

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
STATE OF CALIFORNIA

In the Matter of the Statement of Charges  
Against,

NICHOLAS WOODS,

Respondent.

OAH No. 2015061031

**DECISION**

The Commission on Professional Competence (Commission) heard this matter in Huntington Beach, California, on January 19, 20, and 26, and February 4, 5, 8, 9, 10, 11, 12, 16, 17, 18, 19, 22, 23, and 24, 2016. The Commission consisted of M'Liss Patterson, designated by the Huntington Beach Union High School District (District or Complainant), Dorothy Stafford, designated by Respondent Nicholas Woods (Respondent), and Administrative Law Judge (ALJ) Carla L. Garrett, Office of Administrative Hearings, State of California, who presided.

Anthony DeMarco and Heather Dozier, Attorneys at Law, represented the District. District representative, Dr. Carolee Ogata, Deputy Superintendent of Human Resources, attended all days of hearing, except February 18, 2016 and the afternoon of February 19, 2016, when Dr. Dan Bryan, Director of Student Services, appeared in her stead.

Daniel Sorrenson, Michael Kennedy, and Tionna Dolin, Attorneys at Law, represented Respondent. Respondent appeared on all days of hearing.

The parties submitted the matter for decision on February 24, 2016.

Respondent is a permanent certificated employee of the District assigned as a Language Arts teacher at Westminster High School. District alleged that Respondent demonstrated unprofessional conduct (§ 44932, subd. (a)(2)),<sup>1</sup> unsatisfactory performance (§ 44932, subd. (a)(5)), evident unfitness for service (§ 44932, subd. (a)(6)), and 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 (§ 44932, subd. (a) (8)). District seeks Respondent's dismissal.

<sup>1</sup> All statutory references are to the Education Code unless otherwise noted.

## FACTUAL FINDINGS

1. On May 15, 2015, District served Respondent with a Statement of Charges executed by Carolee Ogata, Ed.D., Deputy Superintendent of Human Resources, acting in her official capacity. On May 26, 2015, Respondent served his Request for Hearing.

2. Respondent has taught English at Westminster High School (WHS) since the commencement of the 2002-2003 school year. Prior, he taught at other districts for a period of 10 years. Respondent earned a bachelor's degree in English and theology, a master's degree in education, and holds a teaching credential. Over the years at WHS, Respondent has taught English 4 CP (college prep), California High School Exit Examination (CAHSEE) remediation, English 3 CP, English 4 sheltered,<sup>2</sup> and English 1 sheltered.

3. Respondent was motivated to go into teaching, because he wanted to work with and interact with people, and felt teaching was the direction of his life. Respondent enjoys teaching, not because he has been doing it for so long, but because of his interactions with students, helping and directing them.

### *Teacher Position Description*

4. District expected its teachers to perform duties in compliance with its teacher position description. The teacher position description listed seven major duties: (1) "provides instruction in areas of knowledge and skills in assigned subject areas, utilizing the adopted courses of study, and effective learning, including but not limited to interests, attitudes, appreciations, and values"; (2) "utilizes the appropriate instructional techniques, activities and materials which will adapt the curriculum to the needs of pupils and be consistent with departmental, school and district goals"; (3) "communicates with parents, peers and school counselors on the individual pupil's progress"; (4) "advises students and provides personal support of students"; (5) "cooperates with other professional staff members in assessing and helping pupils solve health, attitude, and learning problems"; (6) "establishes and maintains standards necessary to preserve a suitable learning environment"; and (7) "performs basic student attendance accounting, textbook accounting, and business services as required by staff rules or established local procedures."

### *California Standards for the Teaching Profession*

5. District required its teachers to apply the California Standards for the Teaching Profession (the standards) in the course of their duties, which included six key standards: (1) engaging and supporting all students in learning; (2) creating and maintaining effective environments for student learning; (3) understanding and organizing subject matter for

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<sup>2</sup> A sheltered class is one in which students' primary language is other than English, but the students have become proficient in English well enough to meet the demands of the curriculum. Students who require more support in English fluency are assigned to English Development classes.

student learning; (4) planning instruction and designing learning experiences for all students; (5) assessing students for learning; and (6) developing as a professional educator.

*2011-2012 School Year*

6. During the 2011-2012 school year, Teddy Reid, who testified at hearing, had been an administrator since 1993, and was the assistant principal over guidance at WHS. Prior, he served as a teacher from 1986 to 1992, and taught English, music, and drama.

7. As an assistant principal at WHS, Mr. Reid was responsible for, among other things, conducting formal evaluations of certificated staff. In that regard, and as part of the formal evaluation process, Mr. Reid, at the beginning of each school year, would meet individually with certificated teachers and discuss individual plans and goals. Specifically, Mr. Reid discussed each teacher's Individual Performance Plan (IPP), a draft of which each teacher prepared prior to meeting with Mr. Reid. The IPP included a list of objectives on which the teacher endeavored to work during the course of the evaluation period, a work plan to meet those objectives, and a timeline in which the teacher hoped to meet those goals. During the meeting between Mr. Reid and the teacher, the two would review the draft IPP, discuss any modifications or additions, and then would mutually agree upon the final IPP.

8. After several meetings, Mr. Reid and Respondent finalized Respondent's IPP for the 2011-2012 school year. Respondent's IPP aligned to the standards and included objectives, work plans, and evaluation plans to address, among other things, incorporating instructional and engagement strategies into the curriculum; making the classroom environment conducive to learning; notifying parents and students of classroom expectations and student progress; endeavoring to help students improve and maintain good attendance; enforcing classroom rules so that the learning environment would be quiet, safe, and industrious and free from electronic devices; posting on the wall student work and grades; and enforcing classroom behavior requirements.

9. When Mr. Reid wished to conduct observations of teachers, he generally gave them two weeks' notice that he was going to observe their class. During the observations, he sat in the back of the class taking notes on his laptop computer. Thereafter, he would prepare a written progress review and subsequently meet with the teacher to discuss the progress review. He also conducted unannounced "drop in" classroom observations approximately four or five times per school year of each teacher under his charge. During all observations, Mr. Reid evaluated whether the teacher adhered to the standards, the teacher position description, best teaching practices, district and site expectations, and other standards.

10. During Mr. Reid's observations of Respondent, Respondent performed below standard, particularly in the areas of classroom management, student engagement, and instructional strategies. Specifically, in the area of classroom management, Mr. Reid observed, among other things, students placing their heads on the desks, talking while Respondent taught class, talking during announcements, and despite Respondent's classroom rules prohibiting such conduct, students also played with electronic devices (e.g., cell phones

and ipods), maintained earbuds in their ears, and ate in class. In the area of student engagement, Mr. Reid observed, among other things, a lack of participation by students during classroom discussions, Respondent skipping pages when reading aloud, causing confusion in students attempting to follow him in the text, Respondent failing to relate the material to the students' lives, and Respondent distributing materials one student at a time, causing students to engage in personal discussions while waiting for Respondent to complete his distribution of materials. In the area of instructional strategies, Mr. Reid observed, among other things, Respondent's failure to ask questions designed to engage students in critical thinking and analysis, to employ effectively strategies to check for understanding, and an overall lack of rigor.

11. On January 24, 2012, Mr. Reid told Respondent during a progress review that "significant improvement will be needed in order for [Respondent] to receive a final, formal evaluation indicating he has satisfied the requirements of the [IPP] and [the District's] teacher position description." Consequently, Mr. Reid required Respondent to participate in a Mutual Assistance Plan (MAP). A MAP is a program designed to help struggling teachers improve their classroom performance, which is implemented after a teacher and an administrator meet and develop mutual objectives and work plans targeting the areas requiring improvement. A MAP is generally in effect for no fewer than four weeks.

*MAP Period of January 31, 2012 – March 9, 2012*

12. On January 27, 2012, Mr. Reid and Respondent executed a MAP targeting classroom management, instructional strategies, and student engagement. In the area of classroom management, the objective Respondent was expected to achieve involved Respondent creating a climate of behavior and enforcing standards of behavior that were conducive to high levels of learning. This involved establishing and communicating classroom expectations related to student behavior and academic performance, as well as consequences for students' failure to meet those expectations. Respondent was also expected to consistently enforce and apply the established expectations and consequences.

13. In the area of student engagement, the objective Respondent was expected to achieve involved Respondent implementing an effective, consistent program of Sustained Silent Reading (SSR),<sup>3</sup> which included establishing routine practices that resulted in students having an ongoing reading project and reading for the entire SSR period. Respondent was also expected to increase student participation in classroom discussions and activities, which included Respondent developing and employing a variety of proven strategies for effectively drawing all students into discussions and holding all students accountable for participating, and developing and employing a variety of strategies for the effective use of cooperative learning experiences.

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<sup>3</sup> SSR was a District-wide program aimed at getting students in the habit of reading. As such, teachers were expected to require their students to read silently in the classroom, eight to thirteen minutes a day, ideally from the same book until completion.

14. In the area of instructional strategies, the objective Respondent was expected to achieve involved Respondent increasing the level of rigor with which he taught literature, including helping students develop the skills they needed to think critically, developing a hierarchy of questions in lessons that would require students to think at various levels of cognition with an emphasis on questions requiring high-level, critical thinking.

15. Additionally, Respondent was expected to allow students to read aloud in class for a higher percentage of time, as Respondent tended to read aloud more often than his students. This objective was particularly important because students in Respondent's class and in most other classes at WHS were primarily English language learners (ELL), mainly Vietnamese and Hispanic, and, although they had been deemed proficient in English, reading aloud helped them practice and enhance their ELL skills.

16. On February 3, 2012, Mr. Reid observed Respondent's class, in which ten students arrived to class after the bell rang, without any acknowledgement from Respondent. Additionally, Mr. Reid noted some items on the bulletin remained covered after he had previously instructed Respondent remove the obstruction. Respondent did not model reading a book during the period of SSR. Mr. Reid noticed that every time Respondent handed out materials or handouts, he went around the room and individually handed each student the item, instead of the more traditional and efficient approach of counting items off and handing them down the rows for the students to distribute. Respondent distributed an *Animal Farm* handout that contained inaccessible information because some of the information was cut off from the bottom of the page. Respondent also spoke inaccurately about historical affairs. For example, he said, "For your generation, the Soviet Union is not the threat it was for our generation," without telling the students that the Soviet Union no longer existed. Additionally, he told the students, "Stalin killed 10 thousand, maybe 15 thousand people—I'm not sure—he killed more than Hitler," even though Stalin killed 20 million people or more, and killed more than Hitler. Respondent also failed to relate stories from George Orwell's *Animal Farm* to the students' contemporary lives to make them more relevant to students. Additionally, Mr. Reid, while observing from the back of the room, noticed stacks of graded papers with no comments or other feedback. Finally, Mr. Reid noted that the lesson plans previously submitted by Respondent were vague and overly ambitious in terms of the number of activities to cover over the course of a week.

17. At hearing, Respondent explained it was not his practice to single out students who walked into his class late. It was his custom and practice to walk around the class with his seating chart, mark on the seating chart whether the student was late or not, and then enter the information in the SB 2000, which was the computer system WHS teachers used to track attendance. Additionally, it was his custom and practice to distribute materials to each student one at a time, because it provided more of a personal touch and disrupted off-task behavior. With respect to his reference to the Soviet Union, he meant that the Soviet Union no longer existing meant it was no longer a threat. Respondent denied stating that Hitler killed more people than Stalin. Notwithstanding Mr. Reid's opinion, Respondent claimed he related materials to student experiences. Respondent could not recall what graded papers

were on the table Mr. Reid saw, but believed they were left over from students who were not there that day.

18. On February 9, 2012, Mr. Reid met with Respondent to discuss the contents of the conference summary memorandum prepared by Mr. Reid. Additionally, Mr. Reid advised Respondent in the conference summary that, in order to help Respondent improve his performance, he arranged for Respondent to observe two teachers as they delivered their lessons: Ms. Angus, who was an English teacher and the department's chair, and Ms. Dadabhoy, a very credible and highly respected English teacher, who, like Respondent, taught an English college preparation course. The ethnic makeup of these classes was similar to ethnic makeup of Respondent's classes, and most classrooms at WHS: mostly Asian and Hispanic, most of whom were English-language learners. Mr. Reid directed Respondent to take notes during his observations of these teachers, and pay particular attention to how SSR occurred and what the respective teachers did during SSR, whether there was a warm-up activity, how the respective teachers led into small group activities, how they held students accountable for engagement in the activity. Mr. Reid also wanted Respondent to pay attention to the flow of the activity, the connection of the lesson and the discussion to the standard, the levels and diversity of questions asked by these teachers (e.g., simple recall, drawing inferences, critical thinking, etc.), the techniques and strategies these teachers used to get all students engaged in the discussion, and the amount of time the teachers spent on each activity in the lesson.

19. On February 14, 2012, Mr. Reid prepared a conference summary memorandum and met with Respondent to discuss its contents. Specifically, Mr. Reid advised that during an observation of Respondent's class, he noted that one student had come to class approximately 20 minutes late, but Respondent neither marked the student late nor requested a late pass. Another student had walked into class approximately one hour and 40 minutes late, but Respondent, as required by attendance procedures, did not mark the student absent. Per the attendance procedures, a student who walked into class more than 30 minutes late had to be marked absent, and required Respondent to send the student to the attendance office to check in. Consequently, during the conference, Mr. Reid provided Respondent with a copy of the District's teacher position description to remind him of his duties.

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20. Also in the February 14, 2012 conference summary memorandum, Mr. Reid described how he went to Respondent's classroom a minute or so before the bell rang, and found no one there, and the door unlocked. Consequently, Mr. Reid admonished Respondent for leaving his classroom unlocked while no one was in the room, and for not keeping students in the classroom until the end of the period.<sup>4</sup> Mr. Reid also noted in the conference summary memorandum that when he instructed Respondent to provide him with an approximate time frame during which Respondent would cover items on the students' senior language arts portfolio,<sup>5</sup> Respondent seemed to imply that it would be difficult to complete all items on the list, due to Mr. Reid's insistence that the students complete an essay in the second semester. Respondent believed an essay was required in the first semester, but not in the second.

21. Mr. Reid also noted in the February 14, 2012 conference summary memorandum that Respondent seemed to be confused about the function and purpose of an "anticipatory set." An anticipatory set refers to an activity to focus the students' attention and help the student get mentally or physically ready for the lesson. Finally, Mr. Reid noted Respondent failed to provide feedback to students between their first and final drafts of an essay.

22. In response, Respondent expressed at hearing that he felt he had no voice in the conference summary meetings, therefore he did not tell Mr. Reid that Mr. Reid had come to his class during a conference period, where no students would be present. Respondent denied telling or implying to Mr. Reid that he would not be able to get his seniors to complete their senior portfolios. Respondent also denied not knowing or harboring confusion about the meaning and purpose of an anticipatory set. With respect to the lack of feedback on the essay draft and final essay, Respondent explained his class was using Jane Schaffer writing templates to create their drafts, which were created in class with student generated responses. As such, there was no feedback necessary, as it was an assignment the class had completed together.

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<sup>4</sup> At hearing, Respondent provided conflicting testimony regarding the unlocked door and the absence of students in the classroom. He first testified that neither he nor his students were in the classroom, because Mr. Reid had come during Respondent's conference period. Respondent subsequently testified that neither he nor his students were in the classroom because he had taken the class to the computer lab. Yet in a written response to the February 14, 2012 conference summary memorandum, Respondent mentioned nothing about his conference period or his escorting the students to the computer lab. Instead, he merely mentioned that he would lock the door when leaving the classroom, and he always maintained a policy of keeping students in the classroom until the end of the period. Given Respondent's conflicting versions, the Commission found Respondent's testimony incredible here.

<sup>5</sup> The senior language arts portfolio was an accumulation of students' work dating back to their freshman year.

23. On February 17 and 21, 2012, Mr. Reid observed Respondent's class, and, on February 23, 2012, prepared a conference summary memorandum. Mr. Reid met with Respondent on February 23, 2012, and advised Respondent that after consulting with the curricular map and members of the English Language Arts department, Mr. Reid learned that students were required to write not one essay for their student portfolios, but three essays in the spring semester. During his observations, Mr. Reid noticed Respondent engaged in no eye contact with the students during the delivery of Respondent's lesson, and students did not look at Respondent. Additionally, students had their heads on their desks and were not engaged in the lesson. Respondent distributed a course syllabus to his students that included the incorrect name of the class. He also, during the delivery of his lesson, did not involve the students, as he asked few questions, all of them low-level, leading to a lack of active student engagement. Mr. Reid also noticed that Respondent often skipped a page or two when reading aloud, without letting the students know, making it difficult for the students to follow him. He also failed to relate the material relevant to the students' lives. Also, despite Mr. Reid's prior discussions with Respondent addressing the time Respondent wasted by distributing material to students one at a time, Respondent continued to walk around to each student and hand them material. Specifically, it took three minutes for Respondent to distribute materials, thereby wasting valuable instructional time. Mr. Reid also noticed three students walked into class late, as well as students with earbuds using electronic devices, but Respondent imposed no consequences. Respondent also noticed that during the tutorial period, Respondent was unaware that students he announced could leave were not the students who actually left. Finally, Mr. Reid found Respondent's lessons lacked variation and creativity, as he followed the same routine every day, which lacked opportunities for cooperative learning.

24. In response, Respondent explained at hearing that his lesson planning provided students with a full chance to get their student portfolios completed. Even though he disagreed that the pacing guide required an additional essay, he was happy to do what Mr. Reid wanted him to do, and get an additional essay completed. Respondent said it was his practice and policy to require students to be quiet, especially during announcements, and to prohibit the non-instructional use of electronics. Additionally, it was his custom and practice not to allow students to lay their heads on their desks. Respondent testified that when he saw such conduct, he would make eye contact with the student or move in close proximity to the student, which would generally prompt the student to correct his or her behavior. If the student failed to comply, he would knock on the student's desk and wait for compliance. Respondent disagreed with Mr. Reid's observation that he skipped pages in the text without telling students. Respondent disagreed he failed to engage his students or relate lessons to their experience. With respect to Mr. Reid's criticism of Respondent's lesson-based questions posed to students, Respondent explained he considered the students' backgrounds, particularly those in his sheltered English class, and asked foundational questions in the lower part of Bloom's taxonomy.<sup>6</sup> Respondent believed that if he had started at a higher

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<sup>6</sup> Bloom's taxonomy provides an important framework for teachers to use to focus on higher order thinking. By providing a hierarchy of levels, this taxonomy can assist teachers in designing performance tasks, crafting questions for conferring with students, and

point in Bloom's taxonomy, it would have caused a disconnection between him and the students. Respondent felt he had to adjust his teaching strategy to meet the needs of the population with whom he worked, which included scaffolding, laying foundational information, and asking low-level questions to help establish that foundation. Mr. Reid rejected the notion that students in the sheltered class were incapable of understanding higher-level questions, or required mostly low-level questions, as they were deemed proficient in speaking, reading, and understanding English.

25. With respect to Mr. Reid's criticism about Respondent's distribution of materials one student at a time, in addition to his initial explanation that he distributed materials in that way to provide more of a personal touch and to disrupt off-task behavior, Respondent explained he could see out of one eye at a time only, because he has a condition called Alternating Strabismus.<sup>7</sup> This condition impacts his peripheral vision, according to Respondent. Therefore, he preferred passing out materials one at a time, as it helped him get a vantage point for classroom management and student engagement purposes. With respect to students arriving late to his class without any consequences, Respondent contends Mr. Reid never disclosed to him what kind of consequences he should impose.

26. With respect to Mr. Reid's criticism that students sneaked out of the tutorial period without his knowledge, when he learned they had, he contacted the students' parents. In regard to Mr. Reid's criticism that Respondent's lessons lacked variation, creativity, and opportunities for cooperative learning experiences, Respondent disagreed and claimed he utilized a variety of instructional strategies, such as think-pair-share, think-write-share, dry erase boards to check for understanding, thumbs-up-thumbs-down, and other strategies.

27. On March 1, 2012, Mr. Reid prepared a conference summary memorandum and met with Respondent to discuss Respondent's progress on the MAP. Mr. Reid told Respondent that he had not achieved the goals of the MAP. Specifically, Respondent failed to develop and employ a variety of proven strategies for effectively drawing all students into discussions and holding all students accountable for participating. He also failed to develop and employ a variety of strategies for the effective use of cooperative learning experiences, help students develop the skills to think critically, and develop a hierarchy of questions requiring students to engage in high-level, critical thinking. Respondent failed to allow students to read aloud for higher percentages of the time, and failed to consistently enforce and apply established expectations and consequences.

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providing feedback on student work. The levels are knowledge (level one) comprehension (level two), application (level three), analysis (level four), synthesis (level five), and evaluation (level six).

<sup>7</sup> Respondent produced no independent evidence demonstrating he suffered from Alternating Strabismus, and proffered no expert testimony describing the symptoms of the condition.

28. Mr. Reid also noted Respondent, who had observed the classrooms of Ms. Asya, Ms. Dadabhoy, and Ms. Lanz and had submitted summaries of his observations to Mr. Reid, failed to do an effective job in attempting to learn from those teachers about effective teaching strategies. Instead, Respondent seemed to focus on what he believed to be negative aspects of the classrooms, and described one of the classrooms as having a “party atmosphere.” Mr. Reid, who observed the classrooms with Respondent, disagreed that the classroom contained a party atmosphere. Mr. Reid also noted Respondent failed to require his students to remain quiet during announcements from the public address (P.A.) system, and that the delivery of his lessons lacked organization and did not follow his lesson plans. Finally, Mr. Reid noted Respondent said, “shh,” at least 50 times per period, in an effort to quiet his students.

29. On March 8, 2012, Mr. Reid prepared a conference summary memorandum concerning a recent observation of Respondent’s class, and met with Respondent to discuss his observations. Mr. Reid observed the students engaged in a lot of talking, laughing, and conversation unrelated to the lesson, students completed work from other classes, talked during P.A. announcements, and fiddled with their cell phones or ipods. Students also failed to comply with Respondent’s instructions, and Respondent demonstrated an inability to motivate students. Respondent also lacked of awareness of his students’ lack of engagement and compliance. Additionally, it took Respondent an inordinate amount of time to get his students to listen and comply with his instructions for them to engage in SSR activities, and students also failed to comply with instructions to get into groups of four for an in-class activity. Finally, Respondent provided a handout to his students that did not relate to the standard Respondent was teaching.

30. Overall, Respondent disagreed with what Mr. Reid said he observed, and claims he engaged in classroom management by moving around the classroom to enforce his rules. Respondent believed that if the class produced work, it meant the students were engaged and that his classroom management was effective.

31. On March 14, 2012, Mr. Reid prepared a conference summary memorandum and met with Respondent to discuss a possible unsatisfactory performance review. Specifically, Mr. Reid stated, “I am notifying you that, based on your inability to meet the goals established in the Mutual Assistance Plan dated January 31, 2012 through March 9, 2012, a Notice of Unsatisfactory Performance is warranted.”

32. On March 21, 2012, Respondent prepared and submitted to Mr. Reid a response to his March 14, 2012 conference summary memorandum, stating that based on Respondent’s “cooperation, adequate performance, and significant improvement in Mutual Assistance Plan goals . . . a Notice of Satisfactory Performance is warranted and deserved.” (Emphasis original). Respondent argued Mr. Reid engaged in agenda-based observations of Respondent to show Respondent “in a bad light rather than to assist [Respondent] in any improvement plan.” Respondent further asserted, among other things, that a finding of unsatisfactory performance “is for a teacher who will not try to improve, will not try to

change, will not cooperate with Evaluator, is unfit to teach by reason of excess absence, drugs, smoking, liquor, and arrest record or criminal record."

*Notice of Unsatisfactory Progress (March 22, 2012)*

33. On March 22, 2012, Mr. Reid issued Respondent a Notice of Unsatisfactory Progress for the MAP period of January 31, 2012 to March 9, 2012. In the Notice of Unsatisfactory, Mr. Reid listed six formal observations during the MAP period, and mentioned he informally observed Respondent's class for 10 to 15 minutes on three or four other occasions. Mr. Reid stated Respondent failed to meet his MAP goals addressing student engagement, classroom management, cooperative learning experiences, critical thinking, enforcing expectations and consequences, tutorial procedures, and students reading aloud.

34. Mr. Reid also concluded in the Notice of Unsatisfactory Progress that Respondent had not met goals in his IPP and in the teacher position description. Specifically, Respondent did not maintain an environment conducive to learning, given how often Mr. Reid observed students in Respondent's class fiddling with electronic devices, earbuds in their ears, and talking about matters unrelated to the lesson. Mr. Reid also noted that the repetitive, unengaging nature of Respondent's instruction was such that, rather than being conducive to learning, it engendered boredom, apathy, frustration, and inattentiveness. Mr. Reid noted Respondent frequently provided students with faulty lessons, unreliable information and inaccurate allusions and illustrations. For example, Respondent announced to his class that he was giving them a worksheet to help develop skills related to Greek, Latin, and Anglo-Saxon roots, but the worksheet applied in no way to such root words, but rather to the students' recall of terms related to 1984. He also said or did nothing to clarify his use of the Soviet Union in the present tense when describing the potential threat posed by the Soviet Union, and did not explain the Soviet Union no longer existed. Respondent was also grossly inaccurate about who killed more people, Hitler or Stalin, and the number of people they killed. He also pronounced Peace Corps as peace "corpse."

35. Additionally, Mr. Reid stated in the Notice of Unsatisfactory Progress that even with close supervision over the course of the MAP period, Respondent's lesson plans had proven to be ill-conceived and reflected the confusion that characterized much of Respondent's work. Mr. Reid concluded that, based on his observations, virtually no effective learning occurred in Respondent's classroom. Mr. Reid stated that in order for Respondent's present unsatisfactory performance to be judged satisfactorily, he must satisfactorily complete a second MAP period to begin on March 27, 2012 and end on April 30, 2012. The MAP, itself, would focus on (1) significantly increasing active student engagement; (2) improving questioning techniques, including the cognitive level of questions asked, appropriateness of questions, and the framing of questions; (3) increasing and improving formative assessments, including checking for understanding; and (4) improving classroom management.

36. Respondent refused to sign the Notice of Unsatisfactory Performance initially, but then signed it, under protest, on March 27, 2012, as he believed he had met all of the goals of the MAP, and concluded Mr. Reid was “trying to get rid of him.”

*California State University Early Assessment Program Testing*

37. On March 5, 2012, a representative from the California State University (CSU) Early Assessment Program (EAP) met with all English teachers who would be administering the EAP test. At the meeting, the representative discussed the directions for giving the test, and stated it was essential that no student use a booklet identified with the name of another student.

38. Prior to the March 27, 2012 test, Respondent received four or five test booklets pre-slugged for students who were in Respondent’s class in the first semester, but not in Respondent’s present class. Respondent gave those pre-slugged test booklets to four students in his class who did not have a test booklet. Respondent instructed those students to cross out the demographic information that was on the pre-slugged tests, and to write their own demographic information in the blanks at the top of the page. Administrators retrieved those pre-slugged documents from Respondent and got them to the students for whom they were originally pre-slugged.

39. If administrators had not retrieved those pre-slugged documents, CSU could have discovered an anomaly, which could have resulted in severe consequences for the school, and could have jeopardized the validity of all of the students’ tests. Mr. Reid counseled Respondent about this on March 27, 2012, and instructed him to follow testing directions in the future. Mr. Reid prepared a conference summary memorandum recapping the substance of his discussion with Respondent, which Respondent and Mr. Reid signed on March 27, 2012.

40. On April 2, 2012, Respondent submitted a written response to Mr. Reid’s March 27, 2012 conference summary memorandum. Respondent believed that once the pre-slugged name was crossed out, the document’s original identity ceased to exist. Once the student wrote his or her name at the top of the document, that document took on a new identity. Respondent apologized for any problem caused by his actions.

*MAP Period of March 27, 2012 – April 29, 2012<sup>8</sup>*

41. The time period set forth for the MAP was March 27, 2012 to April 29, 2012, and included three main objectives: (1) increase student active engagement in the learning; (2) increase the number, variety, and quality of checks for understanding; and (3) create a climate and enforce standards of behavior that are conducive to high levels of learning.

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<sup>8</sup> Although Mr. Reid signed the MAP on March 27, 2012, Respondent refused to do so. Mr. Reid advised Respondent that the MAP would still take effect on March 28, 2012. After some minor revisions, Respondent signed the MAP on April 19, 2012.

42. In order to accomplish these goals, Respondent was to develop and employ no fewer than three proven strategies based on best practices in the teaching profession for effectively drawing students into discussions and holding all students accountable for participating in the discussions; develop and employ no fewer than three proven strategies based on best practices to be used when assigning cooperative learning experiences that will result in active student engagement; develop and employ no fewer than three proven strategies based on best practices for effectively making lesson content relevant to students; develop and employ no fewer than three proven strategies based on best practices in the teaching profession for ensuring that distribution of students' opportunities to read aloud in class occurred and that all students were held accountable for being ready to read when called upon to do so. Additionally, when reading aloud was required, Respondent was expected to permit students to read no less than 70% of the time.

43. Respondent was also expected to submit detailed lesson plans to Mr. Reid for each week of the MAP period. Those plans were to include in their implementation questions that would call on students to respond at various levels of cognition including simple recall, drawing inferences, comprehension, application, analysis, synthesis, and evaluation. He was also expected to implement in each class period no fewer than three proven strategies based on best practices in the teaching profession to assess whether or not all students understood the content of the lesson. Finally, Respondent was expected to develop effective consequences, based on best practices used in the teaching professions, to discourage students from violating behavioral norms established by Respondent.

44. Respondent disagreed that the MAP was actually a mutual document, as it was prepared without his input and felt the goals were immeasurable. Despite this, he felt that he put strategies in play that addressed the goals of the MAP, such as pair-share, read-write-share, working in collaborative groups, incorporating content in lessons applicable to the students' lives, ensuring more students participated in reading by pulling name cards from a hat, using the name generator, and using an electronic dart board. He also used dry erase boards to check for understanding, as well as thumbs-up-thumbs-down, and implementing progressive discipline such as losing points and calling parents.

45. Mr. Reid observed Respondent's class on March 30, 2012 and April 4, 2012, and prepared a conference summary memorandum and met with Respondent to discuss his observations. Mr. Reid observed that there were no cooperative learning experiences during the March 30, 2012 observation, except for one student who turned her seat to work on an anti-hero assignment with her neighbor. During SSR, several students were writing instead of reading, presumably working on assignments from other classes, according to Mr. Reid. Two students sitting in the front row talked incessantly for nearly the entire period, but Respondent failed to address the behavior. He also failed to ensure the equal distribution of opportunities for students to read aloud in class. Additionally, Respondent demonstrated inconsistency in distributing participation points for students reading aloud. Respondent still handed out papers one sheet at a time to one student at a time, which took three minutes of instructional time.

46. During his April 4, 2012 observation, Mr. Reid observed Respondent distributing material one student at a time, which consumed five minutes and fifty-seven seconds of instructional time. Students talked and laughed during the period, some incessantly, even during Respondent's presentation of the lesson and during P.A. announcements. Respondent mostly failed to address this behavior, and when he did, it was in the form of raising his voice to get their attention. Mr. Reid also observed that posters containing writing strategies and literary concepts were covered by other posters. During Respondent's presentation of the lesson, Respondent gave students the incorrect definition of the word "urbane," and failed to correct students' incorrect answers concerning the definition of the word.

47. At hearing, Respondent explained he had given his students ownership to post posters in his class, and claimed not know what posters Mr. Reid was talking about, and had difficulty extracting information from Mr. Reid regarding the specific posters Mr. Reid wished for him to address. He further explained that the class period was one hour and forty-five minutes long, which made classroom management more challenging. If a student had his or her head on the desk, but appeared to be working, Respondent did not correct the student, as he did not consider himself the "posture police." Respondent maintained that as long as the students' work product showed they understood the lesson, he was satisfied that he had employed effective classroom management and student engagement.

48. As for the poster, Respondent acknowledged that an older poster slightly covered another, but denied it interfered with the text of the newer poster. Respondent denied telling the students the wrong definition of "urbane." In response to Mr. Reid's criticism that he failed to correct students who provided incorrect answer to questions Respondent posed to the class, Respondent explained that it was his practice not to embarrass students when they got an answer wrong, given the ethnic background of the students, as honor was very important. Consequently, he would tell the students that they were on the right track and then elicit the correct answer from someone else in the class. Respondent acknowledged he sometimes raised his voice, but once he gained the attention of the students, he would lower his voice again.

49. Mr. Reid observed Respondent's class on April 19, 2012 and prepared a conference summary memorandum outlining his observations. Mr. Reid observed Respondent had yet to change the posted materials covering the other posted materials on the walls and bulletin boards. The students were off-task, as some had their heads down, one student was playing a game, a student was listening to music through his earbuds, a student was shuffling cards, and students were talking and laughing. The environment was not conducive to learning, and Respondent was ineffective in getting the students to engage. Respondent would ask a question, but would not allow the students to respond, thereby promoting a lack of expectation of student engagement. During student presentations, Respondent duplicated materials at the copier machine instead of giving the student presenters his full attention.

50. Overall, Respondent disagreed with Mr. Reid's characterization of his class on April 19, 2012. Respondent believed the students were engaged in hearing student presentations, asking questions, and interacting with the presenters, which Respondent believed Mr. Reid interpreted as social talking. In those situations when he would ask a question and not wait for an answer, Respondent stated he was in a re-teaching mode.

51. On April 23, 2012, Respondent submitted a written response to Mr. Reid's April 19, 2012 conference summary memorandum. Respondent asserted, among other things, that 80% of the class was engaged, to which Mr. Reid vehemently disagreed at hearing. Respondent also stated that his students were making first-time attempts to exercise self-discipline regarding their cell phones, as Respondent provided students with plastic bags in which to store their phones during the class period.

52. Mr. Reid observed Respondent's class on April 26, 2012 and prepared a conference summary memorandum outlining his observations. Mr. Reid observed students coming into class late, as well as Respondent's difficulty in getting students to quiet down to begin SSR. Respondent often said, "shh," to quiet the students, but it was ineffective. Mr. Reid had had multiple discussions with Respondent about his effective use of "shh," yet Respondent failed to curtail his use of it and find another way to quiet his students. Students were off-task, as one student had earbuds in his ears, one student was working on something from another class, one student had his head on his desk with his eyes closed, and one student was putting on make-up. Despite making an announcement at the commencement of class that he would take away any electronic devices he saw out, some students had their cell phones out. When Respondent approached one student to demand her phone, the student shoved the cell phone into her purse. Respondent did not take the cell phone or take any further action addressing the student's noncompliance, such as applying progressive discipline strategies.

53. On May 3, 2012, Mr. Reid prepared a conference summary memorandum and met with Respondent to discuss a possible unsatisfactory performance review. Specifically, Mr. Reid stated, "I am notifying you that, based on your inability to meet the goals established in the Mutual Assistance Plan dated March 27, 2012 through April 9, 2012, a Notice of Unsatisfactory Performance is warranted."

54. On May 7, 2012, Respondent prepared and submitted to Mr. Reid a response to his March 3, 2012 conference summary memorandum, stating that Respondent had worked hard to cooperate with Mr. Reid and to make changes during both MAP periods. Given his past and ongoing efforts, Respondent believed he should receive a notice of satisfactory performance.

#### *Notice of Unsatisfactory Progress (May 10, 2012)*

55. On May 10, 2012, Mr. Reid issued Respondent a Notice of Unsatisfactory Progress for the MAP period of March 27, 2012 to April 29, 2012. Mr. Reid found that Respondent employed strategies that had the potential to draw students into his lessons, but

the results were minimal. In other words, there were only four to six students contributing to discussions led by Respondent, and when they did contribute, their responses involved very few words, very little critical thought, and very little enthusiasm. This was the case because Respondent's attempts to generate discussion were little more than asking simple recall questions that elicited short responses. On infrequent occasions when Respondent asked a question or posited an idea that had the potential to generate a meaningful dialogue, a brief response from a student elicited no follow-up questions or ideas from Respondent to generate ongoing discussion.

56. Mr. Reid also stated in the Notice of Unsatisfactory Progress that Respondent attempted to employ the cooperative learning teaching method on two occasions that Mr. Reid observed, but in neither of those instances were 70% of students discussing the assigned topic, nor were they held accountable for group product even though Respondent's written lesson plan indicated they would be. Instead, the groups were engaged in a lot of social conversation and laughter. Respondent, who stood at various points in the room, seemed to have no awareness that the students were not engaged in the assigned activity.

57. Respondent met the goal of developing and employing no fewer than two proven strategies for ensuring students read aloud in class, but it was not clear to Mr. Reid whether Respondent kept track of which students read and which did not, nor did Mr. Reid see evidence that Respondent organized the execution of his strategies to ensure that students who had not read one day were called upon on future days. Respondent also met the goal of allowing students to read no less than 70 % of the time.

58. Mr. Reid found that Respondent failed to fully understand the nature of checking for understanding, as his attempts had been misguided and minimally effective. Respondent only seemed to check for simple recall of people, places, and events in the literature, and never checked to see if students understood abstract ideas in the literature.

59. Mr. Reid also stated in the Notice of Unsatisfactory Progress that every time he entered Respondent's classroom, he would see students with cell phones in their hands and/or earbuds in their ears. On one occasion, for students' multimedia presentations, Respondent provided pouches in which students were encouraged to place their phones, but fewer than half of the students complied, and Respondent imposed no consequence for students who did not comply.

60. Mr. Reid recommended that Respondent decrease the amount of time allocated in daily lessons for SSR and the tutorial period, as Respondent seemed to need more time to cover all of the material, given the loss of instructional time that would occur as a result of Respondent's poor classroom management skills. Mr. Reid also recommended that Respondent develop and employ the ability to set up questions in a manner that increased student interest and responsiveness.

61. Mr. Reid stated Respondent would undergo formal evaluations for the 2012-2013 school year, as well as another MAP period beginning on September 17, 2012 and

ending October 19, 2012. The new MAP would include goals requiring Respondent to increase and improve the number and quality of student-centered learning activities, increase student interest in and responsiveness to lessons, increase the number and improve the quality of formative assessments, and improve classroom management.

62. Respondent refused to sign the Notice of Unsatisfactory Progress.

*Formal Evaluation Report (May 11, 2012)*

63. On May 11, 2012, Mr. Reid prepared a formal evaluation report concerning Respondent. Mr. Reid stated that while Respondent met or partially met some of his goals set forth in his IPP, he failed to meet some significant goals, particularly those associated with classroom management, student engagement, and instructional strategies. Mr. Reid stated Respondent made ineffective, disorganized, and repetitive instructional strategies that resulted in students leaving Respondent's classes with deficits in knowledge and skills related to English language arts. Mr. Reid further stated there was very little evidence of student interest in or valuing the curriculum as presented in Respondent's classes, and students were often disruptive and inattentive. Respondent seemed unaware of the student behaviors that impeded learning, and, when he was made aware of them, he seemed unable to make changes that would improve the learning environment. Mr. Reid stated that, to Respondent's credit, Respondent took deliberate steps in an effort to correct the observed deficiencies; however, most of his attempts were of little or no effect in terms of increasing student engagement and improving the learning environment.

64. The formal evaluation included commendations. Specifically, Mr. Reid commended Respondent for employing various strategies for selecting students to read in class, standing throughout the delivery of his instruction and moving around the room, and improving the use of tutorial time. However, Mr. Reid recommended that Respondent increase and improve the number, variety, and quality of student-centered learning activities, increase student interest in and responsiveness to lessons, increase the number and improve the quality of formative assessments, and improve classroom management.

65. Respondent signed the formal evaluation under protest.

66. Respondent submitted a written response to the formal evaluation, stating, among other things, he disagreed with Mr. Reid and believed his classroom environment was conducive to learning and to high levels of rigor, that Mr. Reid had not given him credit for the changes he made in helping student learning and engagement. Rather, Respondent believed the subjective nature of the evaluation did not seem to apply to all teachers equally, and asserted the standard used to evaluate him was not applied to other permanent teachers at the school. Finally, Respondent stated there was no mutuality in the development of the MAP, and it included an excessive number of goals.

### *California Standards Test (CST) Training*

67. On May 11, 2012, Assistant Principal Jessica Krimker sent an email to the teachers of WHS instructing them to attend CST training on May 14, 2012 concerning the administration of CST examinations. Respondent and several other teachers failed to attend the meeting. Consequently, Ms. Krimker sent another email stating she would be holding a make-up training session on May 21, 2012 during the lunch period. Respondent failed to attend the make-up session, citing his failure to read his email. As a result of these failures, on May 21, 2012, Mr. Reid met with Respondent reminding him of his contractual duties, and the importance of attending such trainings to ensure fidelity of the tests. Mr. Reid prepared a conference summary memorandum on May 21, 2012 memorializing his discussion with Respondent.

68. Respondent said he had not received the email regarding the training.

### *2012-2013 School Year*

#### *Peer Assistance and Review (PAR) Program*

69. District provided Respondent with an opportunity to participate in the PAR program during the 2012-2013 school year, in an effort to improve Respondent's teaching skills. The PAR program provides a teacher who requires improvement with a PAR professional (i.e., a teacher consultant/coach/mentor) to meet, generally weekly, to discuss goals, the development of lesson plans, the implementation of lesson plans, and the adoption of teaching tools and strategies. Additionally, the PAR professional provides reflection conferences with the teacher, refers the teacher to learning resources and developmental opportunities throughout the school year, and arranges for the teacher to observe other teachers for modeling purposes.

70. Dr. Robert Rasmussen served as Respondent's PAR professional from November 2012 through May 2013. Dr. Rasmussen, who testified at hearing, has been employed by the District for 11 years, and is currently an assistant principal. Prior, Dr. Rasmussen served as a social science teacher for eight years, and then as a teacher on special assignment for one year. He holds a teaching credential and an administrator's credential.

71. On November 30, 2012, Dr. Rasmussen met with Respondent to develop four goals to assist Respondent in becoming a better teacher: (1) use multiple teaching strategies to enhance the learning experience and student engagement; (2) improve student engagement such that there was a greater level of participation during the delivery of lessons; (3) improve classroom organization; and (4) improve communication by explaining lessons effectively, improving the level of communication between Respondent and his students, and vice-versa.

72. During the PAR period, Dr. Rasmussen met with Respondent more than 20 times, attended a Beginning Teacher Support and Assessment (BTSA) workshop with Respondent on the subject of English language learners and lesson design, observed the

English classes of premier teachers with Respondent, sent Respondent to a professional development workshop on teaching strategies, and engaged in collaborated lessons with Respondent. The premier teachers served as examples of exceptional classroom organization, as they showed that they had written detailed standards on the board that included everything the students would be doing that day. Additionally, these teachers showed how students participated and worked well together in pairs or small groups, their effectiveness in communicating with the students to keep them on task, their effectiveness in refocusing and redirecting students, and their effective use and enforcement of very strict classroom rules. The teachers also used effective small group strategies, and the students appeared very familiar with the routine and remained on task. Additionally, the teachers were very clear in their directions and instructions, suffered no discipline problems, and taught in a way where the lesson flowed very well. Dr. Rasmussen also had Respondent observe Dr. Rasmussen's class to see how he designed his lessons and organized his classroom. Dr. Rasmussen also wanted Respondent to see his seating chart and how he used it to take attendance, and how he organized his lessons into three or four activities instead of one long lesson.

73. Dr. Rasmussen conducted observations of Respondent's class on December 6, 2012, February 5, 2013, and February 6, 2013. During the December 6, 2012 observation, Dr. Rasmussen noted Respondent had difficulty with classroom management and student engagement, which resulted in a high noise level in the classroom. Students talked throughout the period, worked on assignments from other classes, and some had their heads down on the desk. He also noted Respondent needed to improve his lesson design, as the worksheets Respondent distributed to the class were very fuzzy, had very small font, and were not connected to the lesson. Respondent also demonstrated difficulty with transitioning from one activity to another while simultaneously keeping students engaged and on-task. Respondent also rushed the closing of the lesson, because the period was ending. Dr. Rasmussen recommended that Respondent structure lessons to include the use of more visuals and technology, improve the sequencing and designing of lessons, include the use of a summative closure activity, improve in classroom management including the creation of a weekly agenda board outlining the topic of the lessons, standards addressed, and assignments, and improve in student engagement and student participation.

74. During the February 5, 2013 observation, Dr. Rasmussen observed continued problems with Respondent's classroom management and student engagement. Respondent often chose the same students to participate as opposed to asking other students to volunteer. Respondent did not address students who came to class late, which promoted a climate of apathy, as students knew there would be no consequences for their behavior. Respondent also demonstrated difficulty connecting one activity with the next, as Respondent failed to ask students guiding questions that linked the activities together. He also failed to allow time at the end of the period to review or recap the lesson.

75. During the February 6, 2013 observation, Dr. Rasmussen noted that many students were missing and a number had walked into class late, which Dr. Rasmussen attributed to a lack of classroom management. Several students had their heads on the desk,

but Respondent failed to address these students. Later, when the class filled up, only nine students participated in the lesson, while the majority of the class appeared disconnected and disengaged. Respondent again needed to allocate more time for the closure, as he failed to leave enough time for students to ask questions about the lesson or about the assignment they needed to complete.

76. On March 15, 2013, Dr. Rasmussen conducted a collaborated lesson with Respondent. Days prior, Dr. Rasmussen met with Respondent so they could brainstorm teaching strategies to present for the collaborative lesson. On the day before the collaborative lesson, Dr. Rasmussen presented Respondent with the lesson plan Dr. Rasmussen had prepared, which the two rehearsed. During the collaborative lesson of Respondent's class, Dr. Rasmussen modeled how to present the lesson. Students were engaged, participating, and contributing. Dr. Rasmussen also modeled how to get the students thinking critically, as he designed the lesson to be a conversation piece and emphasize communication between the students and the teacher and vice versa.

77. After the lesson, Dr. Rasmussen explained to Respondent that he was expecting Respondent to prepare the lesson plan for the next collaborative lesson, and be prepared to deliver the lesson to the students. Dr. Rasmussen told Respondent he expected to see an improvement in his lesson plan design and implementation. In that regard, Dr. Rasmussen provided Respondent with two lesson plan templates so he could look at two different styles of lessons. One was a Madeline Hunter template, which began with an anticipatory set, followed by a purpose or objective, instructional input, modeling, checking for understanding, and guided practice. The other was a Western Accreditation Schools & Colleges (WASC) lesson plan template which addressed goals of the lesson, objectives, materials, procedure, expectations, including integration of core knowledge, effective communication, critical thinking, and teacher reflection.

78. For the next collaborative lesson, which occurred on April 25, 2013, Dr. Rasmussen and Respondent met on April 15, 2013 to develop the co-teaching plan, and on April 24, 2013 to rehearse the collaborative lesson. Respondent submitted a lesson plan that was very similar to the one Dr. Rasmussen had prepared for the March 15, 2013 collaborative lesson. Dr. Rasmussen observed as Respondent presented the lesson to the class. Respondent encountered student engagement problems, evidenced by the noise level in the room. Respondent also asked low level questions. Dr. Rasmussen noticed no difference or improvement in Respondent's classroom management.

79. Following the second collaborative lesson, Dr. Rasmussen told Respondent that he needed to take greater risks in trying out more strategies and activities, as opposed to generating a lesson that basically mirrored his. Dr. Rasmussen felt he had provided Respondent with enough material to incorporate other activities and strategies.

80. The third collaborative lesson occurred in May 2013. Prior to the lesson, Dr. Rasmussen met with Respondent to discuss goals, objectives, and strategies. Respondent prepared a lesson plan, but it was not as dynamic as Dr. Rasmussen would have liked, as it

was still similar to the previous lesson. Like before, Dr. Rasmussen did not teach the lesson with Respondent, but rather observed as Respondent delivered the lesson to the class. Dr. Rasmussen noticed no improvement between Respondent's delivery of this lesson and the second collaborative lesson, as Respondent continued to encounter classroom management and student engagement issues. This created a situation where Respondent had to rush to get through the material. There was little student participation.

81. On June 11, 2013, Dr. Rasmussen submitted a report to the PAR panel,<sup>9</sup> summarizing Respondent's performance. Dr. Rasmussen reported that while Respondent demonstrated some improvement in the areas of teaching strategies, lesson design, and student engagement, and demonstrated a positive attitude and a willingness to do what was asked of him, Respondent required more work in the areas of classroom management and organization. As such, Dr. Rasmussen advised that Respondent would benefit from additional support and professional development opportunities. At hearing, Dr. Rasmussen stated he could have been more critical of Respondent's performance in the report, as he did not find Respondent's performance satisfactory.

82. The PAR panel concluded Respondent did not make sufficient progress, and, as such, determined Respondent would continue to participate in the PAR process during the upcoming 2013-2014 school year.

#### *More Administration Observations (2012-2013)*

83. Owen Crosby, who began serving as WHS's principal just prior to the commencement of the 2012-2013 school year, testified at hearing, and was responsible for conferencing with certificated employees and developing IPPs, and subsequently evaluating these employees. At the beginning of the school year, Mr. Crosby and Respondent developed Respondent's IPP, which addressed, among other things, performing classroom duties according to school and district policies, providing a classroom conducive to learning, and using various teaching strategies, activities, and classroom materials.

84. After conducting formal and informal observations of Respondent's classroom on a number of occasions, Mr. Crosby developed concern about Respondent's skills in the areas of classroom management, student engagement, lesson design, and the level of classroom rigor. Specifically, Mr. Crosby conducted formal observations of Respondent on November 1, 2012, December 5, 2012, and April 10, 2013, where he sat in Respondent's class for approximately an hour and took notes. After each observation, Mr. Crosby prepared a written progress review record and met with Respondent to discuss the observations and progress review record. During each conference, Mr. Crosby received

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<sup>9</sup> The PAR panel consisted of Dr. Carolee Ogata, who, at the time, was District's Assistant Superintendent of Human Resources, Shawn Warner, who was Respondent's union representative, Cathy Leo and Darla Morrow, union representatives, and Connie Mayhugh, who was the Director of Curriculum Instruction.

Respondent's feedback, which Mr. Crosby, in Respondent's presence, typed into the progress review record.

85. During the conference regarding the November 1, 2012 observation, Mr. Crosby commended Respondent for utilizing a variety of instructional activities and strategies throughout a lesson, utilizing the available technology resources throughout the lesson, such as the computer and document camera, and utilizing several differentiated strategies to provide student access to the content, such as white boards, audiotape, teacher-directed questions, and teacher and student led reading. However, Mr. Crosby told Respondent he required further growth in incorporating a variety of effective strategies to check for understanding; setting and upholding high expectations for student behavior and addressing off-task behavior effectively and promptly when it occurred; utilizing more student-based strategies and activities that effectively engage students in the learning; building connections between students' life experiences and the subject matter to help build relevance with the content; and utilizing higher level questioning techniques that require students to provide justification for their responses and cite specific examples from the text.

86. During the conference regarding the December 5, 2012 observation, Mr. Crosby discussed how he observed students engaged in personal conversations, as well as a few yelling across the room. Mr. Crosby told Respondent he required further growth in identifying key standards and concepts and articulating them to his students; incorporating student-centered strategies to check for understanding of the content and making "on the spot" changes to the lesson delivery based on student engagement, understanding and questions; setting and upholding high expectations for student behavior and addressing off-task behavior effectively and promptly when it occurred; utilizing higher level questioning techniques that required students to provide justification for their responses, including citing specific examples from the text; and further developing classroom procedures, routines, and transitions to maximize instructional time.

87. During the conference regarding the April 10, 2013 observation, Mr. Crosby discussed how he observed nine students walk into class tardy, and students engaged in personal conversations at the beginning of class because Respondent had no activity prepared for students as soon as they walked into the classroom. Additionally, as the period progressed, Mr. Crosby observed students participating in off-task behaviors, engaged in personal conversation instead of in the assigned activity, and completing homework from other classes. Respondent never addressed these students. Rarely did students volunteer to answer questions when Respondent would ask them. As a result of the lack of volunteers, the lack of student engagement, and discussion, Respondent did most of the talking. Respondent often talked before he had the attention of all the students. At one time, students began packing to leave while Respondent spoke, which caused Respondent to raise his voice to talk over the noise. When the bell rang, the students dismissed themselves.

88. Mr. Crosby told Respondent he required further growth in incorporating a variety of strategies in the lesson to systematically check for student understanding; walking around the classroom to closely observe student participation and engagement in the

activities; setting and upholding high expectations for student behavior and addressing off-task behavior effectively and promptly when it occurred; following his own classroom rules and using progressive discipline to redirect students' off-task behaviors; utilizing more structured engagement strategies to seek student input and provide opportunities for more students to share before moving forward in the lesson; establishing a productive, achievement-oriented climate in the classroom by setting and upholding high academic expectations for all students; having the attention of all the students and ensuring all students were ready to listen before moving forward in the lesson; and having an activity prepared for the students to work on as soon as they walked into the classroom, thereby establishing the expectation that they were to begin working immediately when the bell rang.

*MAP Period of April 15, 2013 – May 10, 2013*

89. On April 18, 2013, Mr. Crosby prepared a memorandum to Respondent discussing his overall concern regarding Respondent's instructional practices. Specifically, Mr. Crosby noted the following deficiencies: (1) Respondent's checking for understanding strategies did not engage all students; (2) lesson plans were not adjusted to meet student needs; (3) students were not actively engaged in the planned learning activities; (4) a variety of instructional strategies were either not used or not used effectively; (5) students were permitted to opt out when called upon to participate; (6) students were not engaged in meaningful classroom activities that required bell-to-bell student engagement; (7) classroom rules and procedures were not effectively and consistently enforced; and (8) students continued to arrive tardy to class. As a result, a MAP was developed to help remediate these deficiencies.

90. The time period set forth for the MAP was April 15, 2013 to May 10, 2013, and included the following objectives: (1) increasing the use of effective checking for student understanding strategies to monitor student learning; (2) increasing student engagement in learning; (3) designing student-learning tasks that promoted bell-to-bell instruction; and (4) setting and upholding high expectations for student behavior.

91. Respondent contended the MAP was not mutual, as his input was not requested. Consequently, he signed the MAP "under duress and protest."

92. Mr. Crosby observed Respondent's class on April 23, 2013. Fourteen students were late to class, which Respondent addressed by verbally explaining his new policy that one tardy would result in a warning, a second tardy would result in a second warning, and a third tardy would result in a call home to the student's parents. During Respondent's presentation of the lesson, he attempted to check for understanding by instructing students to use their individual white boards to write an answer to a question he posed, and then instructed them to hold up their white boards; however, not all of the students complied. Respondent did not address these students. He also did not address students' noncompliance when Respondent asked students to share their white board answers with a partner. Instead, many students engaged in off-task behaviors such as having personal conversations and applying make-up. Additionally, when Respondent asked the students to show him thumbs-

up or a thumbs-down, signifying whether they understood the material, half of the class did not comply. However, Respondent did not address these students. As Respondent spoke, he had to tell the class four times to listen, after he had lost control of the class when he turned his attention to distributing paper to his students. Students began engaging in additional off-task activities such as doodling on their individual white boards.

93. Mr. Crosby told Respondent he required further growth by effectively using a variety of student-centered instructional strategies (i.e., allotting appropriate time for students to complete the instructional task that Respondent designed); consistently following and enforcing classroom rules, expectations, and consequences in the classroom; addressing all off-task behaviors immediately and effectively; having all of the students' attention before moving forward with a lesson; ensuring students consistently follow instructions; and establishing expectations for students coming to class on time and addressing tardy students during times that did not disrupt the flow of instruction.

*Formal Evaluation Report (May 15, 2013)*

94. On May 15, 2013, Mr. Crosby prepared Respondent's formal evaluation report concerning Respondent's performance. Mr. Crosby indicated that Respondent's lesson plans typically provided an explanation of the activities, but sometimes they did not include explanations. Additionally, when it became evident that students did not understand the content or were not engaged in the activity, Respondent failed to effectively adjust the lesson plans to meet students' needs. While Respondent incorporated checking for understanding activities into his instruction, they did not always engage the students, and not all students participated in them. Also, although Respondent developed a classroom plan and communicated it to his students, Respondent failed to consistently follow and enforce the plan. Students continued to engage in off-task activities, such as having personal conversations, applying make-up, and laying their heads down on the desk, yet Respondent failed to address these students. Additionally, students talked frequently while Respondent tried to address the entire class, and they would not follow instructions given by Respondent. Moreover, students continued to come to class tardy after Respondent implemented his attendance plan. Finally, Respondent lacked effectiveness in lesson delivery, and he often lost classroom instructional time as a result of his failure to maintain control over his students' behavior. Generally speaking, during lessons, Respondent asked the students questions that were in the lower levels of rigor (i.e., simply recall questions), as opposed to questions asked pursuant to Bloom's taxonomy as Mr. Crosby had instructed him to.

95. Mr. Crosby told Respondent he required further growth by effectively using a variety of student-centered instructional strategies (i.e., allotting appropriate time for students to complete the instructional task that Respondent designed); consistently following and enforcing classroom rules, expectations, and consequences in the classroom; addressing all off-task behaviors immediately and effectively; having all of the students' attention before moving forward with a lesson; ensuring students consistently follow instructions; establishing expectations for students coming to class on time and addressing tardy students during times that did not disrupt the flow of instruction; establishing a rigorous learning

environment and classroom climate that promoted mutual respect between Respondent and students; and creating high academic expectations for all students.

96. Mr. Crosby concluded that while Respondent had made progress in some areas of his MAP, it was evident that there continued to be areas in which Respondent performed at an unsatisfactory level. Therefore, Respondent would continue to be evaluated during the 2013-2014 school year.

97. Respondent acknowledged he struggled with transitions "from time to time," but "not for a significant amount of time." Other than that, he believed he had accomplished the tasks set forth in Mr. Crosby's recommendations. Additionally, he believed he performed satisfactorily overall, notwithstanding areas he conceded on which he needed to work. Respondent based this belief on the evaluation's lack of "comprehensive language" concerning his purported unsatisfactory performance.

#### *2013-2014 School Year*

##### *Letter of Reprimand*

98. Pursuant to the PAR panel's determination, Respondent was to continue participating in the PAR program for the 2013-2014 school year. In that regard, Mr. Crosby made several attempts in October 2013 to schedule a meeting between Respondent, Dr. Ogata, and himself to discuss the PAR process and introduce Respondent to his new PAR teacher consultant. However, Respondent declined each meeting request because he believed he had already completed the PAR process. Specifically, Respondent said he believed he was out of PAR because, among other things, he had received no written notice that the PAR panel expected him to continue in PAR, and Dr. Rasmussen's final report indicated that he had shown improvement.

99. However, in a written response Respondent submitted to Dr. Ogata, Dr. Rasmussen, and Mr. Crosby on June 15, 2013, Respondent demonstrated he was, in fact, aware the PAR panel had expected him to continue the PAR process, evidenced by Respondent's statement that, "it would be unfair for the panel to refuse Teacher's release from PAR . . . ."

100. Additionally, Mr. Crosby wished to meet with Respondent to develop his IPP, but Respondent failed to appear for the scheduled meeting of October 7, 2013. After five attempts to confirm a meeting, Respondent finally met with Mr. Crosby on October 15, 2013 to develop his IPP. Because Respondent failed to meet to discuss the PAR process and delayed in meeting to develop his IPP, Mr. Crosby issued a letter of reprimand to Respondent on November 6, 2013, stating Respondent's conduct was unprofessional and unacceptable.

*Notice of Unprofessional Conduct and Unsatisfactory Performance*

101. On January 30, 2014, Dr. Ogata<sup>10</sup> issued Respondent a Notice of Unprofessional Conduct and Unsatisfactory Performance outlining the deficiencies demonstrated by Respondent over the years, specifically in the areas of classroom management, organization, teaching strategies, student engagement, lesson planning, and academic rigor, among others.

102. In order to overcome the deficiencies, Dr. Ogata directed Respondent to remediate them by: (1) preparing and submitting weekly lesson plans by the timelines specified by the principal; (2) planning grade level appropriate lessons and units to capture student attention and interest, utilizing grade level state and district standards; (3) designing lessons that sequence subject matter knowledge to promote understanding and critical thinking for all students; (4) preparing for each lesson ahead of time to maximize the instructional presentation, instructional practice, and instructional minutes; (5) providing detailed directions to students to maximize their interactions with Respondent and each other so that they would know on what they were to be working and what they were to be learning at all times; (6) employing appropriate curriculum utilizing a variety of instructional strategies to introduce, explain, and restate subject matter concepts and processes so that all students understood; (7) developing and implementing an effective instructional program by using a variety of instructional strategies in a cohesive manner; (8) accurately modeling written and spoken lesson objectives without errors; (9) employing differentiated lessons based on students' current levels of performance and accommodate the different ways in which students learn; (10) effectively using a variety of student-centered instructional strategies; (11) relating instructional activities to short-term and long-term goals; (12) establishing high expectations that promote critical thinking; (13) regularly checking for understanding, using a variety of formative assessments; (14) having a learning activity prepared for students to begin as soon as they walk into the classroom and establish the expectation that they should begin working immediately when the bell rings; (15) developing and implementing an effective student discipline program and making sure all students remain on task; (16) making sure that when giving students instructions, they are paying attention; (17) monitoring students appropriately at all times including observing their verbal and nonverbal cues as indicators of their engagement and understanding, and walking throughout the classroom to closely observe student participation and engagement; (18) not spending an excessive amount of time on any one lesson or activity; (19) providing students with appropriate activities they can complete without going off-task when working independently; (20) designing student learning tasks that promote bell-to-bell instruction; (21) communicating the objective of each lesson clearly so that students know what is expected of them; (22) establishing and teaching classroom routines and implementing them on a daily basis; (23) establishing a rigorous learning environment and classroom climate

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<sup>10</sup> Dr. Ogata was, at the time, District's Assistant Superintendent of Human Resources. Prior, she was the Director of Instruction at the Garden Grove Unified School District, and taught English for six years at the middle school level. She currently serves as District's Deputy Superintendent of Human Resources.

that promotes mutual respect between teacher and student and high academic expectations for all students; (24) establishing classroom rules, expectations, and consequences, including tardy and attendance rules, and consistently ensuring students follow such rules; (25) supervising students during all instructional duty hours; (26) responding promptly to emails and voicemails from supervisors and other District personnel; (27) attending all meetings scheduled by supervisors or by those assigned to assist Respondent in improving his performance; (28) communicating in a professional and respectful manner at all times; (29) timely fulfilling all professional obligations; (30) efficiently using instructional time; (31) working professionally, collaboratively, and respectfully with colleagues to attain common student goals; (32) showing students progressing toward grade level/content standards; (33) minimizing distractions in the classroom and minimizing time spent in transition and in handing out papers; (34) utilizing available support resources, including observing teachers and others to assist Respondent in remediating his performance; (35) maintaining an enriching classroom environment, displaying model student work and student resources; (36) timely reviewing student work and developing an appropriate system for allowing students to be regularly apprised of their current grades on assignments, missing assignments, and other important information; (37) creating a weekly agenda board, outlining the topics of lessons, standards to be addressed, and student assignments; (38) refraining from overusing the sound, “Shhh” as a method of hushing the personal conversations of students, and use an effective method instead; (39) utilizing high level questioning techniques and activities, and improving the level of cognitive questions asked of students, to help set and uphold high academic expectations for all students; and (40) following all previous directives given by site or District administrators to assist Respondent in overcoming his deficiencies.

103. Respondent was surprised he had received a Notice of Unprofessional Conduct and Unsatisfactory Performance, because “it was not preceded by a MAP” and he had demonstrated an overall improvement in his performance.

104. Dr. Ogata requested different administrators to observe Respondent, including administrators from different sites, because she wanted their input and perspectives.

#### *More Administration Observations (2013-2014)*

105. On February 12, 2014, Mr. Crosby conducted an observation of Respondent’s classroom and prepared a memorandum describing his observation, which he reviewed with Respondent. Mr. Crosby noted Respondent failed to display the standards Respondent intended to cover for that period, and failed to list student learning tasks. Additionally, Respondent failed to ensure he had bell-to-bell student engagement and instruction, as he failed to have the students complete a warm-up activity as Respondent took roll. When Respondent asked questions of his class regarding the lesson, very few students responded, or they did not respond at all, which prompted Respondent to answer his own questions and move forward. Mr. Crosby recommended that when students fail to respond to his questions, it was an indication that the students did not understand the material, were not engaged in the learning activity, or did not feel safe taking risks in class. As such, Mr. Crosby recommended that Respondent engage in student-centered checking for understanding

strategies. If students did not understand, Mr. Crosby recommended that Respondent stop and re-teach the concept and provide further examples.

106. Mr. Crosby also observed students with their heads down on the desk, and others engaged in personal conversations, yet Respondent failed to address these students. Additionally, Respondent failed to elicit deeper critical thinking from his students, as he asked low level questions. Overall, Mr. Crosby continued to see deficiencies set forth in the 40 areas listed in the Notice of Unprofessional Conduct and Unsatisfactory Performance.

107. Overall, Respondent disagreed with Mr. Crosby's characterization of his performance, and believed the students were engaged in the lesson, as the entire lesson was designed to engage the students.

108. On February 18, 2014, Joe Fraser, who was an assistant principal of WHS during the 2013-2014 school year, observed Respondent's classroom, and prepared a memorandum directed to Respondent. Mr. Fraser, who testified at hearing, is the current principal of WHS, and has been employed by the District for six years. Prior, he was the assistant principal over curriculum at WHS, an assistant principal at Fountain Valley High School (FVHS), and also served as a teacher on special assignment. Before that, he worked for the Paramount Unified School District for six years. He holds a multiple subject credential, a physical education credential, and an administrator's credential.

109. When the bell rang, students continued to engage in personal conversations and several students were on their cell phones. Respondent took attendance, which took several minutes, but Respondent had no bell-starter activity for the students to do as he took roll. Consequently, students continued their social conversations, and when Respondent asked students to be quiet, they ignored him. Mr. Fraser observed that it took approximately 10 minutes to get the students on task from the start of the period. When Respondent transitioned into a PowerPoint presentation, Respondent did not have the PowerPoint presentation cued up and ready to go. During the presentation, students had their heads on the desks, and one student was sleeping right in front of Respondent. Students talked during the presentation, and other students looked in directions other than where the images were projected. Seven students left the class during the period. Students remained off-task, disengaged, on their phones, and had personal conversations during the entire period. Overall, Mr. Fraser saw deficiencies set forth in the 40 areas listed in the Notice of Unprofessional Conduct and Unsatisfactory Performance.

110. In his capacity as assistant principal at WHS, Mr. Fraser conducted informal observations of Respondent's class on 15 to 20 occasions, and observed the same deficiencies he saw during the February 18, 2014 evaluation. Specifically, he saw students engaged in personal conversations, heads down on desks, using cell phones, and leaving class, and observed student engagement issues, instructional strategy deficiencies, particularly in the areas of checking for understanding and transitions, and deficiencies in the use of instructional time. Mr. Fraser had numerous discussions with Respondent to help

remediate his deficiencies, but giving Respondent suggestions “was like giving him a hammer and watching him turn it around and use the wooden handle.”

111. Overall, Respondent disagreed with Mr. Fraser’s characterization of his performance, and believed the observation summaries he received after the Notice of Unprofessional Conduct and Unsatisfactory Performance “blew things out of proportion” and seemed more critical.

112. On March 5, 2014, Chris Herzfeld, who was the principal of FVHS, observed Respondent’s classroom at Dr. Ogata’s behest, and prepared a memorandum directed to Respondent. Mr. Herzfeld, who testified at hearing, has been employed with the Laguna Beach Unified School District since October 2014, and serves as the principal of Laguna Beach High School. Prior, he worked as a principal at FVHS for 11 years, and as a teacher in Colorado for nine years, where he taught social studies, history, world history, philosophy, job readiness, and government. He holds teaching and administrator credentials.

113. Mr. Herzfeld noted Respondent’s lesson did not match the written lesson plan. As the bell rang, students continued talking with each other, even after Respondent told the students to be quiet as he took attendance. Respondent shouted instructions over the students who continued talking amongst themselves. Mr. Herzfeld observed two students arm wrestling, three students eating, including one who ate a full lunch, and one student who threw a pizza bread sandwich across the room to another student. As Respondent distributed handouts desk to desk, students continued chatting. Students also continued talking while Respondent provided instructions to the class concerning the activity he wanted them to complete. Additionally, a student held up his cell phone and took a selfie. Respondent did not address these behaviors. One student, who sat at the front of the room, talked to her friend the entire period. A student placed his head down on the desk, but after a while, Respondent tapped the student’s shoulder, prompting the student to lift his head. One student threw scraps of paper at the girl sitting in front of him, after he spent time tickling her shoulder with a pencil. Students continued to talk throughout the period, which sometimes prompted Respondent to say, “Shhh,” which the students ignored. One student left for the bathroom, and did not return for nearly 20 minutes. When Respondent asked teacher-directed questions, they tended to be leading, low level questions, which required yes or no responses. At no time were all students engaged.

114. Mr. Herzfeld stated Respondent needed to: (1) plan grade level appropriate lessons and units to capture student attention and interest, utilizing grade level state and district standards; (2) design lessons that sequence subject matter knowledge to promote understanding and critical thinking for all students; (3) provide detailed directions to students to maximize their interactions with Respondent and each other so that they would know on what they were to be working and what they were to be learning at all times; (4) employ appropriate curriculum utilizing a variety of instructional strategies to introduce, explain, and restate subject matter concepts and processes so that all students understood; (5) develop and implement an effective instructional program by using a variety of instructional strategies in a cohesive manner; (6) employ differentiated lessons based on students’ current levels of

performance and accommodate the different ways in which students learn; (7) effectively use a variety of student-centered instructional strategies; (8) relate instructional activities to short-term and long-term goals; (9) establish high expectations that promote critical thinking; (10) regularly check for understanding, using a variety of formative assessments; (11) have a learning activity prepared for students to begin as soon as they walk into the classroom and establish the expectation that they should begin working immediately when the bell rings; (12) develop and implement an effective student discipline program and make sure all students remain on task; (13) make sure that when giving students instructions, they are paying attention; (14) monitor students appropriately at all times including observing their verbal and nonverbal cues as indicators of their engagement and understanding, and walk throughout the classroom to closely observe student participation and engagement; (15) provide students with appropriate activities they can complete without going off-task when working independently; (16) establish and teach classroom routines and implement them on a daily basis; (17) establish a rigorous learning environment and classroom climate that promotes mutual respect between teacher and student and high academic expectations for all students; (18) establish classroom rules, expectations, and consequences, including tardy and attendance rules, and consistently ensure students follow such rules; (19) efficiently use instructional time; (20) minimize distractions in the classroom and minimize time spent in transition and in handing out papers; (21) maintain an enriching classroom environment, displaying model student work and student resources; (22) create a weekly agenda board, outlining the topics of lessons, standards to be addressed, and student assignments; (23) refrain from overusing the sound, “Shhh” as a method of hushing the personal conversations of students, and use an effective method instead; and (24) utilize high level questioning technique and activities, and improve the level of cognitive questions asked of students, to help set and uphold high academic expectations for all students.

115. Respondent testified there were no sleeping students in his class, but rather there was a student with his head down on his desk. Respondent said the student was still engaged, evidenced by the work the student completed in class, so he did not address him. He also stated that because students completed their assignment, it served as evidence that the students were engaged. With respect to students leaving class, Respondent said he was not “the bladder police,” so he did not verify whether students really needed to go and relieve themselves.

116. On March 11, 2014, Melissa Chan-Nauli, who was the assistant principal of guidance, observed Respondent’s classroom at Mr. Crosby’s behest, and prepared a memorandum directed to Respondent. Ms. Chan-Nauli, who testified at hearing, has been employed with District for three years: two years as an assistant principal of guidance at WHS and one year as assistant principal of educational services. Prior, Ms. Chan-Nauli served as a counselor for 11 years at Cerritos High School. Ms. Chan-Nauli co-taught a peer leadership class during her tenure at Cerritos High School, but taught no academic courses. She is currently pursuing her doctorate, and holds a pupil services credential and an administration credential.

117. Ms. Chan-Nauli observed students with heads down on their desks, and students engaged in personal side conversations, yet Respondent often failed to address these behaviors. Ms. Chan-Nauli directed Respondent to comply with the 40 directives listed in the Notice of Unprofessional Conduct and Unsatisfactory Performance.

118. On March 17, 2014, Mr. Crosby conducted an observation of Respondent's classroom and prepared a progress review record describing his observation, which he reviewed with Respondent. When the bell rang, students were chatting with each other. Respondent came into the class, but the students did not stop talking, which prompted Respondent to raise his voice. Respondent had not set up processes and procedures in his classroom such that the students would have already known they were expected to come into class and begin working on an activity. Several students had their heads down on their desks and engaged in off-task behavior, yet Respondent never addressed these students. Respondent implemented no effective intervention to address off-task behaviors. Mr. Crosby noted that at no time during his observation were all students engaged. There were students always off-task.

119. Based on his observation, Mr. Crosby found that Respondent continued to be deficient in the areas identified in the Notice of Unprofessional Conduct and Unsatisfactory Performance. Mr. Crosby concluded Respondent needed to: (1) effectively utilize student-centered strategies to check for understanding of the content and make "on the spot" changes to the lesson delivery based on student engagement understanding and questions; (2) utilize higher level questioning techniques and activities to help set and uphold high academic expectations for all students; (3) set and uphold high expectations for student behavior and address off-task behavior effectively and promptly when it occurs; and (4) utilize student engagement strategies that require all students to participate.

120. On March 24, 2014, Mr. Crosby conducted an observation of Respondent's classroom and prepared a memorandum describing his observation, which he reviewed with Respondent. Mr. Crosby noted standards posted on the board, but these standards did not align with the lesson plan Respondent prepared for that day. When the bell rang, students continued talking with one another, so Respondent shouted over their voices. Six students had their heads down on their desks initially, followed by nine students later on in the period. Mr. Crosby told Respondent that, in order to ensure students were engaged in the activity, Respondent needed to set and uphold high expectations for student behavior and address off-task behavior effectively and promptly when it occurred. Mr. Crosby also noted that few students participated or volunteered to answer questions posed by Respondent regarding the lesson, and he failed to address students who were engaged in off-task behaviors, such as having side conversations and looking around the classroom. Additionally, Respondent only asked low-level questions designed to elicit a choral response. Mr. Crosby advised Respondent that, in order to engage more students in the lesson, he needed to design learning activities that required all students to participate, and provide students opportunities to work at the higher levels of Bloom's taxonomy. Moreover, Respondent moved forward with the lesson without ascertaining whether all the students understood the material. In that regard, Mr. Crosby told Respondent that, in order to ensure student understanding of the content,

Respondent needed to utilize student-centered checking for understanding strategies that engaged all students. Mr. Crosby also told Respondent that if students did not understand the material, or were not engaged in the activity, Respondent needed to stop, adjust his lesson, and reteach the concept. Finally, Mr. Crosby noted that Respondent walked up and down every row and individually distributed a worksheet to each student, which took several minutes, and Respondent gave no instructions regarding the completion of the worksheet. During this time, students engaged in off-task behaviors. As such, Mr. Crosby advised Respondent he needed to use classroom management techniques that ensured optimal use of instructional minutes and provided for quick transitions between activities. Overall, Mr. Crosby continued to see deficiencies set forth in the 40 areas listed in the Notice of Unprofessional Conduct and Unsatisfactory Performance.

121. On March 27, 2014, Connie Mayhugh, Executive Director of Curriculum, Instruction and Categorical Programs, conducted an observation of Respondent's classroom at Dr. Ogata's behest, and prepared a memorandum describing her observation. Ms. Mayhugh, who testified at hearing, has been employed with District since 2000, initially as a principal, then as the Director of Curriculum Instruction, and now as Executive Director of Curriculum. She also taught high school English for five years with the Santa Ana Unified School District.

122. Ms. Mayhugh observed that initially, most students worked quietly on as assignment Respondent had given them, but three students in the front of the class talked continuously, and a student in the second row turned around completely to talk to his neighbor behind him. After about two minutes, more students began talking with each other. Respondent neither inquired whether the students had completed their work nor attempted to refocus students on the task. Respondent also took three minutes to set up a slide show, because he did not have it set up ahead of time, which resulted in students losing their focus. Respondent asked questions based on the literature, but they were at the lowest level, requiring recall of information and no other explanation, no requirement for the students to return to the text to find passages, and no requirement to justify their responses. At one time, Respondent walked around the room. Several students were working, but many were not. Respondent did not address any off-task behavior.

123. Ms. Mayhugh stated Respondent needed to: (1) design lessons that sequence subject matter knowledge to promote understanding and critical thinking for all students; (2) prepare for each lesson ahead of time to maximize the instructional presentation, instructional practice, and instructional minutes; (3) provide detailed directions to students to maximize their interactions with Respondent and each other so that they would know on what they were to be working and what they were to be learning at all times; (4) employ appropriate curriculum utilizing a variety of instructional strategies to introduce, explain, and restate subject matter concepts and processes so that all students understood; (5) begin to frame questions in a way that would elicit responses beyond yes or no; (6) regularly check for understanding, using a variety of formative assessments; (7) establish high expectations to promote critical thinking; (8) develop and implement an effective student discipline program and make sure all students remain on task; (9) make sure that when giving students

instructions, they are paying attention; (10) monitor students appropriately at all times including observing their verbal and nonverbal cues as indicators of their engagement and understanding, and walk throughout the classroom to closely observe student participation and engagement; (11) communicate the objective of each lesson clearly so that students know what is expected of them; (12) establish classroom rules, expectations, and consequences, including tardy and attendance rules, and consistently ensure students follow such rules; (13) efficiently use instructional time; (14) refrain from overusing the sound, “Shhh” as a method of hushing the personal conversations of students, and use an effective method instead; (15) utilize high level questioning techniques and activities, and improve the level of cognitive questions asked of students, to help set and uphold high academic expectations for all students; (16) relate instructional activities to short-term and long-term learning goals; and (17) follow all previous directives given by site or District administrators to assist Respondent in overcoming his deficiencies.

*Notice of Unsatisfactory Progress (March 28, 2014)*

124. On March 28, 2014, Mr. Crosby issued to Respondent a Notice of Unsatisfactory Progress, stating Respondent was unsatisfactory for: (1) using checking for understanding strategies that did not engage all students; (2) failing to adjust lesson plans to meet student needs when students did not understand the content or were not engaged in the activity; (3) failing to engage students in the planned learning activities; (4) failing to use or effectively use a variety of instructional strategies; (5) failing frequently to utilize student learning tasks and activities that required students to work in the higher levels of Bloom’s taxonomy; (6) failing to use differentiated lessons and activities to support student needs; and (7) failing to effectively and consistently enforce classroom rules and procedures.

125. Mr. Crosby stated that in order for Respondent’s to remediate his unsatisfactory performance, he needed to: (1) utilize a variety of teacher-centered and student-centered check for understanding strategies; (2) utilize student input to monitor attainment of desired learning outcomes and adjust instruction as necessary based on student understanding and engagement; (3) identify and describe each student learning activity in his written lesson plans, and provide step-by-step descriptions of the instructional strategies; (4) effectively utilize a variety of structured student learning strategies throughout the lesson; (5) utilize higher order questioning techniques requiring students to operate at higher levels of Bloom’s taxonomy; (6) utilize a variety of student-centered instructional strategies to differentiate instruction; and (7) provide a classroom environment that promoted and reflected student learning, fairness, and mutual respect.

*MAP Period of March 31, 2014 – May 2, 2014*

126. On March 28, 2014, Mr. Crosby gave Respondent written notice that, because Respondent needed to make improvements, they needed to develop a MAP to provide Respondent with support to remediate his deficiencies. As such, Mr. Crosby scheduled a meeting with Respondent for March 31, 2014 to begin the MAP process.

127. The time period set forth for the MAP was March 1, 2014 to May 2, 2014, and included the following objectives: (1) increasing the use of effective checking for student understanding strategies to monitor student learning; (2) increasing student engagement in learning; (3) creating a rigorous learning environment with high expectation and appropriate support for all students; and (4) setting and upholding high expectations for student behavior.

128. On April 8, 2014, Mr. Crosby conducted an observation of Respondent's classroom and prepared a progress review record describing his observation, which he reviewed with Respondent. Mr. Crosby noted that when Respondent broke up the students into small groups, the students began moving their desks and engaging in off-task conversations that made it very difficult to hear. Once the students were in their groups, they continued to engage in personal conversations, yet Respondent never addressed this behavior. Additionally, many students were not engaged in the lesson, and were not responding to teacher-directed questions. Mr. Crosby also noted that later on in the period, a transition period took eight minutes because Respondent had failed to provide his students with the correct page number to start the new activity. During this period, students talked, yawned, drew, placed their heads down on the desk, or completed homework for other classes. Mr. Crosby recommended that Respondent, in order to ensure smooth transitions, prepared ahead of time and ensured the activity was ready to go. Additionally, Mr. Crosby told that, in order to establish a student-centered classroom environment that promoted mutual respect, Respondent needed to address all off-task students and demonstrate consistency in enforcing his classroom rules and expectations.

129. On April 24, 2014, Mr. Crosby conducted an observation of Respondent's classroom and prepared a progress review record describing his observation, which he reviewed with Respondent. Mr. Crosby observed a student walk in the class 11 minutes late, drinking a beverage. Respondent told him to go outside and finish his drink. Respondent invited the student back into the class after he had missed 18 minutes of class. Mr. Crosby told Respondent that if it was his expectation for students not to eat or drink in class, Respondent should have required the student to throw away his drink or save it for later, but not miss instructional time. When Respondent broke students up into groups, they engaged in off-task conversations, yet Respondent failed to address this behavior. Additionally, students used cell phones, drew pictures, read material from other classes, listened to music through their earbuds, and rested their heads on their desks, yet Respondent failed to address these behaviors.

130. Mr. Crosby stated that in order for Respondent's to remediate his unsatisfactory performance, he needed to: (1) utilize a variety of teacher-centered and student-centered check for understanding strategies; (2) utilize student input to monitor attainment of desired learning outcomes and adjust instruction as necessary based on student understanding and engagement; (3) effectively utilize a variety of structured student learning strategies throughout the lesson; (4) effectively utilize higher order questioning techniques requiring students to operate at higher levels of Bloom's taxonomy; (5) establish a productive, achievement-oriented climate within the classroom; (6) set and uphold high academic and behavioral expectations for all students and consistently follow and enforce

classroom rules; (7) design lessons with sufficient content to support student learning; and (8) provide a classroom environment that promoted and reflected student learning, fairness, and mutual respect.

131. On April 25, 2014, Ms. Chan-Nauli observed Respondent's classroom, and prepared a memorandum directed to Respondent. Out of a class of 34 students, only 16 were present. When Respondent randomly asked a student to read, he realized the student was texting on his phone. Consequently, Respondent asked the student for the phone, but the student refused. Respondent did not address the student's defiance. Additionally, Ms. Chan-Nauli observed one student with earplugs in his ears and another student with her head down playing on her phone. During the lesson, only two students repeatedly volunteered to answer questions posed by Respondent. Ms. Chan-Nauli directed Respondent to comply with the 40 directives listed in the Notice of Unprofessional Conduct and Unsatisfactory Performance.

132. On May 6, 2014, Mr. Crosby conducted an observation of Respondent's classroom and prepared a memorandum describing his observation, which he reviewed with Respondent. Mr. Crosby noted deficiencies in Respondent's classroom management, lesson delivery, and student engagement. Specifically, Respondent failed to provide students with an activity to complete at the commencement of class while Respondent took attendance. Respondent also provided answers to his own questions instead having the students answer his questions, failed to engage all of his students, and failed to adequately check for understanding. Additionally, Respondent failed to address students engaged in off-task behavior. Overall, Mr. Crosby continued to see deficiencies set forth in the 40 areas listed in the Notice of Unprofessional Conduct and Unsatisfactory Performance.

133. On May 7, 2014, Ms. Mayhugh observed Respondent's classroom again at Dr. Ogata's behest, and prepared a memorandum directed to Respondent. Ms. Mayhugh saw no improvement in Respondent's performance since her last observation. Ms. Mayhugh observed that when the bell rang and Respondent reviewed activities noted on the board, Respondent made no attempt to fully obtain the attention of every student. Students continued to talk, including those at the front of the classroom, and one student slept, but Respondent did not address the behavior. Respondent used the overhead display during his lesson, but the information Respondent exhibited was messy and incorrect. Respondent also failed to collect the students' work and provide feedback, or otherwise verify that students participated in an activity initiated by Respondent.

134. Ms. Mayhugh stated Respondent needed to: (1) design lessons that sequenced subject matter knowledge to promote understanding and critical thinking for all students; (2) provide detailed directions to students to maximize their interactions with Respondent and each other so that they would know on what they were to be working and what they were to be learning at all times; (3) employ appropriate curriculum utilizing a variety of instructional strategies to introduce, explain, and restate subject matter concepts and processes so that all students understood; (4) ensure Respondent accurately modeled written and spoken lesson objectives without errors; (5) effectively use a variety of student-centered instructional strategies; (6) regularly check for understanding, using a variety of formative assessments;

(7) have a learning activity prepared for students to begin as soon as they walk into the classroom and establish the expectation they were to begin working immediately when the bell rang; (8) develop and implement an effective student discipline program and make sure all students remained on task; (9) make sure that when giving students instructions, they were paying attention; (10) monitor students appropriately at all times including observing their verbal and nonverbal cues as indicators of their engagement and understanding, and walk throughout the classroom to closely observe student participation and engagement; (11) provide students with appropriate activities they could do without going off-task when they worked independently; (12) communicate the objective of each lesson clearly so that students know what was expected of them; (13) establish a rigorous learning environment and classroom climate that promoted mutual respect between teacher and student and high expectations for all students; (14) establish classroom rules, expectations, and consequences, including tardy and attendance rules, and consistently ensure students follow such rules; (15) efficiently use instructional time; (16) minimize distractions in the classroom, and minimize time spent in transition and in handing out papers; (17) utilize high level questioning techniques and activities, and improve the level of cognitive questions asked of students, to help set and uphold high academic expectations for all students; and (17) follow all previous directives given by site or District administrators to assist Respondent in overcoming his deficiencies.

135. On May 10, 2014, Donald B. Austin, Ed.D., who was the Assistant Superintendent of Educational Services for District, observed Respondent's classroom at Dr. Ogata's behest, and prepared a memorandum directed to Respondent. Dr. Austin, who testified at hearing, has been the Superintendent with the Palos Verdes Unified School District for the past two years, was the Assistant Superintendent for District for three years, and served as a teacher of social studies, English, student government, and physical education. Dr. Austin has teaching and administrator's credentials, and has earned a doctorate in educational leadership.

136. Dr. Austin heard students talking inside of Respondent's class as Dr. Austin approached the classroom. His initial observation included one student with a closed book and working on something else, another student completing a worksheet for another class, and five students wearing earbuds and listening to music. Respondent attempted to lead a discussion regarding the book, *1984*, but students talked throughout his lesson; yet Respondent failed to address their poor behavior. Respondent asked low-level questions that required little more than regurgitation of names and places from the book. When students made no attempt to engage in the teacher-directed questions, Respondent simply offered the correct responses for them. As a whole, the class was completely disengaged in the activity. Respondent walked the aisles, but he failed to correct any student behavior.

137. Overall, Dr. Austin saw deficiencies set forth in the 40 areas listed in the Notice of Unprofessional Conduct and Unsatisfactory Performance. Dr. Austin concluded Respondent was subpar in every category. Respondent's class was the poorest class Dr. Austin had ever seen in his years as an administrator. Dr. Austin described it as witnessing

something worse than watching the worst substitute teacher, exacerbated by Respondent's obliviousness to his demonstrated deficiencies.

*Formal Evaluation Report (May 14, 2014)*

138. On May 14, 2014, Mr. Crosby prepared Respondent's formal evaluation report and stated Respondent failed to improve in the area of increasing the use of effective checking for student understanding strategies to monitor student learning. While lesson plans included check for understanding strategies to be used in the lesson, Respondent's implementation of the strategies was not effective and did not engage all students. Mr. Crosby noted Respondent frequently used teacher-directed questions, thumbs-up-thumbs-down, and ticket out the door strategies to check for understanding, but these strategies did not require students to demonstrate their understanding of the content. Not all students participated in the checking for understanding activities, which led to a varied level of student engagement in the activities. Mr. Crosby also noted that when it was evident students did not understand a concept or were not engaged in an activity, Respondent rarely modified the lesson or activity to reteach a concept or to re-engage the students.

139. Mr. Crosby also noted Respondent failed to increase student engagement in learning. While lesson plans identified more than one type of instructional strategy, Respondent failed to use the strategies effectively. Specifically, Respondent incorporated direct instruction activities, individual and small group learning activities, discussions, PowerPoint presentations, and visual aids in his lessons, but frequently, few to no students responded to teacher-directed questions or participated in small group activities, because they did not understand the content, or because they were engaged in off-task activities instead.

140. Mr. Crosby stated Respondent also failed to improve in creating a rigorous learning environment with high expectations and appropriate support for all students. Respondent's questioning techniques typically required students to answer yes or no, or answer comprehension questions. Rarely did Respondent's questions require students to work in the higher levels of Bloom's taxonomy, specifically in the areas of analyzing, evaluating, and creating.

141. Mr. Crosby noted Respondent failed to improve in setting and upholding high expectations for student behavior. Students often engaged in off-task behaviors throughout the lessons, such as applying make-up, engaging in personal conversations, placing their heads on the desks, drawing pictures, and using their cell phones, but Respondent often did not address these behaviors.

142. Mr. Crosby stated classroom instructional time continued to be lost during transitions between activities and when Respondent failed to gain and maintain control over his students.

143. Mr. Crosby stated that in order for Respondent to remediate his unsatisfactory performance, he needed to: (1) utilize a variety of teacher-centered and student-centered

check for understanding strategies; (2) utilize student input to monitor attainment of desired learning outcomes and adjust instruction as necessary based on student understanding and engagement; (3) effectively utilize a variety of structured student learning strategies throughout the lesson; (4) effectively utilize higher order questioning techniques requiring students to operate at higher levels of Bloom's taxonomy; and (5) provide a classroom environment that promoted and reflected student learning, fairness, and mutual respect.

144. Finally, Mr. Crosby stated that while Respondent attempted to address the goals of his MAP, Respondent made little to no improvement. Mr. Crosby concluded Respondent continued to perform at an unsatisfactory level and, as such, would continue to be evaluated during the 2014-2015 school year.

#### *2014-2015 School Year*

145. Mr. Fraser and Respondent developed Respondent's IPP. Respondent created the vast majority of the IPP, which Mr. Fraser believed contained too many goals. Mr. Fraser suggested that Respondent state three or four goals instead. Respondent declined. The IPP goals included Respondent: (1) using student knowledge; (2) connecting student knowledge, experiences, and interests; (3) using a variety of strategies, resources, and technologies; (4) promoting critical thinking; (5) monitoring student learning and adjusting instruction as needed; (6) promoting social community for student fairness and respect; (7) creating a safe learning environment to promote productive interaction; (8) maintaining safe physical, emotional, and intellectual learning environments; (9) creating a learning environment with expectations and support; (10) developing and maintaining high standards for individuals and groups; (11) employing classroom routines and norms for positive behavior; (12) using instructional time to optimize learning; (13) demonstrating subject matter knowledge with standards; (14) applying student knowledge development to understanding; (15) organizing curriculum to facilitate student understanding; (16) using instructional strategies appropriate to subject matter; (17) using resources, technologies, and standards for all-student access; and (18) addressing needs of English learners for fair access to content.

146. On November 5, 2014, Mr. Fraser observed Respondent's class, prepared a progress review record, and reviewed it with Respondent. When Mr. Fraser entered the classroom, students were talking and off-task. Respondent often uttered, "Shhh," even during times the class was quiet, which Mr. Fraser believed served as a distraction. When the period was over, Respondent had not closed the lesson, and most of the class was engaged in off-topic conversations and eager to leave. Mr. Fraser noted that during his observation, Respondent's attempts to engage students fell short, that his level of questioning still remained at the first level (i.e., recall and reproduction), that the lesson was fragmented and did not flow, and that students were often off-task and disengaged in the lesson.

147. Mr. Fraser recommended that Respondent: (1) effectively use check for understanding strategies to ensure student comprehension; (2) effectively use higher level thinking questions to maximize student engagement; (3) effectively use engagement

strategies; (4) improve on lesson planning and lesson delivery; (5) additional observations; and (6) undergo the MAP process.

*Formal Evaluation Report (May 1, 2015)*

148. On May 1, 2015, Mr. Fraser prepared a formal evaluation report. Mr. Fraser concluded Respondent had not met the goals set forth in Respondent's IPP, and had failed to adequately address skill deficiencies outlined in previous conferences, observations, and discussions. The deficiencies included classroom management, student engagement, and maintaining a classroom environment conducive to learning. Mr. Fraser further concluded Respondent had not met the expectations outlined in the teacher position description, as Respondent's teaching remained ineffective, evidenced by: (1) students sleeping in class; (2) student using personal devices for non-instructional purposes; (3) students engaged in off-topic conversations; (4) students frequently leaving class for long periods of time; (5) students playing soccer in the classroom; (6) students sitting outside of the classroom; (7) the lack of effective active engagement strategies; (8) the lack of checking for understanding strategies; (8) the lack of timely and helpful feedback to students; (9) the lack of diversified instructional techniques to effectively address the varied learning styles of the students; (19) long pauses during presentations; (20) the use of "Shhh" to quiet class; (21) inability to eliminate classroom interruptions and maximize instruction; (22) inability to secure and maintain students' attention and participation; (23) time management and lack of sufficient time for closure of activities; and (24) the inability to design learning objectives and activities that reflected high expectations for student learning.

149. Mr. Fraser concluded Respondent's performance in the classroom continued to be unsatisfactory, therefore Respondent would continue to be evaluated in the 2015-2016 school year.

150. Mr. Fraser recommended that Respondent: (1) effectively use check for understanding strategies to ensure student comprehension; (2) effectively use higher level thinking questions to maximize student engagement; (3) effectively use engagement strategies; (4) effectively plan and design lessons that were both rigorous and engaging for students; (5) effectively use classroom management strategies to minimize distractions in class; and (6) effectively provide a safe classroom environment that is both physically, socially and emotionally conducive to learning.

151. Because Respondent had not improved his classroom performance over the years, despite the resources used to help Respondent remediate his deficiencies, District initiating teacher dismissal proceedings on May 15, 2015.

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## *Credibility Findings<sup>11</sup>*

152. The Commission found credible the testimony of Mr. Reid, Mr. Crosby, Dr. Rasmussen, and Mr. Fraser, as they observed Respondent independently over a period of time, and reached similar conclusions concerning Respondent's performance. Their perspectives were corroborated by the testimony of Mr. Herzfeld, Dr. Austin, and Ms. Mayhugh, who also observed Respondent, and, like Mr. Reid, Mr. Crosby, Dr. Rasmussen, and Mr. Fraser, witnessed Respondent's deficiencies and lack of effectiveness in the areas of classroom management, student engagement, instructional strategies, and lesson design and rigor, which persisted throughout the years, despite Respondent's efforts to remediate his deficiencies. All of these witnesses testified in a clear, concise, unequivocal manner, supported their perspectives with descriptive facts, buttressed by their individual and collective experience in the teaching profession.<sup>12</sup> The Commission afforded great weight to the testimony of these witnesses.

153. The testimony of Respondent was afforded less weight, as his testimony was disjointed, difficult to follow, and inconsistent. Respondent contradicted himself throughout his testimony, particularly during cross-examination, and at times appeared to fabricate testimony. Respondent's testimony neither discredited the testimony of Mr. Reid, Mr. Crosby, Dr. Rasmussen, Mr. Fraser, Mr. Herzfeld, Dr. Austin, and Ms. Mayhugh, nor the memoranda penned by them.

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<sup>11</sup> In this matter, the Commission evaluated the credibility of the witnesses pursuant to the factors set forth in Evidence Code section 780: the demeanor and manner of the witness while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceeding in which the testimony has been given. The manner and demeanor of a witness while testifying are the two most important factors a trier of fact considers when judging credibility. The mannerisms, tone of voice, eye contact, facial expressions and body language are all considered, but are difficult to describe in such a way that the reader truly understands what causes the trier of fact to believe or disbelief a witness.

<sup>12</sup> Although the testimony and conclusions of Melissa Chan-Nauli were consistent with those of Mr. Reid, Mr. Crosby, Dr. Rasmussen, Mr. Fraser, Mr. Herzfeld, Dr. Austin, and Ms. Mayhugh, the Commission was less impressed with her testimony, given her minimal experience as a teacher. Specifically, Ms. Chan-Nauli never taught any core academic courses, and spent the bulk of her career as a counselor.

## LEGAL CONCLUSIONS

1. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) The "burden of proof" means the obligation of a party, if he or she is to prevail on a particular fact, to establish by evidence a requisite degree of belief or conviction concerning such fact. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1128.) The burden of proof in this proceeding is thus on District to prove the charging allegations.

2. The standard of proof in this proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040; Evid. Code, § 115.) "The phrase 'preponderance of evidence' is usually defined in terms of probability of truth, e.g., 'such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.' (BAJI (8th ed.), No. 2.60.)" (1 Witkin, Evidence, Burden of Proof and Presumptions § 35 (4th ed. 2000).)

3. A permanent District employee may be dismissed for cause only after a dismissal hearing. (§§ 44932, 44934, and 44944.)

4. Under section 44944, subdivision (c), the dismissal hearing must be conducted by a three-member Commission on Professional Competence, unless waived by the parties. Two members of the Commission must be non-district teachers, one chosen by the employee (Respondent) and one by the governing board (District), and the third member of the Commission must be an administrative law judge from the Office of Administrative Hearings.

5. When a school board recommends dismissal for cause, the Commission may only vote for or against it. The Commission may not dispose of a charge of dismissal by imposing probation or an alternative sanction. (§ 44944, subd. (d)(3).)

6. Section 44932 provides in part:

(a) No permanent employee shall be dismissed except for one or more of the following causes:

[¶]

(2) Unprofessional conduct.

[¶] . . . [¶]

(5) Unsatisfactory performance.

(6) Evident unfitness for service.

[¶] . . . [¶]

(8) 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.

7. Unprofessional conduct as used in § 44932, subd. (a)(2), may be defined as conduct that violates the rules or ethical code of a profession or is unbecoming a member of a profession in good standing. (*Board of Ed. v. Swan* (1953) 41 Cal.2d 546, 553, overruled in part, on another ground, in *Bekiaris v. Board of Ed.* (1972) 6 Cal.3d 575, 588, fn. 7.)

8. The term “unsatisfactory performance” is not specifically defined in the Education Code or case law. Unsatisfactory performance must be analyzed with an eye toward the teacher’s performance as evaluated by his or her employing school district. Section 44938 supports this proposition. Section 44938 requires a charge of unsatisfactory performance to be preceded by a written notice of unsatisfactory performance, and refers to section 44660 et seq., which in turn establishes guidelines for how school districts should evaluate and assess the performance of their certificated employees. Thus, cause for discipline may be established if a certificated employee performs unsatisfactorily to his employing school district. However, the purpose of the statute giving tenure to teachers is to insure an efficient permanent staff of teachers whose members are not dependent on caprice for their positions as long as they conduct themselves properly and perform their duties efficiently and well. (*Bakersfield Elementary Teachers Ass’n v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1293, fn 20, citing 56 Cal.Jur.3d (2003) Schools, § 411, p. 757.) Therefore, a reasonable limitation is that an employing school district cannot be arbitrary or capricious in making decisions regarding whether a certificated employee has performed unsatisfactorily.

9. “Evident unfitness for service” means clearly not fit, not adapted to or unsuitable 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.) “‘Evident unfitness for service’ connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district.” (*Id.*)

10. Even where immoral conduct or evident unfitness for service are established, it must also be established that such immoral conduct or evident unfitness renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230 (*Morrison*); *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208 (*Fontana*); *Woodland, supra*, 4 Cal.App.4th at 1444-1445.) In *Morrison*, the California Supreme Court set forth guidelines (eight factors) to aid in determining whether the conduct in question indicates such unfitness:

- (1) The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated.
- (2) The proximity or remoteness in time of the conduct.
- (3) The type of credential held by the person involved.
- (4) The extenuating or aggravating circumstances surrounding the conduct.
- (5) The praiseworthiness or blameworthiness of the motives resulting in the conduct.
- (6) The likelihood of the reoccurrence of the questioned conduct.
- (7) 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.
- (8) The publicity or notoriety given to the conduct.

11. Not all “*Morrison* factors” need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.) Moreover, the *Morrison* analysis need not be conducted on each individual fact established, but rather can be applied to the accumulated facts established collectively. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.)

12. “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 her,” which concerns Education Code, section 44932, subdivision (a)(8), requires a “showing of intentional and continual refusal to cooperate.” (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.)

13. Section 44939, subdivision (b), provides in part:

Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a school district, or upon a written statement of charges formulated by the governing board, charging a permanent employee of the district with immoral conduct, . . . with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, . . . the governing board may, if it deems such action necessary, immediately suspend

the employee from his duties and give notice to him of his suspension, and that 30 days after service of the notice, he will be dismissed, unless he demands a hearing.

14. Section 44944, subdivision (b)(2)(A), provides that no testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice. As such, in the instant matter, the statute of limitations began running on May 15, 2011, based on Factual Finding 1.

15. Here, District established, by a preponderance of the evidence, that Respondent demonstrated unprofessional conduct (§ 44932, subd. (a)(2)), unsatisfactory performance (§ 44932, subd. (a)(5)), evident unfitness for service (§ 44932, subd. (a)(6)), and persistent violation of or refusal to obey reasonable regulations (§ 44932, subd. (a) (8)). As such, as set forth in more detail below, cause exists to dismiss Respondent from his position as a permanent certificated employee of District.

#### *Unsatisfactory Performance*

16. As set forth in Legal Conclusion 8, unsatisfactory performance must be analyzed with an eye toward the teacher's performance as evaluated by Respondent's employing school district. The evidence showed that from February 3, 2012 to April 25, 2014, administrators, in addition to conducting a number of informal, drop-in observations, conducted more than 25 comprehensive observations of Respondent's classroom performance, and followed them by detailed conference summary memoranda or progress reviews. Every single summary noted Respondent's deficiencies in the areas of classroom management, student engagement, instructional strategies and lesson design. Specifically, in the area of classroom management, the administrators observed, among other things, students placing their heads on the desks, talking while Respondent taught class, engaged in off-task behaviors, and, despite Respondent's classroom rules prohibiting such conduct, they witnessed students playing with electronic devices (e.g., cell phones), and maintaining earbuds in their ears. In the area of student engagement, the administrators observed, among other things, a lack of participation by students during classroom discussions, off-task behaviors, Respondent failing to relate the material to the students' lives, and Respondent distributing materials one student at a time, causing students to engage in personal discussions while waiting for Respondent to complete his distribution of materials. In the area of instructional strategies, administrators observed, among other things, Respondent's failure to ask questions designed to engage students in critical thinking and analysis, to effectively employ strategies to check for understanding, and to promote an overall environment of rigor.

17. Despite these detailed memoranda and progress reviews, the evidence showed Respondent failed to significantly improve his performance, notwithstanding the additional support and interventions District provided Respondent to remediate his deficiencies. Specifically, District provided Respondent additional support in the form of MAP programs, twice during the 2011-2012 school year, once during the 2012-2013 school year, and a final

time during the 2013-2014 school year, to help Respondent improve his classroom performance. Additionally, District arranged for Respondent to participate in the PAR program, where he was assigned a PAR professional (Dr. Rasmussen), who provided Respondent with comprehensive one-on-one guidance during the 2012-2013 school year, including observing premier teachers, attending workshops, and co-teaching Respondent's classes. Because Respondent failed to remediate his deficiencies, the evidence showed District provided Respondent with eight different documents over the years formally expressing its dissatisfaction with Respondent's performance, and detailing with painstaking specificity the reasons it found Respondent's performance unsatisfactory. Specifically, District issued Respondent Notices of Unsatisfactory Progress on March 22, 2012, May 10, 2012, and March 28, 2014, a Notice of Unprofessional Conduct and Satisfactory Performance on January 30, 2014, and formal evaluation reports on May 11, 2012, May 15, 2013, May 14, 2014, and May 1, 2015, all of which detailed Respondent's deficiencies in the areas of classroom management, student engagement, instructional strategies and lesson design.

18. Despite the formal notices and observation summaries over the years, the evidence showed that Respondent's deficiencies persisted, established by the credible testimony of Mr. Reid, Mr. Crosby, Dr. Rasmussen, Mr. Fraser, Mr. Herzfeld, Dr. Austin, and Ms. Mayhugh. As such, and given the above factors, District established by a preponderance of the evidence that Respondent performed unsatisfactorily for multiple consecutive years, in violation of Education Code section 44932, subdivision (a)(5).

*Persistent Violation of or Refusal to Obey School Laws / Willful Refusal to Perform Regular Assignments*

19. As set forth in Legal Conclusion 12, cases interpreting whether a teacher has persistently violated or refused to obey school laws require a showing of intentional and continual refusal to cooperate. Here, the evidence showed that Respondent failed to follow multiple directives, and failed to show marked improvement after the issuance of multiple Notices of Unsatisfactory Progress, a Notice of Unprofessional Conduct and Satisfactory Performance, and multiple formal evaluation reports. Additionally, Respondent's performance demonstrated a failure to adhere to the seven major duties set forth in District's teacher position description: (1) "provides instruction in areas of knowledge and skills in assigned subject areas, utilizing the adopted courses of study, and affective learning, including but not limited to interests, attitudes, appreciations, and values"; (2) "utilizes the appropriate instructional techniques, activities and materials which will adapt the curriculum to the needs of pupils and be consistent with departmental, school and district goals"; (3) "communicates with parents, peers and school counselors on the individual pupil's progress;" (4) "advises students and provides personal support of students"; (5) "cooperates with other professional staff members in assessing and helping pupils solve health, attitude, and learning problems"; (6) "establishes and maintains standards necessary to preserve a suitable learning environment"; and (7) "performs basic student attendance accounting, textbook accounting, and business services as required by staff rules or established local procedures."

20. Moreover, the evidence showed Respondent failed to apply the California Standards for the Teaching Profession as required by the District. Specifically, Respondent failed to effectively and consistently adhere to six key standards: (1) engaging and supporting all students in learning; (2) creating and maintaining effective environments for student learning; (3) understanding and organizing subject matter for student learning; (4) planning instruction and designing learning experiences for all students; (5) assessing students for learning; and (6) developing as a professional educator.

21. These failures demonstrated Respondent's refusal or inability to perform regular assignments. Respondent also failed to comply with the multiple directives issued by administrators over the years, as set forth in the multiple Notices of Unsatisfactory Progress, a Notice of Unprofessional Conduct and Satisfactory Performance, multiple formal evaluation reports, and conference summaries. Given the above, District has demonstrated by a preponderance of the evidence that Respondent persistently violated or refused to obey school laws, and willfully refused to perform regular assignments, in violation of Education Code sections 44932, subdivision (a)(8), and 44939, subdivision (b).

#### *Evident Unfitness for Service / Unprofessional Conduct*

22. As set forth in Legal Conclusions 9 and 7, evident unfitness for service and unprofessional conduct address whether a teacher is unfit or unsuitable for teaching, by reason of inadequacies, and whether a teacher's conduct is unbecoming of a member of a profession in good standing, respectively. Here, the evidence demonstrated that Respondent failed to adhere to and/or carry out specific teaching duties, in direct violation of numerous directives issued by multiple administrators over the years, as set forth in the Notices of Unsatisfactory Progress, the Notice of Unprofessional Conduct and Satisfactory Performance, the multiple formal evaluation reports, and in more than 25 conference summaries and progress reviews. Respondent's failure to comply with the sheer number of directives and recommendations, most of them recurring, issued to him from February 3, 2012 through May 1, 2015, and correct his teaching inadequacies, represented a sustained inability to meet the expectations of the District, thereby demonstrating his unfitness for service.

23. Similarly, Respondent's failure to comply with repeated directives and recommendations related to a continual unwillingness or inability to adhere to specific orders issued by those in authority over him, including tasks requiring easy execution. For example, despite numerous directives, Respondent continued to distribute materials one student at a time, despite the amount of instructional time it wasted. He also failed to stop uttering "Shhh" instead of utilizing more effective methods of quieting his class, and failed to require students to adhere to classroom rules. Additionally, Respondent failed to follow testing protocols of the CSU by giving pre-slugged test booklets to students for whom they were not intended, which could have invalidated the results of the CSU. Moreover, Respondent repeatedly failed to meet with Mr. Crosby concerning the implementation of a second PAR program, which resulted in Mr. Crosby issuing Respondent a letter of

reprimand, stating Respondent's conduct was unprofessional and unacceptable. These failures demonstrated a level of defiance, constituting conduct unbecoming of a member of a profession in good standing (i.e., unprofessional conduct).

*Morrison Factors*

24. As set forth in Legal Conclusion 10, after establishing evident unfitness, or unprofessional or immoral conduct, it must be established whether such evident unfitness or conduct renders Respondent unfit to teach, pursuant to the *Morrison* factors:

a. The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated. This factor has maximum application, and weighs in favor of adverse action. As set forth in detail above, Respondent failed to follow numerous directives and recommendations issued by administrators and correct a number of teaching deficiencies, despite an inordinate amount of assistance, guidance, and interventions, including MAP periods, observing premier teachers, and participation in the PAR program. Consequently, Respondent's students experienced a constant loss of instructional time, instruction that lacked rigor, a noisy and poorly managed classroom, and a number of other unacceptable practices, all obstructing their ability to access the curriculum. Further, the District—his educational community—expended resources in an effort to remediate Respondent's deficiencies.

b. The proximity or remoteness in time of the conduct. This factor has moderate application, and weighs in favor of adverse action, in that the events in question are not remote, as they occurred as late as a year ago.

c. The type of credential held or applied for by the person involved. This factor has minimal application, in that the type of credential held by Respondent did not serve as a relevant factor either explaining, defending, or excusing his failures to carry out his duties as a teacher.

d. The extenuating or aggravating circumstances surrounding the conduct. This factor has maximum application, and weighs in favor of adverse action. The evidence showed that Respondent was given extensive, intensive, and repeated assistance and guidance, including more than 25 conference summaries and formal evaluations during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 school years, multiple MAP periods, and participation in the PAR program, yet Respondent failed to make a marked and sustained improvement in his performance as a teacher. In addition to the assistance and guidance, Respondent received multiple Notices of Unsatisfactory Progress, and a Notice of Unprofessional Conduct and Unsatisfactory Performance, but none of those actions resulted in Respondent correcting his deficiencies.

e. The praiseworthiness or blameworthiness of the motives resulting in the conduct. While Respondent's performance was not praiseworthy, there was no evidence

determining Respondent's underlying "motives." Therefore, this factor has minimal application.

f. The likelihood of the recurrence of the questioned conduct. This factor has maximum application and weighs in favor of adverse action. The evidence clearly established that Respondent was unsuccessful in remediating his deficiencies, despite substantial intervention. As such, if Respondent is permitted to return to the classroom, the likelihood is great that he would continue to perform with evident unfitness.

g. The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons. The parties raised no constitutional issues in this matter.

h. The publicity or notoriety given to the conduct. This factor has no application in this matter, as the record includes no evidence of publicity or notoriety stemming from Respondent's conduct.

25. In light of the above, the *Morrison* factors, on balance, indicate that Respondent is unfit to teach, as the number of factors with maximum application outweighs the number of factors with less. Specifically, District has met its burden of demonstrating that Respondent's retention in the District poses a significant danger of harm to its students, school employees, or others who might be affected by his actions as a teacher.

#### *Conclusion*

26. Based on the foregoing, the Commission has determined, by unanimous vote, that cause exists to dismiss Respondent from his employment with the District as a permanent certificated employee, for his unsatisfactory performance, persistent violation of or refusal to obey reasonable regulations, evident unfitness for service, and unprofessional conduct.

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ORDER

The Accusation against Respondent Nicholas Woods is sustained and shall be dismissed as an employee of the Huntington Beach Union High School District forthwith.

DATED: May 31, 2016

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CARLA L. GARRETT  
Administrative Law Judge  
Office of Administrative Hearings  
Commission on Professional Competence

DATED: May \_\_, 2016

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M'LISS PATTERSON  
Commission Member  
Commission on Professional Competence

DATED: May \_\_, 2016

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DOROTHY STAFFORD  
Commission Member  
Commission on Professional Competence

**ORDER**

The Accusation against Respondent Nicholas Woods is sustained and shall be dismissed as an employee of the Huntington Beach Union High School District forthwith.

DATED: May 26, 2016

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**CARLA L. GARRETT**  
Administrative Law Judge  
Office of Administrative Hearings  
Commission on Professional Competence



DATED: May 31, 2016

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**MISS PATTERSON**  
Commission Member  
Commission on Professional Competence

DATED: May 31, 2016

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**DOROTHY STAFFORD**  
Commission Member  
Commission on Professional Competence

ORDER

The Accusation against Respondent Nicholas Woods is sustained and shall be dismissed as an employee of the Huntington Beach Union High School District forthwith.

DATED: May \_\_\_, 2016

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CARLA L. GARRETT  
Administrative Law Judge  
Office of Administrative Hearings  
Commission on Professional Competence

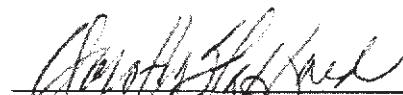
DATED: May \_\_\_, 2016

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M'LISS PATTERSON  
Commission Member  
Commission on Professional Competence

DATED: May 31, 2016

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DOROTHY STAFFORD  
Commission Member  
Commission on Professional Competence