principe's conduct was not remote in time and his refusal to obtain a vaccination occurred up until his dismissal. Although he was on administrative leave at the time, had the district returned him to the classroom, his failure to obtain the vaccination could have affected his students and staff by making them more susceptible to contracting COVID-19. The mandate was a result of the district's

concern for the health and safety of its students, many of whom were not eligible for vaccination at that time. In aggravation, this fact did not seem to have an effect on Mr. Del Principe's conduct. He was provided multiple opportunities to comply and failed to respond, his testimony regarding not being aware of the mandate was not credible, and he never obtained the vaccination and never engaged the accommodation process.

Mr. Del Principe admitted that he did not review his emails "like [he] should have," and he acknowledged that he had an obligation to do so. He asserted that he first learned of the mandate on January 18, 2022. If that were in fact true, he did not immediately contact Ms. Marshall to request an accommodation or obtain a vaccination. At the *Skelly* hearing he agreed to obtain his first dose of vaccine on February 8, 2022, and a second dose by March 10, 2022. He did not do so. There is nothing praiseworthy about Mr. Del Principe's actions or failure to act.

In a period of six to seven months, Mr. Del Principe failed to abide by the requirements of his employment by not checking his emails, not obtaining the vaccination or requesting an accommodation, and stating that he would be vaccinated and then failing to do so. Based on his conduct during this short period of time, it appears likely that this conduct may reoccur.

Persistent Violation/Refusal

15. The district alleges that Mr. Del Principe is subject to dismissal for persistent violation of, or refusal to obey, laws or the district's regulations (Education Code section 44932, subdivision (a)(8)), specifically, failure to comply with the district's COVID-19 vaccine mandate.

16. The district must first establish that Mr. Del Principe's refusal to follow district policy was "persistent." Courts interpreting this provision have focused on whether there has been a pattern of refusal to obey rules and whether an employee was intentionally insubordinate. For example, in *Governing Board of the Oakdale Union High School District v. Seaman* (1972) 28 Cal.App.3d 77, 82 (*Oakdale*), the Court of Appeal reversed a judgment for a school district in an action for dismissal where a teacher requested a leave of absence to accompany her husband abroad to study foreign special education programs. The district never responded to her request, and she returned to school a month after the school year started. The court held that under the circumstances, the teacher's violation of the school's regulations was not "persistent." (*Id.* at p. 82.) In doing so, the court rejected as "specious" the district's argument that every day she was absent was a separate violation and demonstrated the "persistent" requirement of the statute. Instead, the court referenced the dictionary definition of "persistent," to mean "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated," and to judicial decisions, where the word has been interpreted to mean "continuing or constant." (*Ibid.*) The court noted, "The Legislature undoubtedly intended that opportunity for correction be available and refrained from providing for dismissal for a single violation of regulations, or until repeated violations could be considered persistent." (*Ibid.* citing *Midway School Dist. v. Griffeath* (1946) 29 Cal.2d 13, 18). The court also noted that the teacher had been employed by the district for eight years, and there was no evidence in the record to prove that she ever violated a school law or a regulation of the governing board prior to the incident in question. (*Ibid.*)

17. In contrast, *San Dieguito Union High School District v. Commission on Professional Competence* (1982) 135 Cal.App.3d 278 also concerned whether cause existed to dismiss a teacher for persistent violation of or refusal to obey school rules.

In that case, over a four-year period, the teacher was absent 21 percent of the time and she failed to supply lesson plans to substitute teachers numerous times, despite having received several written and oral communications instructing her to provide thorough lesson plans when she planned to be absent. The appellate court concluded that “[w]ithout question a persistent refusal to prepare lesson plans for substitute teachers, viewed in light of the number of absences Harris [the teacher] was experiencing, might be sufficient to constitute ‘persistent violation . . . of school rules’ within the meaning of Education Code section 44932, . . .” (*Id.* at p. 287-288.)

18. From September 28, 2021, through December 20, 2021, the district sent at least eight emails to Mr. Del Principe regarding the vaccination mandate. As a union member, he also received information from the union regarding the mandate. He testified that he never saw any of these emails.

19. He argued that he did not always have access to his district email. This argument was not persuasive. Mr. Allen confirmed that on October 11, 2021, Mr. Del Principe requested that his password be reset, and IT reset his password immediately. Except for this brief interruption, Mr. Del Principe had access to his district email the entire period from September 28, 2021, through January 25, 2022. He could also have accessed his district email at any time through the district’s website. It is true that his email was erroneously deactivated on January 25, 2022, and restored in February 2022 according to Mr. Torren. However, by at least January 27, 2022, Mr. Del Principe was communicating with Ms. Marshall through the use of his personal email, and he was clearly aware of the vaccination mandate. Mr. Torren confirmed that Mr. Del Principe did not access his district email during the period from July 2021 through March 2022.

20. Even though he failed to comply with the mandate by December 20, 2021, Ms. Marshall called him on January 4, 2022, and left a voicemail message when

he did not answer. Mr. Del Principe testified that he was not able to access this message until January 18, 2022, as he had no access to his phone due to an issue with a credit card. He asserted that when he listened to Ms. Marshall's message, this was the first time he was aware of the vaccination mandate. This testimony was not credible. Even if his statement were assumed to be true, he did not immediately try to contact Ms. Marshall, as she requested, but rather he attempted to contact his union representative.

21. Mr. Del Principe argued that he did not know that he was required to review his emails. This claim was not credible as he also admitted that he did not review his emails "like I should have." At the same time, he acknowledged that he knew he remained a district employee during his administrative leave and that all rules and procedures of his employment remained in place.

22. He next argued that the mandate did not apply to him. This argument is not persuasive. The language of the mandate is clear. It required "district employees, partners, contractors and other adults who work directly with students and district employees on district property to be fully-vaccinated on or before December 20, 2021." The vaccination mandate was a condition of employment. Mr. Del Principe was a district employee. The mandate applied to him and was a condition of his continued employment with the district.

23. The January 27, 2022, letter the district sent to Mr. Del Principe contained a wrong termination date. When Mr. Del Principe contacted the district, Ms. Marshall confirmed that he had not been terminated but had only been recommended for termination, and she worked with him to schedule a *Skelly* hearing. As a result of this error, his January pay, due on February 1, 2022, was received on February 10, 2022. His

benefits were restored without lapse in coverage. These issues had no effect on his termination.

24. Mr. Del Principe failed to obtain a first vaccination by February 8, 2022, as he agreed at the *Skelly* hearing. The district offered a resignation settlement agreement, which would have allowed him to voluntarily resign. He refused to sign the agreement because he did not think he had done anything wrong.

25. Mr. Del Principe testified that on February 22, 2022, he obtained a letter from a physician stating that he had a medical condition and should not receive the COVID-19 vaccination. He never requested an accommodation from the district. He never provided this letter to the district and never notified the district that he had obtained this letter. He stated that he did not provide the letter to the district "because I thought I had passed the deadline." Mr. Del Principe offered no explanation as to why he obtained this letter.

26. Cause exists to dismiss Mr. Del Principe pursuant to Education Code section 44932, subdivision (a)(8), because a preponderance of the evidence established that Mr. Del Principe persistently refused to obey the district policies, regulations, and school directives by failing to obtain a COVID-19 vaccination or request and obtain an accommodation, despite multiple requests by the district.

Evident Unfitness For Service

27. The district alleges that Mr. Del Principe is also subject to dismissal under Education Code section 22932, subdivision (a)(6), "evident unfitness for service," as a result of his failure to comply with the district's COVID-19 vaccine mandate. Evident unfitness for service 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 and Joint Unified School District v. Commission on Professional Competence* (1969) 2 Cal.App.4th 1429,1444.)

28. Cause does not exist to dismiss Mr. Del Principe for "evident unfitness for service" pursuant to Education Code section 44932, subdivision (a)(6). At the hearing, district made no argument in support of this allegation and stated that persistent refusal was sufficient for dismissal. A preponderance of the evidence did not establish that Mr. Del Principe is "evidently unfit" to teach as it was not established that he has a temperamental defect making him ill-adapted to teaching.

Conclusion

29. Mr. Del Principe did not explicitly inform the district that he refused to be vaccinated, however, his conduct spoke volumes. His inconsistent arguments and explanations regarding noncompliance were not persuasive or credible. The district has met its burden. The evidence established that Mr. Del Principe's conduct constitutes a 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 governing board of the school district employing him. Mr. Del Principe's conduct is cause for dismissal.

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ORDER

Mr. Del Principe's appeal of his dismissal from employment with the San Diego Unified School District is denied. The district's request to dismiss Mr. Del Principe is granted. Mr. Del Principe shall be dismissed from the district.

DATE: December 22, 2022



Thomas F. Lawrence (Dec 22, 2022 14:40 PST)

THOMAS LAWRENCE

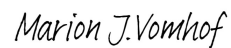
Commission Member



Luciano Ortiz (Dec 22, 2022 15:11 PST)

LUCIANO ORTIZ

Commission Member



MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings