

BEFORE A  
COMMISSION ON PROFESSIONAL COMPETENCE  
FOR THE OCEANSIDE UNIFIED SCHOOL DISTRICT

In the Matter of the Suspension of:

ROBYN MIZOGUCHI,

A Permanent Certificated Employee,

Respondent.

OAH No. 2016120176

**DECISION**

On April 3, 4, and 5, 2017, a Commission on Professional Competence (Commission) heard this matter in Oceanside, California. The Commission consisted of the following members: Kimberly J. Belvedere, Administrative Law Judge; Carolyn Friedman; and Rebecca McQuestion, Ed.D.

Daniel Shinoff and Amanda Johnston, Attorneys at Law, represented complainant, Cheri Sanders, Assistant Superintendent, Human Resources, Oceanside Unified School District.

Jon Vanderpool, Attorney at Law, represented respondent, Robyn Mizoguchi, who was present throughout the hearing.

The record was held open to permit the committee to deliberate and reach a decision. The record was closed and the matter submitted on April 14, 2017.

**PROTECTIVE ORDER**

The names and images of all children referred to in this matter are subject to a protective order. Any document received as evidence in this matter that contains the name of a minor shall, before any disclosure to the public, be redacted and replaced by the initials of the minor's first and last name. No court reporter or transcription service shall transcribe the names of the minors but shall instead refer to each minor by his or her initials.

## ISSUE

Did Mr. Mizoguchi engage in the conduct alleged in the Notice of Charges on September 16, 2016, concerning the control of students? If so, did his conduct constitute immoral conduct and evidence unfitness for service warranting the imposition of a two-day suspension without pay?

## SUMMARY

A preponderance of the evidence did not establish that, on September 16, 2016, Mr. Mizoguchi engaged in the conduct alleged in the Notice of Charges. Although Mr. Mizoguchi used a degree of physical contact to control a chaotic situation outside the classroom of another teacher, the amount of physical contact established by the evidence was appropriate under the circumstances and allowed by law. It was not established that the physical contact violated district policy, professional standards, or various cited provisions of the Penal Code and Education Code pertaining to corporal punishment. Accordingly, Mr. Mizoguchi's conduct did not constitute immoral conduct or show unfitness for service, and the Notice of Charges is dismissed.

## FACTUAL FINDINGS

### *Jurisdiction*

1. On October 31, 2016, complainant signed the Notice of Charges in her official capacity advising Mr. Mizoguchi of the board's intention to suspend him for two days without pay under Education Code section 44932.

2. The Notice also advised that the district will send a Notice of Unprofessional Conduct, pursuant to Education Code section 44938, to Mr. Mizoguchi, indicating that he had 45 days to "correct his faults and overcome the grounds for charges . . . or the district [would] move for further discipline . . . ."

3. The Notice of Charges and other jurisdictional documents were served on Mr. Mizoguchi, who timely filed a notice of defense; this hearing ensued.

### *Mr. Mizoguchi's Background*

4. Mr. Mizoguchi has held a Clear Multiple Subject Teaching Credential since 1998. He also holds a Clear Resource Specialist Certificate of Competence, authorizing him to provide instruction to special education students.

5. Mr. Mizoguchi has been teaching for 19 years, 14 of which have been within the Oceanside Unified School District. His current assignment, where he has been for four

years, is Jefferson Middle School. His primary duty is to teach special education students. However, he provides support to other teachers in their classrooms. When functioning in that capacity, the general education teacher delivers the lessons to the students, and Mr. Mizoguchi supports his special education students as well as students who are not qualified to receive special education services but who may be struggling.

6. Mr. Mizoguchi's most recent personnel evaluation indicated he met standards expected of him. The author of the document made the following comments on his personnel evaluation:

I have observed Mr. Mizoguchi in a variety of settings: in-class support teacher in 8<sup>th</sup> grade Algebra, Learning Center/Study skills with small groups and conducting IEP meetings throughout the year. The words like: *Professional, Caring, Organized, Methodical, and Well-Prepared*, come to mind when I am around Mr. Mizoguchi. He is very consistent with his support within the classroom and carries it over during learning center time. This has been a valuable support for our 8<sup>th</sup> grade students. He has also shown great respect, humility and support when meeting with parents during IEP meetings. Mr. Mizoguchi has made sure to have all pertinent data at hand in order to present the best information that is used to draft the goals that support and ensure student learning and success.

7. Mr. Mizoguchi has never been accused of misconduct in connection with his employment and has never been disciplined.

#### *The District's Investigation*

8. Christy Dayhoff is an Educational Support Services Coordinator for the district. At the time of the September 16, 2016, incident, she was the principal at Jefferson Middle School. She had been appointed principal in July 2016 just before the start of the academic year, and left in December 2016.

Ms. Dayhoff testified that on the date of the incident, she heard over the school radio (handheld) that something had occurred outside Mr. London's classroom. Shortly thereafter, she received a call to contact the student health clerk, Herlinda Ahmad. When Ms. Dayhoff arrived at the health room, she saw a student, L.R., crying. L.R. told her his back hurt and that he had been "thrown against a wall."

Ms. Ahmad, who has been a health clerk at Jefferson Middle School for 23 years, also testified at the hearing. Ms. Ahmad authenticated an entry she made in the Aeries system (computerized school records for each student) on September 16, 2016, regarding L.R. That entry stated:

Student reports that he was grabbed by a male teacher and slammed against a wall with his back. No visible injury. Cold compress applied. Principal C. Dayhoff and AP- C. Coscuna informed.

Ms. Ahmad testified at the hearing, consistent with her entry, that she did not see any bruising, redness, or injuries anywhere on L.R. Photographs admitted into evidence at the hearing did not show any bruising, marks, or injuries. Ms. Ahmad said that Ms. Dayhoff took the photographs; Ms. Dayhoff said she did not know who took the photographs.

After she left the health office, Ms. Dayhoff contacted human resources and spoke with Todd McAteer, the Director of Human Resources for certificated personnel. Mr. McAteer told her to speak to adult witnesses and L.R. Ms. Dayhoff spoke to teachers Joel London and Rasela Mendez, as well as several students. She also filed a report with Child Protective Services as required by law. The students were provided with “Witness Declaration/Incident Report” forms so they could write their own statements; the adult witnesses, with the exception of the school security guard, were not provided with those forms. During the investigation, Ms. Dayhoff learned that another student, J.M., claimed to have been “grabbed by the shirt and pulled” by Mr. Mizoguchi for “misbehaving.”

#### *Witness Testimony Concerning the September 16, 2016, Incident*

##### MR. LONDON’S TESTIMONY

9. Mr. London is credentialed to teach multiple subjects and has taught in the district for several years. On September 16, 2016, he was assigned to Jefferson Middle School and taught math. On that date, he was outside his classroom with the door open attempting to have his students line up for class. The students were not complying, and he was having a hard time getting them to comply. Mr. London saw Mr. Mizoguchi coming up the stairs with J.M., who was late to class. Mr. Mizoguchi was holding on to J.M.’s baggy sweater. He explained that Mr. Mizoguchi was not pulling or grabbing at J.M.; rather, the two were walking up the stairs simultaneously. J.M. was wearing a backpack and was smiling. Mr. London would poke his head in and out of the classroom because there were some students inside his classroom. He said there were about 20 students inside his classroom and 10 outside refusing to line up. He continued to give commands for students to line up, and Mr. Mizoguchi was helping him. He heard L.R. say something like “fool, you can’t tell me what to do” or “you can’t do that” to Mr. Mizoguchi. Mr. London said L.R. was instigating students to not comply with the line-up order. Mr. London heard Mr. Mizoguchi tell L.R. to have a seat between two double doors on the second floor landing on the opposite side of his classroom. Mr. London demonstrated and explained that Mr. Mizoguchi held his arms open in a manner like a “basketball player would play defense” and “ushered” L.R. to the doorway. Mr. London was adamant that Mr. Mizoguchi did not touch L.R. However, as Mr. Mizoguchi tried to usher L.R. to the double doors with open arms, L.R. was pacing back and forth and yelling things at Mr. Mizoguchi. Eventually Mr. Mizoguchi was able to usher L.R. to the area of the double doors. Mr. London said Mr.

Mizoguchi did not grab L.R., did not throw L.R. against the wall, and did not push L.R. Mr. London also never saw L.R. lying on the ground as L.R. claimed.

At some point, Ms. Mendez –whose classroom is next to the double doors where L.R. was standing – came out and asked what was going on. Once Ms. Mendez came out, Mr. London went back to his classroom. Shortly after that, L.R. came into his class and asked to go to the health office. L.R. was not crying.

Mr. London testified that he has never seen Mr. Mizoguchi act inappropriately with any students. He said that Mr. Mizoguchi is “like a father” to the students.

Mr. London’s testimony was sincere, credible, and forthright.

#### MS. MENDEZ’S TESTIMONY

10. Rasela Mendez has taught 8th grade math at Jefferson Middle School for 10 years. Her classroom is on the second floor across from Mr. London’s classroom. On September 16, 2016, she was sitting at her desk, which is 20-25 feet from the door. She could see the students on the second floor landing, but she could not see Mr. London. She heard Mr. London shouting “listen to your teacher.” She said it was just the typical volume of noise one hears when trying to settle students and get them into the classroom. On this date, however, the noise continued a “little longer than normal,” and she heard Mr. London constantly repeating “listen to your teacher.” Ms. Mendez said she respects her colleagues and did not want to intervene, so she waited a few seconds before coming outside. She did not hear any banging noises or any noises that sounded like someone being thrown up against a door. She did see L.R. “shifting” back and forth trying to get around Mr. Mizoguchi. She could not see Mr. London from where she was seated at her desk.

When Ms. Mendez walked outside her classroom, she saw L.R. standing by the double doors next to her classroom. She waited until Mr. Mizoguchi was able to get L.R. to settle down, and then she walked over to L.R. to assist. She said L.R. looked agitated, frustrated, and upset, but he was not crying. When she began to talk to L.R., L.R. did not tell her he was injured in any way, and she never observed him lying on the ground. She said Mr. Mizoguchi did not appear angry. Ms. Mendez told L.R. he needed to resolve whatever his issues were with Mr. Mizoguchi and apologize to Mr. London for not listening. L.R. then walked up to Mr. Mizoguchi, who had moved away from the double doors while Ms. Mendez was speaking to L.R., and said something quietly to Mr. Mizoguchi. Ms. Mendez trusted her colleagues to handle the situation, so she went back to her classroom.

Ms. Mendez’s testimony was sincere, credible, and forthright.

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## STUDENT TESTIMONY

11. Several students testified about what they claimed to have observed on the landing during the incident. All students were properly qualified and determined to understand the difference between the truth and a lie prior to giving testimony.

12. J.M. is 12 years old and is in Mr. Mizoguchi's special education class. The September 16, 2016, incident occurred on the second floor landing outside Mr. London's class. He said he was standing near the railing wearing his backpack. Students were outside the classroom "being bad." He said the students were not standing in line and were talking very loud. J.M. said Mr. Mizoguchi grabbed his jacket and backpack on one side with one hand but that it was "not a hard tug" and "only moved [him] a little." Mr. Mizoguchi told him not to be like the other kids and moved him back in line. He did not recall Mr. Mizoguchi saying anything like what L.R. wrote in his statement, to the effect of "don't be like the other kids they are fools." He did hear L.R. say "let him go" and remembered Mr. London telling L.R. that Mr. Mizoguchi was "just doing his job." He also remembered Mr. Mizoguchi telling him to make good choices. When he demonstrated how Mr. Mizoguchi interacted with L.R., he demonstrated a slight push with one hand but did say L.R.'s back "hit" the wall.

J.M.'s written declaration stated the following:

So I was walking upstairs and I wasn't in line and Mr. Mizoguchi pulled my jacket and backpack and he pulled me on the rail and he told me to not be like my other friends he pulled me in line and he also did the same to . . . but he pushed . . . on the wall and Mr. Mizoguchi was trapping him.

13. Student E.S. is 13 years old. On September 16, 2016, she was in Mr. London's 6th grade math class. The incident occurred on the second floor landing outside Mr. London's math class. She was not standing in line as students were supposed to be doing; she was standing off to the side. Mr. London did not let students come inside. She testified Mr. London "usually picks on the kids that are bad and makes the bad kids stay outside." She described "bad" kids as the ones who do not pay attention and have bad behavior. At some point, she heard Mr. Mizoguchi yell, "get in line." Some students listened; others did not. A quarter then fell out of her hand, so she started walking down the stairs to get it. Mr. Mizoguchi told her to go back upstairs, and she complied. It was at that point that she saw Mr. Mizoguchi "grab" L.R. by the "front" of his shirt and push L.R. against the double doors. She also remembered that Mr. Mizoguchi grabbed J.M.'s "elbow or something" while J.M. was standing near the stairs. She thought the interaction between L.R. and Mr. Mizoguchi happened before the interaction between Mr. Mizoguchi and J.M. Afterwards, Ms. Mendez came out of her classroom and told everyone to get in line.

E.S.'s statement was not consistent with her written declaration taken the date of the incident. In that statement, she did not say anything about trying to walk downstairs to get a



quarter and did not say anything about the interaction with J.M. To the contrary, her declaration stated L.R. and J.M. were yelling, and Mr. Mizoguchi “pulled” one of them (it is unclear) by the “head” and then pulled someone to the “side.” She stated that L.R. “just wanted to go back in line,” but Mr. Mizoguchi blocked his way and L.R. ended up against the wall. Thus, her testimony at the hearing was significantly more detailed than the statement she made on the day of the incident, when the events would have been fresh in her memory.

14. Student N.B. was 12 years old on September 16, 2016, and is in 6th grade. Mr. London was his math teacher at that time. N.B. testified that the incident occurred on the second floor landing outside Mr. London’s math class where everyone was lining up. He said the students were loud and noisy, so Mr. London would not let them into the classroom, although Mr. London had let some students in the classroom. He saw Mr. Mizoguchi come upstairs and saw him “grab” J.M. away from railing (by the arm) and push J.M. on the front of his chest to get him back in line. He then heard someone say “shut up.” He thinks it was L.R. who made that statement. He said Mr. Mizoguchi “pulled” L.R. and “cornered” him against a wall. When he demonstrated the contact, he demonstrated a light pull of the shirt by the shoulder area and a light push. N.B. testified that L.R. “tried to leave” and Mr. Mizoguchi would not let him leave. N.B. said he did see L.R.’s back against the wall. Shortly thereafter, Ms. Mendez came outside to see what was happening. N.B.’s testimony was generally consistent with his written declaration taken the date of the incident.

15. Student S.U. is in seventh grade and is in Mr. Mizoguchi’s special education class. Mr. London is his math teacher. On September 16, 2016, he was inside Mr. London’s classroom before the incident occurred. Students were talking while Mr. London was trying to speak, and they generally were not listening to directions. He remembered Mr. Mizoguchi coming up the stairs to the second floor landing outside Mr. London’s classroom, and he “heard” Mr. Mizoguchi telling the students to stop talking and be quiet. He then heard one of the students yell “shut up.” After that, he “heard” L.R. talking back to Mr. Mizoguchi. S.U. testified that Mr. Mizoguchi “made him go” towards the double doors. He then clarified his statement and noted that Mr. Mizoguchi “grabbed” L.R.’s shirt and “pulled” L.R. towards the double door area. He also contended that Mr. Mizoguchi “pushed” L.R. “towards” the wall. S.U. said that immediately before the interaction with L.R., there was an incident between J.M. and Mr. Mizoguchi. He said J.M. was talking back to Mr. Mizoguchi, and Mr. Mizoguchi pushed J.M. “against the rail,” while telling him to be quiet and get back in line. When S.U. demonstrated what Mr. Mizoguchi did to J.M., he demonstrated a push with both hands against the chest.

16. L.R. is 12 years old and is a student at Jefferson Middle School. On September 16, 2016, he was in Mr. London’s math class when Mr. London said the students needed to go outside and line up because they were being loud. He said he went outside, and J.M. also came outside. He said Mr. London stayed inside the classroom, and Mr. Mizoguchi came outside the classroom. L.R. said J.M. was standing in and out of line, so Mr. Mizoguchi told him to get back in line and stop talking. J.M. would not listen, so Mr. Mizoguchi grabbed him and pulled him by the arm, told J.M. not to do that, and “tried to

push him back into line” by placing hands on J.M.’s back. L.R. said that, when he saw Mr. Mizoguchi trying to “drag” J.M. out of line, he “screamed” to let J.M. go. He said he was about seven feet away from where J.M. and Mr. Mizoguchi were standing.

L.R. said Mr. Mizoguchi started walking towards him. L.R. said he tried to avoid Mr. Mizoguchi, but Mr. Mizoguchi became angry, “grabbed” him by the shirt, and “pushed” him into the wall next to the double doors. L.R. said he “pushed” Mr. Mizoguchi’s hands away at one point prior to being pushed against the wall. L.R. said that, when he was pushed against the double doors, it hurt, and he started to cry. L.R. said he sat down. After he sat down, Ms. Mendez came outside, “tried to cheer [him] up,” and told him that it would “all be OK.” L.R. said Mr. Mizoguchi walked away. L.R. said he went to the health clerk’s office and got some ice. He said he was still crying while at the health clerk’s office.

L.R.’s testimony was inconsistent with the testimony of Mr. London, Ms. Mendez, and Mr. Mizoguchi with respect to what occurred between him and Mr. Mizoguchi. L.R.’s testimony regarding what occurred between Mr. Mizoguchi and J.M. was also not consistent with what other student witnesses said. L.R. not only instigated the chaos on the second floor landing, but his own written statement and testimony confirmed he pushed Mr. Mizoguchi’s hands away from him as Mr. Mizoguchi tried to control the situation.

#### *Mr. Mizoguchi’s Testimony*

17. Mr. Mizoguchi has been a teacher for 19 years. He has never been disciplined or accused of wrongdoing. He did not recall whether he has had formal training regarding when it is appropriate to place hands on students but understands putting hands on students to control them is not a first option unless safety is an issue. Mr. Mizoguchi said that he does touch students because, especially in special education, there are often self-control issues. For example, sometimes students cannot hold still or touch other students at a time when the other students are not desirous of being touched. He also has had students speaking out, throwing things, or doing things to get attention. Mr. Mizoguchi said he will sometimes place his hand on a student’s shoulder to calm the student down.

On September 16, 2016, Mr. Mizoguchi was heading up the stairs to Mr. London’s classroom. He could see the students on the second floor landing and observed that Mr. London was having a difficult time controlling them. J.M. began running down the stairs as Mr. Mizoguchi was heading up the stairs. Mr. Mizoguchi yelled to J.M. and asked him what he was doing. J.M. tried to sidestep him and continue going downstairs so Mr. Mizoguchi reached out and held the loop on J.M.’s backpack to keep him from going downstairs. J.M. is not permitted to mill about the campus on his own; he must always be accompanied. Mr. Mizoguchi testified J.M. started making excuses as to why he had to go downstairs, but Mr. Mizoguchi told J.M. he needed to go back upstairs. Mr. Mizoguchi said he did not grab, squeeze, or pinch anything on J.M.; he merely held J.M. by his sweater and began walking up the stairs with him.



Once he reached the second floor landing, Mr. Mizoguchi saw students engaged in “horseplay.” Some students were leaning on the railing. Some students were banging on the elevator door. Mr. London was having difficulty getting them under control. Mr. Mizoguchi “felt alarmed” by the students’ challenging Mr. London. Mr. Mizoguchi saw J.M. start to engage in horseplay with the other boys on the landing. He called out to J.M. repeatedly. Eventually, Mr. Mizoguchi said he “touched” J.M. to “move” him. He said at one point J.M. was bent over the railing spitting, so he held J.M.’s backpack and pulled him back from the railing. As he was speaking with J.M. about his behavior, Mr. Mizoguchi said L.R. came within a foot of his face and started screaming that he could not touch students, calling him a molester, and saying Mr. Mizoguchi was gay. The statements did not anger Mr. Mizoguchi because he has heard much worse in his career. Once L.R. started yelling, the other boys on the landing started yelling the same thing. Thus, L.R.’s conduct escalated the intensity of the problems on the landing.

At that point, Mr. Mizoguchi turned to L.R. because he thought it was a good idea to get L.R. away from the other boys. Mr. Mizoguchi ordered L.R. to go to the opposite side of the landing away from Mr. London’s classroom. Mr. Mizoguchi pointed to the double door area and told L.R. to “sit down over there.” He did not place any hands on L.R., who did not comply.

Because L.R. continued yelling and would not comply, Mr. Mizoguchi put his arms out (in the same manner as described by Mr. London) and tried to guide L.R. towards the double doors. L.R. kept trying to shift left and right so Mr. Mizoguchi shifted his position to block L.R. At some point, L.R. hit Mr. Mizoguchi’s hand. Mr. Mizoguchi was successful in getting L.R. to move to the double door area. However, he never touched L.R., never pushed L.R., and did not shove L.R. onto the ground.

After L.R. was standing by the double doors, Ms. Mendez called out to some of the boys to “knock it off” and then started speaking to L.R. Once he saw Ms. Mendez talking to L.R., Mr. Mizoguchi backed up and let her handle L.R. Once Ms. Mendez released L.R., he came up to Mr. Mizoguchi and said he was sorry and walked into Mr. London’s classroom.

Mr. Mizoguchi said that at the November 1, 2016, meeting when they notified him he would be facing discipline, he was in a “state of disbelief.” He said he could not believe he was being accused of child abuse and may have commented how difficult the job is becoming. He did not, however, state that he needed to put his hands on students to do his job. He also did not recall apologizing at the meeting because none of his actions were physically aggressive.

Mr. Mizoguchi regrets the situation that occurred and said that looking back he realizes he might have been able to handle things differently. He said he realizes now that his colleagues – like Ms. Mendez – are very willing to help in situations like the one that occurred on the landing. Mr. Mizoguchi reflected that perhaps he should be more willing to ask for help in the future. He also said that in the future perhaps it might be a better idea to

take more time to assess the situation and make an assessment as to what superiors might desire.

Mr. Mizoguchi's testimony was sincere and credible. His testimony was consistent with that of Mr. London, Ms. Mendez, and J.M. Mr. Mizoguchi's testimony was also consistent with a written statement he sent to Ms. Sanders on December 16, 2016, after he had been notified of the allegations against him.

#### *District Actions Following the Incident*

18. Cheri Sanders is the Associate Superintendent of Human Resources and testified at the hearing. According to Ms. Sanders, she spoke with Mr. McAteer following the incident. They made a determination to place Mr. Mizoguchi on paid administrative leave, which became effective September 19, 2016. Mr. McAteer told her he was going to conduct follow-up interviews with the students, which he did.

19. Mr. McAteer did not testify at the hearing, and his notes regarding the interviews he conducted constituted administrative hearsay and were generally not helpful. Some of the notes indicated that they were summaries. Other portions of the notes did not contain dates of interviews. One of the dates, October 2, 2016, was actually a Sunday, and was therefore not a correct date. Moreover, because Mr. McAteer did not testify, it is not known whether the words he used in his notes are direct quotes or paraphrased statements. Thus, Mr. McAteer's notes concerning his interviews were not relied on in forming conclusions concerning credibility of witnesses or in making findings of fact.

20. Mr. Mizoguchi reported back to full duty at the school on October 12, 2016.

21. According to Ms. Sanders, following the investigation, she presented the board with the Notice of Charges and statements provided by the student witnesses, Ms. Dayhoff's paraphrased notes, and photographs of L.R. However, Mr. London's statements concerning the incident were not attached; Ms. Mendez's statements concerning the incident were not attached; and Mr. Mizoguchi's statements concerning the incident were not attached. Those statements generally were helpful to Mr. Mizoguchi, provided credible accounts of the incident, and called the credibility of the student statements into question. Ms. Sanders did not know why those statements were not included and said nothing requires that every investigation document be provided to the board.

22. On November 2, 2016, a meeting occurred among Mr. Mizoguchi, Ms. Sanders, Mr. McAteer, and Jennifer Skellet (President of the California Teacher's Association). The purpose of the meeting was to review the Notice of Charges with Mr. Mizoguchi. Ms. Sanders testified that, when Mr. Mizoguchi was presented with the packet containing the Notice of Charges and what had been provided to the board, he was surprised and upset. Ms. Sanders testified that Mr. Mizoguchi commented that he could not do his job if he could not put hands on students. Ms. Sanders found this statement troubling, as she personally believes the only time a teacher should ever touch a student is in self-defense. In

response to Mr. Mizoguchi's concerns regarding the fact that not all of the witness statements were provided to the board, Ms. Sanders stated there is no rule that requires everything be provided to the board.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. The standard of proof in a teacher disciplinary proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.)

### *Relevant Statutory and Constitutional Authority*

2. Education Code section 44932, subdivision (a), provides in part:

A permanent employee shall not be dismissed except for one or more of the following causes:

(1) Immoral conduct, including, but not limited to, egregious misconduct. For purposes of this chapter, "egregious misconduct" is defined exclusively as immoral conduct that is the basis for an offense described in Section 44010 or 44011 of this code, or in Sections 11165.2 to 11165.6, inclusive, of the Penal Code.

[(1)] . . . [(1)]

(6) Evident unfitness for service.

3. Education Code section 44934 permits a district to seek suspension or dismissal for a violation of provisions of Education Code section 44932.

4. Under the California Constitution, students and employees "have the inalienable right to attend campuses which are safe, secure and peaceful." (Const. art. 1, §28.) It is an explicit duty of teachers to reasonably control the conduct of students to maintain a safe and healthy learning environment. (Ed. Code, § 44807).

5. Education Code section 49000 et seq., sets forth the law regarding the prohibition of utilizing corporal punishment in schools. Section 49001, subdivision (a), provides:

For the purposes of this section "corporal punishment" means the willful infliction of, or willfully causing the infliction of,

physical pain on a pupil. An amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to persons or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, is not and shall not be construed to be corporal punishment within the meaning and intent of this section. Physical pain or discomfort caused by athletic competition or other such recreational activity, voluntarily engaged in by the pupil, is not and shall not be construed to be corporal punishment within the meaning and intent of this section.

6. Penal Code section 11165.3, provides:

As used in this article, “the willful harming or injuring of a child or the endangering of the person or health of a child,” means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

7. Penal Code section 11165.4, provides:

As used in this article, “unlawful corporal punishment or injury” means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

8. Education Code section 44807 provides:

Every teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess. A teacher, vice principal, principal, or any other certificated employee of a school district, shall not be subject to criminal prosecution or criminal penalties for the exercise, during the performance of his duties, of the same degree of physical control over a pupil that a parent would be legally privileged to exercise but which in no event shall exceed *the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning*. The provisions of this section are in addition to and do not supersede the provisions of Section 49000. [Emphasis added].

#### *Relevant Board Policies*

9. The applicable board policy for professional standards cited in the Notice of Charges, section 4119.21, provides:

The Board of Education expects district employees to maintain the highest ethical standards, exhibit professional behavior, follow district policies and regulations, and abide by state and federal laws. Employee conduct should enhance the integrity of the district and advance the goals of the district's educational programs. Each employee should make a commitment to acquire the knowledge and skills necessary to fulfill his/her responsibilities and should focus on his/her contribution to the learning and achievement of district students.

#### *Relevant Judicial Authority*

10. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235, the Supreme Court held that "an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher." The court delineated the following criteria to determine whether a teacher's conduct indicates that he or she is not fit to teach: (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the conduct in question; and (8) the extent to which disciplinary action may

inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.*, at pp. 229-230.)

### *Unfitness for Service*

11. Unfitness for service under Education Code section 44932, subdivision (a)(6), is established by conduct demonstrating that the teacher is “clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) As a threshold matter, the *Morrison* criteria must be examined to ascertain whether the conduct in question indicates unfitness for service. “If the *Morrison* criteria are satisfied, the next step is to determine whether the ‘unfitness’ is ‘evident,’ i.e., whether the offensive conduct is caused by a defect in temperament.” (*Id.*, at 1445.) A Commission has broad discretion to determine what constitutes unfitness to teach and to decide whether the teacher should be sanctioned. (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327, 343.)

12. In *Board of Education v. Jack M.* (1970) 19 Cal.3d 691, the Supreme Court detailed the process to be considered in determining fitness to teach. This opinion upheld the standard established in *Morrison* that a discharged teacher is entitled to a fitness hearing in which not only his conduct but also these factors are analyzed: (1) likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers’ and students’ relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct. (*Id.*, at f.n. 5.)

### *A Preponderance of the Evidence did not Establish Immoral Conduct or Evident Unfitness for Service*

13. A preponderance of the evidence did not establish that Mr. Mizoguchi’s conduct on September 16, 2016, violated any provisions of the Penal Code or Education Code, violated any policies of the school district, or constituted corporal punishment, as alleged in the Notice of Charges. Therefore, cause does not exist to suspend Mr. Mizoguchi for two days without pay pursuant to Education Code sections 44932, subdivision (a)(1), and 44932, subdivision (a)(6) [immoral conduct and evidence unfitness for service].

Mr. Mizoguchi has been teaching for 19 years. His most recent evaluation noted exemplary conduct. Mr. Mizoguchi has never been disciplined. Thus, the conduct alleged in the Notice of Charges is entirely out of character with Mr. Mizoguchi’s background. Mr. Mizoguchi credibly denied any inappropriate contact with both J.M. and L.R. The student witnesses tell another story.

The student witnesses all generally agree that Mr. Mizoguchi had some form of physical contact with J.M. and L.R. However, the manner and degree in which that contact occurred varied widely. The student witnesses used terms in their statements to school



personnel and during testimony like “slammed, pushed, grabbed, and touched.” To the contrary, Mr. London, who was in a position to view the interactions with both students, testified credibly that Mr. Mizoguchi simply held J.M. to guide him up the stairs and also guided him into line. J.M., who was credible, corroborated that version of events. Mr. London also saw Mr. Mizoguchi, with his arms outstretched, trying to guide L.R. – who was belligerent, yelling, and instigating – into a corner away from the other students. Mr. Mizoguchi’s credible testimony corroborated what Mr. London observed with respect to the interaction between respondent and L.R. Ms. Mendez also credibly testified that she came outside her classroom during the commotion and saw respondent speaking to L.R. who was still being disrespectful, and she did not see respondent push L.R. She did not hear anything unusual. She did not see L.R. crying. She did not see L.R. on the ground. Ms. Mendez’s observations directly contradict L.R.’s testimony that he was on the ground and crying after respondent “slammed” him into the wall by the double doors. Indeed, Ms. Mendez’s classroom was right next to the double doors, yet she heard nothing, placing L.R.’s account and/or recollection of what occurred in doubt. L.R. had no injuries, and the photographs provided showed no evidence of redness or bruising.

The version of events related by Mr. Mizoguchi, Ms. Mendez, and Mr. London is much more plausible and consistent than the version of events presented by the student witnesses. A preponderance of the evidence did not establish that Mr. Mizoguchi engaged in immoral conduct or that he is unfit for service. A preponderance of the evidence did not establish that Mr. Mizoguchi violated any professional standard, student discipline requirement, or provisions of the Penal Code and Education Code. Mr. Mizoguchi acted reasonably in his minimal physical contact with J.M. and L.R., as permitted by Penal Code section 44807, to maintain control of the situation on the landing outside Mr. London’s classroom on September 16, 2016.

There may have been a variety of ways that the situation on the landing could have been handled differently. Mr. Mizoguchi – or Mr. London – could have called security. Other teachers, like Ms. Mendez, could have been summoned to assist. Or perhaps, the principal could have been called. Perhaps additional training for all teachers would be of assistance as none of the faculty witnesses expressed a clear standard of what they believe the district expects of them. Nonetheless, it is not the job of the Commission to decide what other options should have been selected to maintain control of the situation; the only issue before us is whether the evidence established that Mr. Mizoguchi engaged in immoral conduct or demonstrated unfitness for service. On this record, he did not.

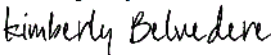
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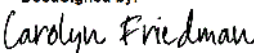
ORDER

The Notice of Charges against Robyn Mizoguchi is dismissed.

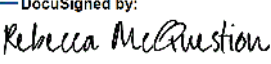
May 11, 2017  
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KIMBERLY J. BELVEDERE  
Administrative Law Judge  
Office of Administrative Hearings

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REBECCA MCQUESTION, Ed.D.  
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