

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
JURUPA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

CHRISTOPHER GILLOTTE,

A Permanent Certificated Employee,

Respondent.

OAH No. 2012060681

**DECISION OF THE
COMMISSION ON PROFESSIONAL COMPETENCE**

On February 12, 13, 14, 19 and 20, 2013, the Commission on Professional Competence of the Jurupa Unified School District, heard this matter in Riverside, California. The Commission members included James Ahler, Russell Kline, and Christopher Rabing.

Kerrie Taylor, Attorney at Law, represented complainant Elliott Duchon, Superintendent, Jurupa Unified School District.

Richard D. Ackerman, Attorney at Law, represented respondent Christopher Gillotte, who was present throughout the hearing.

On February 20, 2013, the matter was submitted.

SUMMARY

Christopher Gillotte is a permanent certificated employee of the Jurupa Unified School District who teaches high school mathematics. Complainant seeks to terminate Mr. Gillotte's employment on grounds of Mr. Gillotte's alleged unprofessional conduct, evident unfitness for service, and persistent violation of the Governing Board's rules and regulations.

A preponderance of the evidence established that between October 2008 and December 2011, Mr. Gillotte frequently demeaned students, made derogatory comments to and about students in the classroom, failed to assist students in the classes he taught, and behaved in a manner that was unprofessional and unbecoming of an educator. Much of the misconduct occurred following Mr. Gillotte's receipt of a letter of reprimand, two notices of

unprofessional conduct, an unsatisfactory evaluation, and after he participated in several programs designed to improve his classroom behavior.

After applying relevant *Morrison*¹ criteria, the Commission on Professional Competence of the Jurupa Unified School District concluded that Mr. Gillotte engaged in unprofessional conduct, is not fit to teach within the District, and repeatedly violated applicable rules and regulations. Mr. Gillotte's employment with the District should be terminated.

FACTUAL FINDINGS

Background Information

1. Christopher Gillotte (Respondent) graduated from Baldwin Park High School in 1983. He received a bachelor's degree in Aeronautics from Cal Poly Pomona in 1989. He thereafter completed a teacher credentialing program at Cal Poly Pomona.

In 2002, the Commission on Teacher Credentialing (Commission) issued Respondent a clear single subject credential in mathematics that authorized him to teach mathematics to students in grades 12 and below and in classes organized primarily for adults. The Commission also issued to Respondent a CLAD credential that authorized him to provide services to limited-English proficient pupils.

2. Respondent worked as a teacher for the Azusa Unified School District during the 1998 through 2000 school years, for Arcadia High School in the 2000-2001 school year, and for the West Covina Unified School District for the 2001-2002 school year under an emergency teaching credential. Respondent then worked for the Corona-Norco Unified School District in the 2002-2003 and 2003-2004 school years under his single subject teaching credential.

When Respondent was employed by the Corona-Norco Unified School District, he heard about a desirable employment opportunity with the Jurupa Unified School District (the District). Respondent applied for a job with the District.

3. The Jurupa Unified School District (District) has continuously employed Respondent as a high school mathematics teacher since fall 2004. During winter 2011, Respondent was removed from the classroom and placed on paid administrative leave; thereafter, he was placed on unpaid leave.

¹ These factors are set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214.

At all times relevant to this matter, Respondent was a permanent certificated employee of the District.
2008-2009 School Year

4. *The Incident Involving LL:* On October 23, 2008, LL, a male student, arrived late to an integrated math class taught by Respondent. LL made a noise as he entered the classroom and put down his backpack. Respondent offered LL the opportunity to practice walking into and out of the occupied classroom. LL accepted that offer. Thereafter, LL entered and exited the classroom many times while class was in session. In doing so, LL opened and closed the classroom door to enter the classroom, removed and returned items from his backpack, and opened and closed the door to exit the classroom. This repetitive drill distracted other students in class. During this exercise, DK, a female student, asked Respondent, "Please stop because you are making it so that none of us can learn with him going in and out." Respondent permitted LL to continue the exercise despite DK's request.

5. Respondent's written response concerning this incident stated in part:

He [LL] had chosen to practice entering the class rather than do his work. I would also like to point out that I did not have any students complain during this exercise. I did have some who barked out orders to me, and their behavior became worse. If [LL] was truly the reason they were acting out, why did they only do so after he had left? While I initially thought it was an appropriate object lesson for [LL], it is unfortunate that it became an unwanted distraction, so I gave him an opportunity to return to class work. The fact that he turned down my offer says much about his commitment to the curriculum and his education. Regardless, though, no students have the right to bark orders at a teacher.

In his testimony concerning this incident, Respondent said he was not aware of any issue involving LL until "long afterwards."

6. Respondent took no responsibility for the classroom disturbance. He blamed LL and other students for the commotion. Respondent's decision to allow LL to go into and out of the classroom, and then to permit this disturbing conduct to continue after a student complained, demonstrated poor judgment and constituted unprofessional conduct.

7. *The Incident Involving BR:* In fall 2008, students in Respondent's class were talking during instruction. Respondent observed BR, a female student, talking and told her to stand up. After BR did so, Respondent forcefully pushed BR's desk against the wall and directed her to "Sit down!" in a loud voice.

8. Respondent's written response concerning this incident stated in part:

I moved a desk out of its row and moved it so it faced towards a wall. This was necessary in order to direct the student's attention from her classmates – a sort of time out space. This was in concert with relocating several other students to either another classroom or to different positions in the class room. I directed [BR] to sit in the desk. She argued repeatedly that she did not have to sit where directed. She eventually took her seat but stated she would continue to disrupt the class. This open defiance of authority has been a pattern with her, which prompted my decision to investigate further

In his testimony concerning this incident, Respondent stated that he did not “slam” the student's desk against the wall, that he unintentionally caused the student's desk to strike the wall, that he did not shout at the student, and that he simply became “impatient.” Respondent apologized for the incident, even though he previously denied any wrongdoing.

9. Respondent forcefully pushed a student's desk against a wall and told the student in a loud voice to “Sit down!” His conduct was threatening and unprofessional.

10. *The “Scrubbing My Toilets” Comment:* In September 2008, Respondent told several students in his classroom, “If you keep talking you will be scrubbing my toilets and mowing my lawn for the rest of your lives” or words to that effect. The students took his comment personally and were offended. Respondent's comment was demeaning and unprofessional.

11. Respondent testified that he never used the word “my” when making the comment “. . . you will be scrubbing my toilets and mowing my lawn . . .” This testimony was not credible in light of all the evidence to the contrary. All student witness statements specifically mentioned that Respondent used the word “my” when making the comment. Respondent's claim that he did not use the word “my” was disingenuous and established that he was very much aware that his comment was offensive and had been taken that way.

Respondent excused his behavior in his written response and in his testimony by claiming that it was common for math teachers in his department to provide motivational talks to students in which scenarios involving menial unskilled labor were provided, with the goal of having students choose professions involving skilled labor as being more rewarding. Respondent referred to this lecture as “the McDonald's speech.” Respondent claimed that an important aspect of the talk was “to never demean the unskilled work, but to describe it as a possible necessity for someone without a high school diploma.” He claimed the speech was given to provide encouragement.

There was nothing encouraging about Respondent's comment. It was personally directed at his students and was demeaning.

12. Despite the students' understandable negative reaction to the comment "If you keep talking you will be scrubbing my toilets and mowing my lawn for the rest of your lives," Respondent "categorically" denied insulting any student and claimed that students distorted his comment, took his comment out of context, and impugned his professional integrity. In other words, Respondent took no responsibility for the predictable effect of his demeaning comment and claimed that he was the victim of student injustice.

13. *The "Not a Personal Tutor" Comment:* During the 2008-2009 school year, Respondent told his students that he was a "classroom instructor and not a personal tutor" when some of his students asked him for assistance.

Many of Respondent's students required one-on-one instruction and required his support to understand and grasp the material being presented. Respondent's statement that he was "not a personal tutor" discouraged learning and was demeaning and unprofessional.

14. *Request to Access a Cumulative File:* In October 2008, Respondent sought to access confidential student records of DK, a female student, including her cumulative file. This effort occurred after the incident involving LL. On two separate occasions, Respondent directly contacted the registrar of the middle school that DK previously attended to obtain her discipline and cumulative files. Respondent did not disclose to the middle school registrar the reason he sought DK's files. The middle school registrar became concerned about the unusual request and contacted Respondent's supervisor, Laurel Fretz, because Respondent's behavior was strange and persistent. The middle school registrar reported that Respondent treated him in a demeaning and condescending manner.

15. Respondent claimed that he wanted to review DK's files because she was having problems in his class, and he wondered whether that might be the result of family problems, an emotional or psychiatric condition, or drug use. Respondent claimed that he made direct contact with the middle school registrar because the District did not have a form by which he could request the production of a student's cumulative file. Respondent denied that he was condescending in his interactions with the middle school registrar. Finally, Respondent claimed that this disciplinary charge was, in part, no more than simple retaliation in response to a grievance he previously filed against Ms. Fretz.

16. Under federal and state law, teachers may access student records only for legitimate educational purposes. Respondent did not establish that he was attempting to access DK's files for any legitimate purpose. Respondent's claim that he sought to access DK's files to determine whether she was having family, emotional or other problems was not credible in light of the fact that Respondent did not report his concerns to school counselors and did not request school counselors obtain DK's files for his review. Respondent's conduct relating to this incident was unprofessional.

17. *2009 Letter of Reprimand:* On December 10, 2008, Respondent received a Letter of Reprimand from Tamara Elzig, the Assistant Superintendent of Personnel Services. The letter outlined the District's concerns about Respondent's performance and provided

several examples of Respondent's alleged unprofessional interactions with students in the classroom. The letter of reprimand stated in part:

Your students deserve to work in a positive, well-managed classroom environment, free from verbal abuse or harassment. Your students deserve to be educated in a safe, positive environment, free of inappropriate comments and behaviors. Failure to provide such an environment could have an adverse impact on our students, and could result in liability for the District based on discrimination or harassment. Your conduct reflects poorly on you as an educator and as a role model for students in your school.

Effective immediately, you are directed to treat all students, staff, and parents with courtesy, respect and professionalism. You must develop classroom management skills that do not demean students and facilitate learning.

Failure to follow these or other directives and/or show necessary improvement in the areas discussed may lead to appropriate disciplinary action, including termination from employment. You are also specifically warned not to threaten, intimidate, retaliate against, or otherwise confront any person about the contents of this memorandum or any related matter. If you have any questions about any of these or other directives, you must contact me to discuss the issue

18. *Continuing Rude Conduct:* During the 2008-2009 school year, Respondent was repeatedly rude and condescending to students.

In 2009, SL, a female student in Respondent's math class, described Respondent as mean, sarcastic and discouraging towards students in the classroom. Respondent raised his voice and became frustrated when students asked questions, and he frequently responded to student questions by telling his students, "Go back to the book." SL did not have any other teachers who acted in that kind of frustrated and unhelpful manner. Respondent told seniors in the class "they didn't matter" because they would not be taking an upcoming test that would reflect on Respondent's teaching abilities.

During the 2008-2009 school year, Respondent frequently insulted or demeaned students in his classroom, including SL, by making personal statements such as "Why don't you cut your hair?" and "Is the reason you're wearing a hood because you didn't fix your makeup today?"

During the 2008-2009 school year, LB, a student, asked Respondent to show the class how to do a problem. Following LB's request Respondent became angry and told her, "Stop being a jerk."

19. In his testimony in this proceeding, Respondent claimed that the District did not notify him of the student complaints in a reasonably prompt fashion, testifying "If there was a problem, I should have been notified immediately." Respondent testified that he was not shown the students' statements until a year after they were made. He claimed that the District did not include positive student statements in its presentation of the evidence. In his defense, Respondent testified that he used a variety of instructional techniques, demonstrated problem solving to students in class, engaged in cooperative learning, and required students to work at the board. Respondent claimed that he told students to pull the hoods off of their heads whenever they were in his classroom in an effort to make students adhere to District policy. In his written response to the allegations that he told LB to "Stop being a jerk," Respondent asserted that he told LB to "Stop acting like a jerk."

20. *The 2009 Notice of Unprofessional Conduct:* On June 2, 2009, Respondent received a Notice of Unprofessional Conduct related to his behavior during the 2008-2009 school year. The Notice made reference to the incident involving LL, the incident involving BR, the "scrubbing my toilets" comment, Respondent's request to access a cumulative file, and his continuing rude conduct towards students. The Notice directed Respondent to: (1) avoid confrontations with students; (2) avoid mocking students; (3) refrain from calling students names; (4) treat students equitably; and (5) treat students in a nurturing and respectful manner. The Notice stated that the District was willing to offer Respondent assistance in overcoming any deficiencies.

21. By email dated June 15, 2009, Respondent advised Assistant Superintendent Elzig that he would participate in a community action-employee participation plan and COMP training.

2009-2010 School Year

22. *Comments to RM and EP:* During the 2009-2010 school year, Respondent continued to make rude and demeaning comments to students, including RM and EP. As a result, many students did not want to attend Respondent's class. Examples of Respondent's demeaning comments included the interactions described below.

23. During fall 2009, Respondent regularly picked on RM, a male senior student in his class. RM had only 30 units of credit at the time and was not scheduled to graduate from high school. Respondent repeatedly called RM a "super senior" and told RM that he was a "screw up" in front of the class. Respondent told his class, "If you behave like [RM], you will be in the same place he is in three years" or words to that effect. On another occasion, Respondent stated, "I wonder where [RM] is going to be three years from now?"

RM was upset, embarrassed and frustrated that Respondent singled him out. Respondent's demeaning comments adversely impacted RM and did not encourage RM to do well in class. Other students, such as RQ, believed that Respondent's behavior was inappropriate and felt sorry for RM. Respondent's comments made RQ uncomfortable and, as RQ testified, "It wasn't right." EP, another student in Respondent's class, testified that a teacher should not call a student a "super senior" and that Respondent should not have told RM he was not going to graduate.

24. In fall 2009, Respondent asked RM whether he passed the California High School Exit Exam (CAHSEE) in front of the entire class. Before he asked that question, Respondent had reviewed RM's CAHSEE test results on Zangle, the District's web-based student information system. Zangle reported that RM had failed the CAHSEE examination. In response to the Respondent's question, RM falsely represented that he had passed the CAHSEE. In response to this representation, Respondent announced in front of the class, "No you didn't . . . I just wanted to know if you were going to be honest."

25. Respondent testified he did not call RM a "super senior," although he recalled RM's classmates using that term. He claimed he never called RM a "screw up." Respondent recalled asking RM if he passed the CAHSEE examination, and he admitted that he did so after he learned on Zangle that RM had failed the CAHSEE examination. To defend himself, Respondent claimed that Zangle often contained incorrect information so he believed he was justified in asking RM whether RM passed the CAHSEE examination. He did not explain why he chose to do so in front of the class.

26. Respondent called RM a "super senior" in the presence of other students. Calling RM a "super senior" was rude, demeaning and unprofessional. Respondent called RM a "screw up" in front of other students, and he used RM's lack of academic progress to embarrass RM in front of the class. Respondent set up a situation by which RM's failure to pass the CASHEE examination would become public knowledge. It was inappropriate for Respondent to discuss RM or any other student's academic status or test scores in front of the class. Respondent's statements embarrassed R.M. and were demeaning.

27. On December 14, 2009, Respondent told EP, a student in his class, "[You] will never be anything in life and no one would want [you] for a job." After EP told Respondent about his plan to enlist in the Army, Respondent stated, "[T]he Army [will] not want you and [will] not trust you." Respondent told EP that he, as EP's teacher, "wouldn't trust [him] with a gun." Respondent's comments made EP "feel worthless."

28. Respondent testified that he never made the alleged comments to EP, and that EP said announced that he wanted to join the Navy, and not the Army. With respect to his negative comments to EP, Respondent said he was simply trying to advise EP that having knowledge in mathematics was necessary if he was going to be entrusted with the firing of 16 inch guns. Respondent's testimony in this regard was not believable.

29. Respondent's comments to EP were rude, demeaning and unprofessional.

The 2010 Statement of Allegations

30. The District provided Respondent with a “summary of allegations” dated January 14, 2010, that advised Respondent of the District’s concerns related to his comments to RM and EP. Respondent was given the opportunity to respond to the allegations.

31. By letter dated February 19, 2010, Danuta W. Tuszynska, Respondent’s (then) attorney, responded to the statement of allegations dated January 14, 2010. Ms. Tuszynska’s letter stated that the allegations were cumulative insofar as they related to RM and were contradicted by Respondent’s most recent satisfactory evaluation. The letter stated that the phrase “pick on students” had no meaning. The letter asked:

What is wrong with asking a student if they passed the exit examination? Where is the violation of policy? The senior is in a class with freshman and complains because he is asked if he passed an exit examination? Why were the students assigned credibility and the teacher is not supported, and [is] indeed undermined by the Administration?

The letter concluded:

The January 14, 2010, Summary of Allegation is repetitive and lacking in specific, valid accusations. Overly broad, conclusory language is used to avoid providing any basis for discipline. Allegations as foolish as referrals are written for “dumb reasons,” per the student, are included. The District has once again undermined and withheld support for this teacher, and gives credibility to students and yet assigns none of the teacher.

The February 2010 Observation Form

32. Jay Trujillo (Principal Trujillo), a site administrator, signed an Observation Form dated February 17, 2010, following his observation of Respondent’s third period class. The form noted that Respondent met standards for engaging and supporting all students in learning (standard 1), understanding and organizing subject matter for student learning (standard 3), and planning instruction and designing learning experiences for all students (standard 4). However, the “N” box, for “Needs Improvement,” was checked for standard 2 – creating and maintaining effective environments for student learning. The observation put Respondent on notice that his site administrator believed that Respondent’s classroom management skills were deficient.

The March 2010 Notice of Unprofessional Conduct

33. On March 24, 2010, the District issued a Notice of Unprofessional Conduct to Respondent. The notice directed Respondent to, among other things: (a) refrain from mocking students; (b) refrain from calling students names that were offensive or demeaning; (c) treat his students in a nurturing and respectful manner; (d) provide assistance to students in an equitable manner; (e) provide assistance to students who request help on assignments; (f) refrain from picking on students; (g) inform students of the reason/behaviors for which they are disciplined; (h) refrain from using sarcastic comments that students might construe as demeaning; and, (i) refrain from disciplining students in a public manner. The evidence supporting the issuance of this Notice was not established, but the Notice nevertheless advised Respondent of the District's reasonable expectations.

The May 2010 Evaluation

34. Principal Trujillo completed and signed an Evaluation Form dated May 20, 2010. Respondent met all standards, except for the standard related to creating and maintaining effective environments for student learning (standard 2). For that standard, Respondent received a "U" or unsatisfactory evaluation. The comment stated:

Classroom procedures and routines to promote learning have been inconsistently evidenced in [Respondent's] classes. For example, during one lesson observed, some students did not do any work, as instructed, until the teacher came near their desk . . . In this same lesson, on at least two different instances, [Respondent] was trying to explain key concepts by attempt to "talk over" students who had become too noisy. Several students report feeling consistently attacked by [Respondent] and/or belittled in class. For several students, they report that the classroom environment is anything but effective for student learning . . . [Respondent] often times escalates student misbehavior with inappropriate comments, as reported by students. Yet on other occasions (e.g., *scheduled* observation), I've noted [Respondent's] effective use of behavior cues to appropriately re-direct student attention or mis-behavior . . . I have also observed [Respondent] take some responsibility for minor student misunderstanding . . . [Respondent's] ability to be effective in managing students has been noted, though only rarely. Room does have some subject-specific and motivational posters displayed. Further, student progress charts are posted in his room.

The following comment was included in the evaluation:

Serious concerns regarding [Respondent's] classroom management skills persist. In June of 2009, [Respondent] received a Notice of Unprofessional Conduct wherein he was directed to, among other things, avoid confrontations with students, refrain from mocking students, refrain from calling students offensive and/or demeaning names, treat students in a nurturing and respectful manner, and treat all students equitably. However, [Respondent] continues to use sarcastic comments in class which are hurtful to students. Although [Respondent] may not intend for the comments to be hurtful, the students to whom the comments are directed and observing students perceive the comments and inappropriate and hurtful. Additional evidence of [Respondent's] ineffective classroom management skills is the disproportionate number of referrals he sends to the office. Many of these referrals should be addressed by [Respondent] in the classroom.

This evaluation provided Respondent with further notice of the District's concerns.

2011-2012 School Year

35. In November 2011, while walking about his classroom, Respondent called students "idiots" in French. Respondent denied making that comment in this proceeding. It is determined that Respondent's testimony was not true; he made the comment.

36. During the 2011 fall semester, Respondent frequently refused to provide assistance to students in the class and with their homework, which had a negative impact on students and their ability to learn. Examples of Respondent's responses to students when they requested assistance on an assignment included but were not limited to:

- a. Respondent told students that they were supposed to learn the math work on their own.
- b. Respondent told students to refer to the book rather than providing assistance and instruction to students.
- c. Respondent told students that they already knew how to answer the problem and walked away from their desks.
- d. Respondent stated that he would provide assistance only to those students who "want to learn," "make an effort," "complete their homework," and/or "are serious about passing."

- e. Respondent told students that he already taught the material and that students should know the material already.
- f. Respondent told students that he would not assist them because in college the professors would not provide them with assistance.
- g. When asked to assist students in solving a problem, Respondent told students to “figure it out for [themselves].”
- h. Respondent told students “This work is easy. I am not going to waste [my] time going over that” or words to that effect.

37. Respondent testified that during the 2011 fall semester, he provided Integrative Math students “with great latitude” in getting through the material. Respondent testified that in the 2011 fall semester, his AP Statistics class outperformed all other AP Statistics classes, which demonstrated that his educational approaches were sound.

Respondent claimed that he never walked away from a student’s desk if the student asked for help. He testified that he never said he would assist “only those who want to learn.” He denied telling students that he was not going to help them because college professors would not help them, testifying that he taught at a college and that he always helped his college students.

38. The testimony that Respondent offered to refute the matters set forth in Factual Finding 35 was far less persuasive than the evidence offered to establish the factual matters found to be true. Taken in their entirety, Respondent’s comments demonstrated disrespect for his students, involved unprofessional conduct, and established that Respondent is not presently fit to teach within the District.

39. During the 2011 fall semester, Respondent frequently made demeaning comments to students. Respondent’s demeaning comments made many students feel uncomfortable and frustrated. Examples of Respondent’s demeaning comments included but were not limited to:

- a. When students informed Respondent that they did not understand a math concept and that reviewing material in the text book did not resolve their questions, Respondent told them that they “must have a reading comprehension problem.”
- b. Respondent called students “idiots.”
- c. Respondent asked students to solve math problems on the board. On several occasions, a student Respondent called upon did not know how to solve the problem and informed Respondent of that. Rather than explaining the problem to the student or having another student in the classroom assist the student who was at the board, Respondent required the student to remain at the board and,

while the student was standing there, asked the student why he or she did not know how to complete the problem. Respondent sometimes told these students, “This is cookbook” or made similar comments. The students were embarrassed. On one occasion, Respondent required a student to stand at the board for an excessive and unreasonable period of time while the rest of the class sat silently and no assistance was offered.

- d. Respondent frequently demeaned his AP Statistics students by telling them words to the effect, “[T]his is cookie cutter math,” “[T]his is cookbook . . . Anyone can do this,” “[T]his is Algebra 1 work . . . Anyone can do this,” “This is so easy a second grader can do this,” and “my integrated math kids can understand this. Why can’t you?” These kinds of derogatory statements negatively impacted students and inhibited their ability and desire to learn.
- e. Respondent told students that they were “Dumb as rocks,” or words to that effect, and told them that “A horse could sit in class and be smarter than you.”

40. Respondent denied engaging in unprofessional conduct. He testified he never required a student to remain at the board for as long as 15 minutes, as alleged. He denied telling students that the material was “cookie cutter,” although he admitted he may have mentioned that a particular mathematical process or problem was “cook book.” Respondent testified that he never told students that they were “dumb as rocks.” Respondent testified that students may have misunderstood a “horse comment” that he made in class because on at least one occasion he referred to Clever Hans² and, on another occasion, he may have mentioned Napoleon’s comment, “If experience was all that mattered, my horse would be a great general.”

41. The testimony that Respondent offered to refute the matters set forth in Factual Finding 38 was far less persuasive than the evidence that established Respondent made those comments. Taken in their entirety, Respondent’s comments demonstrated disrespect for students, involved unprofessional conduct, and established that Respondent is not presently fit to teach within the District.

42. During the 2011 fall semester, Respondent made inappropriate and demeaning comments to students regarding their performance on daily activities, quizzes, and tests, on occasion singling out certain students. For example, on one occasion Respondent complimented the class as a whole for a job well done. However, Respondent then turned to SM, a student, and said, “Except you” in front of the entire class. The comment was sarcastic, unprofessional, and failed to provide SM with a valuable learning experience.

² Clever Hans was a horse that was claimed to have been able to perform arithmetic and other intellectual tasks. After formal investigation in 1907, it was determined that the horse was not actually performing these mental tasks, but was watching the reaction of his human observers. Clever Hans’ trainer was entirely unaware that he was providing such cues. The “Clever Hans effect” provides an illustration of the observer-expectancy effect.

43. On December 9, 2011, IA, a male student, asked for Respondent's assistance on a statistics problem. Respondent provided the assistance in front of the class. At the conclusion of the instruction, Respondent said, "Class, aren't we glad we cleared this up for [IA]?" or words to that effect. Respondent's attempt to engage in a moment of humor at a student's expense went awry. Respondent's comment demeaned and embarrassed IA. The making of that comment demonstrated poor judgment.

44. Respondent asserted that IA was a good student and that he made the comment in front of the class in an effort to praise IA for asking a valuable question. Respondent did not explain the purported reason for his comment to the class or to IA at that time or at any other time.

45. After he was instructed by the District to avoid confrontations with students, to refrain from mocking students, to treat students in a nurturing and respectful manner, and to treat all students equitably, Respondent singled out SM and IA when he made the comments described in Factual Findings 41 and 42.

A Teacher's Responsibilities

46. Board Policy 4122 (Code of Ethics of the Teaching Profession) requires teachers to "practice the profession according to the highest ethical standards." Under the policy, teachers are required to, among other things:

- a. [Encourage] the student to independent action in the pursuit of learning and provide access to varying points of view;
- b. [Protect] the health and safety of students;
- c. [Honor] the integrity of students and influences [sic] them through constructive criticism rather than by ridicule and harassment;
- d. [Conduct] professional business through proper channels.

47. Board Policy 4144 provides in part: "The certificated staff has a moral obligation to assume responsibility for the maintenance of such standards of behavior and performance as encouraged by the code of ethics of the various professional organizations to which its members belong."

48. The District's Classroom Teacher job description identifies the following general duties and responsibilities of a teacher:

- a. Teaches in accordance with the abilities and achievements of the pupils assigned to his or her classes, and in conformance with the district's philosophy, goals and objectives.

- b. Maintains a behavioral climate in his or her classroom conducive to learning, and works cooperatively with administrators in attempting to resolve problems of pupil behavior.

49. The California Teachers Association Code of Ethics requires teachers to make “reasonable effort to protect students from conditions harmful to learning . . .” and to refrain from intentionally exposing students from “embarrassment or disparagement.”

Administrator Testimony

50. Harold Owens (Assistant Principal Owens) is an Assistant Principal. He investigated some of student complaints referred to in the accusation. He asked questions of students from a prepared list of questions that he was given and took accurate notes that summarized student responses. Assistant Principal Owens’ notes did not state Respondent called any students by derogatory names. Assistant Principal Owens did not believe Respondent was a racist. Assistant Principal Owens had no concerns about Respondent’s professionalism, but he never conducted a formal classroom evaluation of Respondent and was not responsible for doing so.

51. Roberta Pace (Principal Pace) is currently Principal of Patriot High School, where she had previously served as an Assistant Principal and Interim Principal. As Principal, she was responsible for the day-to-day operation of the high school. Principal Pace conducted an investigation of Respondent in concert with other administrative staff.

In fall 2009, Principal Pace received complaints from students and parents about Respondent. She investigated those complaints and selected other students from Respondent’s classes on a random basis to determine if the student and parent complaints were common and legitimate. She prepared a set of questions to be asked of the students who were selected at random. Notes taken of student interviews were retained by the District.

Based on the fall 2009 complaints and student interviews, Principal Pace prepared a “Summary of Findings.” The findings were incorporated into Assistant Superintendent Elzig’s “Summary of Allegations dated January 14, 2010.”

In fall 2011, Principal Pace conducted another investigation. Respondent was teaching Integrative Math and AP Statistics. Principal Pace spoke with students and maintained notes of her conversations with them. The student statements were incorporated into an eight-page memorandum (Exhibit 69) that was summarized and provided to Jay Trujillo (Exhibit 88). In that memorandum, Principal Pace made various recommendations that included Respondent making himself more accessible to answering student questions when students asked for help, to refrain from the use of sarcasm, and to find appropriate ways to respond to challenging student behavior. The concerns that Principal Pace investigated in fall 2011 were summarized in Assistant Superintendent Elzig’s “Summary of Allegations” dated December 13, 2011.

On cross-examination, Principal Pace testified that Respondent taught five periods of class and provided educational services to approximately 175 students each day while teaching at Patriot High School. She acknowledged that a few students she interviewed complimented Respondent. Principal Pace testified that Respondent voluntarily participated in the District's Peer Assistance Review Program (PAR). Principal Pace did not believe Respondent ever posed a physical threat to his students, but she was extremely concerned about the belittling and demeaning comments he made to and about the students. Principal Pace conducted several formal evaluations and several walkthrough observations while Respondent was teaching and, on those occasions, she never heard him make belittling or demeaning comments to students.

52. Assistant Superintendant Elzig holds a teaching credential, an administrative credential, and a master's degree in Educational Administration. She taught in the classroom for seven years and thereafter served in various administrative capacities including her current service as the Assistant Superintendant of Personnel Services.

The District utilizes a system of progressive discipline. Progressive disciplinary sanctions are imposed whenever the most recently imposed sanction proves unsuccessful in remediating targeted misconduct. Absent a situation that requires immediate suspension or termination of employment, the system begins with informal discussion, then proceeds to a letter of concern or reprimand, followed by a notice of unprofessional conduct, and, finally, a formal action to suspend or terminate an employee's employment status. Under the collective bargaining agreement between the District and the National Education Association - Jurupa, an association affiliated with the California Teachers Association, a complaint from a parent or member of the public about a teacher must be investigated by administration, while a student complaint is usually referred back to the teacher unless the complaint involves a chronic issue.

Assistant Superintendent Elzig discussed the District's experience in implementing a progressive discipline plan related to Respondent's situation. Within four years of the filing of the Notice of Intention to Dismiss, Assistant Superintendant Elzig became aware of complaints about Respondent's negative interaction with students and poor classroom management skills. She was concerned about what was reported. Student and parent complaints were investigated in fall 2008, which resulted in the issuance of a Letter of Reprimand. The same kind of issues continued in early 2009, which resulted in the District issuing a Notice of Unprofessional Conduct to Respondent dated June 2, 2009. Following his receipt of that Notice, Respondent entered into a Community Action – Employee Assistance Plan and COMP training. Respondent voluntarily transferred from Jurupa Valley High School to Patriot High School for a fresh start in the 2010-2011 school year. Assistant Superintendent Elzig scheduled a meeting in February 2010 to discuss concerns of serious misconduct. On March 24, 2010, the District served Respondent with a second Notice of Unprofessional Conduct. In fall 2011, Assistant Superintendent Elzig became aware of additional concerns, which resulted in the preparation of a Summary of Allegations dated December 13, 2011. Attorney Richard D. Ackerman, on Respondent's behalf, issued a letter dated December 14, 2011, in which he stated that Assistant Superintendent Elzig cancelled

the meeting that had been scheduled for the previous day. Attorney Ackerman represented that Respondent had no idea why that meeting was scheduled, claimed that holding a meeting without an agenda resulted in a chilling of Respondent's due process rights, asserted that Assistant Superintendent Elzig's conduct violated the collective bargaining agreement, stated that there was no known threat to any student, and represented that Respondent was unaware of any grounds for discipline. By letter dated December 15, 2011, the District placed Respondent on paid administrative leave pending further investigation.³

Assistant Superintendent Elzig testified that the District's investigations established that Respondent had engaged in unprofessional conduct, that Respondent did not realize he had engaged in wrongdoing, that Respondent refused to acknowledge that he had engaged in wrongdoing, that Respondent did not modify his behavior despite notices of unprofessional conduct and participation in assistance programs, and that Respondent continued to engage in unprofessional conduct that he had been directed to correct.

On cross-examination, Assistant Superintendent Elzig characterized some of Respondent's defenses to the charges as rationalizations. She testified that there was no single incident that compelled Respondent's termination, but that termination was required as a result of the accumulation of incidents occurring over a number of years. Respondent's counsel essentially asked Assistant Superintendent Elzig on a step-by-step basis whether the incidents that were alleged to be unprofessional conduct always constituted unprofessional conduct or whether justification might exist as a result of circumstances that could be implied from the evidence; for the most part, Assistant Superintendent Elzig testified the specific incidents at issue involved Respondent's lack of judgment and unprofessional conduct. During the course of her testimony, Assistant Superintendent Elzig conceded such matters as Respondent's right to determine classroom seating based on student needs, Respondent's right to hold an opinion that ASB was a waste of time, her lack of familiarity with Clever Hans, a teacher's right to raise his or her voice on occasion to gain the attention of students in the classroom, a teacher's right to impose discipline based upon conduct occurring in the teacher's presence, a teacher's right to select students at random to answer questions in class, and similar matters.

53. The evidence established that an email sent by (then) Principal Trujillo stated he wanted "to take a hit out" on Respondent. The email was not provided and the context in which that statement was made was not explained. Assistant Superintendent Elzig testified that Principal Trujillo's statement was unfortunate and inappropriate, and that corrective action had been taken to deal with the comment.

It was not established that Principal Trujillo's statement resulted in the production of any untruthful evidence or that any bias Principal Trujillo may have held against Respondent influenced the District's investigation or its proposed disciplinary action.

³ Later, and as an agreed condition to the granting of a continuance that Respondent's (previous) attorney requested, Respondent's paid administrative leave was converted to unpaid administrative leave.

Respondent's Testimony and Evidence

54. Respondent testified about the matters referred to in Factual Findings 1, 2, 3, 5, 8, 11, 15, 19, 24, 27, 34, 36, 39 and 43. He testified that many of the students who testified in this proceeding had a history of behavioral and disciplinary problems, and that others who testified were not as interested in mathematics as they were in extracurricular activities. Respondent suggested that the testimony of these students was not credible and that the students were biased.

Respondent denied intentionally making any disparaging or demeaning comments to students, and he vehemently denied being a racist. He testified that he required group work in all of his classes, which he described as an excellent pedagogical tool, and he said that was one of the several reasons he sometimes refused to help students when asked. Respondent was upset that the District obtained negative statements about him from students without his knowledge, asserting that he had the right to know what was being said so he could refute the student allegations and/or conduct his own investigation. Respondent claimed the District's delay in making him aware of the charges was unreasonable and resulted in his struggling to remember exactly what occurred. Respondent claimed the District failed to produce favorable student comments. Respondent implied his due process rights were violated when the District directed him not talk to anyone about the allegations or retaliate against those who complained. Respondent testified that he believed the reason he was in trouble was the result of his holding students to high behavioral standards and giving students the grades they deserved. Respondent testified that he thought he was in trouble because Assistant Superintendent Elzigg and others were named as defendants in some type of litigation that was filed after the District issued the Notices of Unprofessional Conduct to him. Respondent said that no one from the District ever told him he was a danger to students and, in fact, they permitted him to continue teaching until he was placed on administrative leave.

On the issue of rehabilitation, Respondent said he took the allegations seriously. He said he voluntarily entered the PAR program, where he came under the mentorship of Monica Worley, previously the Chairperson of the Mathematics Department. Respondent was in the PAR program for more than a year before he was placed on administrative leave. He described his activities in the PAR program. Respondent testified that he now works at the college level and that he is always willing to work with administrators.

Respondent testified he is committed to education and student well being, and that he wants students to succeed. He said he takes great pride in his students' success.

On cross-examination, Respondent testified he had filed about ten grievances against District administrators before he was placed on administrative leave.

When Respondent was asked what he would do differently, he said he would have hired Attorney Ackerman much sooner, he would have sought help from National Education Association – Jurupa, he would not have transferred to Patriot High School, and he would not have spoken directly to students about their misconduct and would have simply written

disciplinary referrals. Respondent said he was still willing to continue participating in the PAR program and other improvement programs.

55. The District has employed Monica Worley (Ms. Worley) as a classroom teacher for more than 25 years. She has been associated with the PAR program for three years. Although Ms. Worley knew Respondent before their association in the PAR program, she had “no idea” why Respondent ended up in the program. Respondent never shared the District’s concerns with Ms. Worley. Ms. Worley worked with Respondent as his PAR mentor for one year, four months.

Ms. Worley met with Respondent mostly after school, although she observed him in the classroom approximately half a dozen times. On those occasions, Ms. Worley saw nothing that raised concerns. Respondent engaged well with students.

Ms. Worley believed Respondent enjoyed mathematics and teaching. He always responded promptly to her emails and completed all the work he was assigned without complaint. Ms. Worley maintained a “support log” that summarized her contacts with Respondent; there were no negative comments in it. Ms. Worley encouraged Respondent to provide instruction to students in different ways, and they discussed how he might motivate students to do their homework. According to Ms. Worley, she and Respondent talked “a little” about his discipline policies; she recalled that they discussed contacting students’ parents and removing students from the classroom.

The Contentions

56. Complainant argued that in the four years before the Notice of Intention to Dismiss was filed, Respondent frequently demeaned and belittled his students. Complainant asserted that Respondent was less than candid in his testimony, and that he minimized or denied the nature and extent of his misconduct. Complainant argued that despite being provided with adequate notice of his professional deficiencies, Respondent was unwilling or unable to take effective corrective action and change his behavior. Complainant argued that Respondent received due process throughout the disciplinary process and during the hearing in this matter. Complainant claimed that a preponderance of the evidence supported a determination that Respondent engaged unprofessional conduct, was unfit for service, and persistently violated District regulations and policy. Complainant argued that Respondent’s employment with the District should be terminated.

57. Respondent’s counsel argued that complainant failed to prove the charges. Respondent was not a racist; he did not call his students names; he was not mean spirited; he did not possess a temperamental defect; and he was fit to serve. Respondent’s counsel urged the Commission to look at the evidence as a whole and recognize that the rate of reported incidents, even if some of allegations were true, were miniscule in relation to the enormous number of student contacts Respondent had in the four years preceding the filing of the Notice of Intention to Dismiss; in fact, the student complaints were isolated and did not demonstrate a pattern of misconduct. According to Respondent’s attorney, the students who

filed the complaints “had issues and other priorities,” and their biases explained the reason that they complained; student testimony should not be presumed truthful simply because it was given. Respondent’s students’ academic performance was excellent, which should be the measure of an educator’s fitness. Counsel argued that Respondent was entitled to exercise reasonable judgment in providing instruction in the classroom and academic freedom. The District left Respondent in the classroom for four years before it filed the notice of intention to dismiss, which belied Complainant’s claim that Respondent engaged in a pattern of unprofessional conduct and was unfit to serve. Respondent’s counsel argued that Respondent excelled in the PAR program, which demonstrated Respondent’s willingness to change. However, Respondent was unpopular with District administrators and that, according to counsel, was the motivation for this disciplinary action.

Witness Credibility

58. The testimony of the students was credible, trustworthy and reliable for several reasons. In many instances, their testimony was corroborated by written statements that they provided at or near the time of the incidents at issue. Student testimony was usually supplemented and explained by statements obtained from other students who did not testify in this proceeding; the statements from these students were obtained at or shortly after the incidents that gave rise to this disciplinary matter. The manner in which the District obtained those statements was not unfair, and the District had no obligation to immediately turn those statements over to Respondent.

Some students did not like Respondent, but their dislike of him does not require a finding that their testimony was not believable. It would not have been credible if some of these students had testified that they were fond of Respondent given some of his negative comments about them. Some students had a history of discipline. The mere existence of a disciplinary history, in and of itself, does not justify a finding that a student’s testimony was not trustworthy. The student’s demeanor during their testimony was calm and thoughtful, and the students directly answered the questions that were asked, even when providing a truthful answer may have been embarrassing.

59. The testimony of the administrators was credible for several reasons. In most instances, their testimony was corroborated by contemporaneous notes that were prepared in the ordinary course of business. Based on those notes, adequate notices of misconduct were provided to Respondent that contained detailed explanations and examples relating to such misconduct. There was no rush to judgment, and administrators provided Respondent with opportunities to remediate his conduct. The administrators testified in a non-adversarial manner. The administrators were not impeached to any great extent on cross-examination.

60. Ms. Worley was a credible witness. She observed Respondent in the classroom on half a dozen occasions. Ms. Worley’s limited classroom observations do not support a finding that Respondent is fit to teach or that he always engaged in professional conduct outside her presence. To the contrary, Ms. Worley’s observations, and those of Vice

Principal Owens, established that Respondent was capable of behaving in a reasonable fashion when he was being observed and it was in his interest to do so.

61. Respondent was not a credible witness. His interest in the outcome of the proceeding was obvious and was reflected in his attitude and demeanor. Respondent provided testimony he believed to be helpful in response to questions that were not asked, and he offered farfetched explanations to disprove some evidence that was offered by Complainant, such as his Clever Hans and Napoleon's horse testimony. Respondent speculated about the motivation of witnesses, and sometimes he offered explanations that made no sense, such as the District's retaliation against him for his involvement in litigation that had not yet been filed and in which he was not a party. Some of Respondent's testimony was simply false; for example, there is no doubt that Respondent called RM a "super senior," that he called his students "Idiots" in French, and that he said that they were "Dumb as rocks." Respondent's testimony about those material matters was false, and his willingness to testify falsely under oath about those matters brought into question the credibility and trustworthiness of his testimony as a whole.

The Morrison Factors

62. The Commission applied the *Morrison* factors and determined that Respondent is not fit to teach within the District.

Respondent holds a single subject teaching credential and was employed to provide instruction to high school students. In the four years preceding the filing of the Notice of Intention to Dismiss, Respondent engaged in a pattern of conduct that featured name calling, the belittling and demeaning of students, and an unreasonable refusal to help students with their assignments. Respondent's conduct adversely affected students. The conduct at issue was continuing and occurred most recently in fall 2011, when Respondent was placed on administrative leave. Aggravating circumstances included a history of unprofessional conduct, as reflected by the issuance of a Letter of Reprimand and two Notices of Unprofessional Conduct, and an inability to recognize his weaknesses. There was nothing praiseworthy in Respondent's demeaning and belittling students, singling students out for ridicule in the classroom, or the unreasonable refusal to provide instructional assistance when asked. Given his history, it is more likely than not that Respondent would engage in the same or similar kinds of misconduct if he returned to employment with the District. Respondent clearly demonstrated that he was not fit, not adapted to, and was unsuitable for employment with the District, most likely by reason of temperamental defect that was shown to be irremediable after his receipt of several notices that informed him that his conduct failed to meet the District's reasonable expectations. Respondent's dismissal from his employment will not have a chilling effect on his constitutional rights or the constitutional rights of other teachers. A teacher does not have a right to expose students to embarrassment or disparagement.

During Respondent's employment, Board Policy 4122 and Board Policy 4144 were in effect. Under these policies, Respondent and other teachers were required to practice the

profession of teaching in accordance with the highest ethical standards, to protect the health and safety of students, to honor the integrity of students, to influence students through constructive criticism rather than by ridicule and harassment, to teach in accordance with the abilities and achievements of the pupils assigned to the classroom, to maintain a behavioral climate within the classroom conducive to learning, to make a reasonable effort to protect students from conditions harmful to learning, and to refrain from intentionally exposing students to embarrassment and disparagement.

Respondent persistently violated these policies. Respondent ridiculed and harassed students, failed to provide instruction in accordance with the abilities and achievements of the pupils assigned to his classroom, failed to maintain a behavioral climate within his classroom that was conducive to learning, and exposed students in the classroom to embarrassment and disparagement through his comments and actions.

The Commission concludes that Respondent's dismissal from employment is appropriate and will not violate his constitutional rights. The Commission is mindful that this determination is based upon a preponderance of the evidence standard and that its decision does not involve an evaluation of Respondent's fitness to hold a teaching credential or his ability to serve in a credentialed capacity elsewhere.

Jurisdictional Matters

63. All prehearing jurisdictional requirements were met. The parties to this disciplinary proceeding accepted those individuals who were selected to serve as panel members as being qualified. On February 12, 2013, the record in the administrative proceeding was opened; jurisdictional documents were presented; rulings were issued on motions in limine argued outside the presence of the panel members nominated by the parties; and opening statements were given. On February 13, 14, 19 and 20, 2013, sworn testimony and documentary evidence was received, and official notice was taken. On February 20, 2013, closing arguments were given; the record was closed; the matter was submitted; and the Commission met in closed session to determine the matter.

LEGAL CONCLUSIONS

Burden and Standard of Proof

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

Due Process under the Education Code

2. A permanent employee may be dismissed for cause only after a dismissal hearing conducted in accordance with the Education Code. (Ed. Code, §§ 44932, 44934 and 44944.) Hearings to determine whether a permanent public school teachers should be dismissed from employment for cause are held before a Commission on Professional Competence – a three-member administrative tribunal consisting of one credentialed teacher chosen by the school board, a second credentialed teacher chosen by the teacher facing dismissal, and an administrative law judge the Office of Administrative Hearings who serves as chairperson and a voting member of the commission and who is responsible for assuring that the legal rights of the parties are protected at the hearing under Education Code section 44944, subdivision (b). The Commission’s decision is deemed to be the final decision of the district’s governing board under Education Code section 44944, subdivision (c). (*California Teachers Ass’n v. State of California* (1999) 20 Cal.4th 327, 331.)

3. A Commission on Professional Competence has broad discretion to determine the issues before it and to determine whether dismissal is the appropriate sanction. (*California Teachers Ass’n v. State of California, supra*, at p. 343.) 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 seeking dismissal by imposing probation or an alternative sanction. (Ed. Code, § 44944, subds. (c)(1)-(3).)

Statutory Grounds for Dismissal

4. Education Code section 44932 provides in part:

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

(1) Immoral or unprofessional conduct.

[¶] . . . [¶]

(5) Evident unfitness for service.

[¶] . . . [¶]

(7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools . . . by the governing board of the school district employing him or her. . . .

Relevant Legal Authority

5. A Commission has broad discretion in disciplinary matters. Its role is not merely to determine whether the charged conduct in fact occurred, but to decide whether that conduct - measured against the *Morrison* criteria - demonstrates unfitness to teach and thus constitutes “immoral or unprofessional conduct” within the meaning of the statute. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 220.)

6. Fitness to Teach – Unprofessional Conduct - The Nexus Requirement: The terms “immoral” or “unprofessional conduct” are so broad and vague that, standing alone, they could be constitutionally infirm; hence the proper criteria is fitness to teach. A board cannot abstractly characterize conduct as “immoral,” “unprofessional,” or “involving moral turpitude” unless that conduct indicates that petitioner is unfit to teach. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 696.)

7. Unfitness or fitness to teach is a question of ultimate fact. (*West Valley-Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1775, citing *Board of Education v. Jack M.*, *supra*, at 698, fn. 3.)

8. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court suggested seven factors that may be utilized to determine whether certain conduct was unprofessional and demonstrated unfitness to teach.

In determining whether the teacher’s conduct thus indicates unfitness to teach the board may consider such matters as [1] the likelihood that the conduct may have adversely affected students or fellow teachers, [and] the degree of such adversity anticipated, [2] the proximity or remoteness in time of the conduct, [3] the type of teaching certificate held by the party involved, [4] the extenuating or aggravating circumstances, if any, surrounding the conduct, [5] the praiseworthiness or blameworthiness of the motives resulting in the conduct, [6] the likelihood of the recurrence of the questioned conduct, and [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. These factors are relevant to the extent that they assist the board in determining whether the teacher’s fitness to teach, i.e., in determining whether the teacher’s future classroom performance and overall impact on his students are likely to meet the board’s standards.

9. The *Morrison* factors can be applied to all the charges in the aggregate. When a camel’s back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. A trier of fact is entitled to consider the totality of the

offensive conduct. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.)

10. Evident Unfitness for Service: *Woodland Joint Unified School District v. Commission on Professional Competence*, *supra*, at p. 1444, held that “evident unfitness for service” as a ground for dismissal of a teacher means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. The phrase connotes a fixed character trait that is presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district. The definition of “evident unfitness for service” does not include the terms “incompetent” and “physically or mentally unsound” since those characteristics are specified as separate causes for dismissal in the statute.

11. Unlike unprofessional conduct, “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.” (*San Diego Unified School District v. Commission on Professional Competence (Lampedusa)* (2011) 194 Cal.App.4th 1454, 1462.)

12. Persistent Violation: A school district has the right to adopt rules governing the conduct of its employees and to require employees to observe those rules. A single violation of a school board’s rules is not, of itself, cause for the dismissal of a permanent teacher under the Education Code. While this ground for dismissal pertains to unintentional as well as intentional transgressions, and hence apparently allows the opportunity for a correction, the Legislature has decreed that a single violation is not sufficient to warrant dismissal; it is the persistent disregard of school rules that the subsection is designed to regulate. (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 84.)

Cause Exists to Dismiss Respondent from Employment

13. A preponderance of the evidence established cause under Education Code section 44932, subdivision (a)(1), to dismiss Christopher Gillotte from his employment with the Jurupa Unified School District on the grounds of unprofessional conduct. In the last four years of his employment before the filing of the Notice of Intention to Dismiss, Respondent engaged in a pattern of conduct that featured name calling, the demeaning and belittling students, and an unreasonable refusal to help students with their assignments. His conduct adversely affected students. The conduct was continuing in nature and occurred most recently in fall 2011, following the issuance of a Letter of Reprimand and two Notices of Unprofessional Conduct. There was nothing praiseworthy about Respondent’s demeaning and belittling conduct towards students or his unreasonable refusal to provide instructional assistance when asked. It is more likely than not that Respondent will engage in the same or similar misconduct if allowed to return to employment with the District.

14. A preponderance of the evidence established cause under Education Code section 44932, subdivision (a)(5), to dismiss Christopher Gillotte from his employment with the Jurupa Unified School District on the grounds of evident unfitness for service. It was clearly demonstrated that Respondent was not fit, not adapted to, and was unsuitable for employment with the District. Respondent continued to engage in unprofessional conduct following his receipt of several Notices from the District that notified him that his conduct failed to meet the District's reasonable expectations, and his inability to remediate his misconduct was most likely because of a temperamental defect.

15. A preponderance of the evidence established cause under Education Code section 44932, subdivision (a)(7), to dismiss Christopher Gillotte from his employment with the Jurupa Unified School District on the grounds of persistent disregard of the Governing Board's policy that required teachers employed by the District to avoid ridiculing students, to provide instruction in accordance with the abilities and achievements of the pupils assigned to the classroom, to maintain a behavioral climate within the classroom that was conducive to learning, and to avoid exposing students to embarrassment and disparagement.

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DISPOSITION

The charges contained in the Dismissal Accusation and Statement of Charges are sustained as reflected in the Commission's factual findings and legal conclusions set forth herein. Richard Gillotte is dismissed from his employment with the Jurupa Unified School District.

DATED: _____

JAMES AHLER, Administrative Law Judge
Commission on Professional Competence

DATED: _____

RUSSELL KLINE, Member
Commission on Professional Competence

DATED: _____

CHRISTOPHER RABING, Member
Commission on Professional Competence