

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Dismissal of:

NICHOLAS CAMONTE (EN 772915),  
A Permanent Certificated Employee,

Respondent.

OAH No. 2015040360

**DECISION**

On May 18 through 22, 2015, Michael A. Scarlett, Administrative Law Judge (ALJ), Office of Administrative Hearings, sitting alone, heard this matter on behalf of the Commission on Professional Competence (Commission) in Los Angeles, California.<sup>1</sup>

Michelle K. Meek, Attorney at Law, Liebert Cassidy Whitmore, A Professional Corporation, represented Justo H. Avila (complainant), Chief Human Resources Officer, Los Angeles Unified School District (LAUSD or District).

Daniel Kolodziej, Attorney at Law, Trygstad, Schwab & Trygstad, represented Nicholas Camonte (respondent), a permanent certified employee of the District, who was present throughout the hearing.

Oral and documentary evidence was received and the record was closed on May 22, 2015. The Commission finds as follows:

**FACTUAL FINDINGS**

*Jurisdiction*

1. On February 20, 2015, complainant made and filed the Statement of Charges alleging that respondent committed immoral conduct, including egregious misconduct based upon conduct allegedly to have been committed by respondent between January to June

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<sup>1</sup> Education Code section 44944.1, subdivision (c), provides that effective January 1, 2015, dismissal or suspension proceedings based on charges of egregious misconduct may be heard by an ALJ sitting alone who shall have all of the powers granted to an agency pursuant to Education Code section 44934.1.

2006, as listed in Factual Finding 2 below.<sup>2</sup> On March 11, 2015, respondent was served with the District's Notice of Intent to Dismiss. On April 13, 2015, complainant filed the Accusation in his official capacity alleging said charges, and on April 7, 2015, respondent submitted a request for hearing to the District, and filed a Notice of Defense.

2. Complainant's Accusation seeks to dismiss respondent, a permanent certificated employee of the District, for immoral conduct, including egregious misconduct, in violation of Education Code sections 44932, subdivision (a)(1), and 44939.1,<sup>3</sup> based on the following allegations:

- (1) During the period from on or about January 1, 2006 through on or about June 5, 2006, respondent while a 5th grade teacher at Vermont Elementary School, touched the buttocks of female student K [REDACTED] A.;
- (2) During the period from on or about January 2006 through on or about June 2006, respondent touched the hips and massaged the neck of female student C [REDACTED] V.;
- (3) During the period from on or about January 2006 through on or about June 2006, respondent touched the buttocks of female student P [REDACTED] P.;<sup>4</sup>
- (4) During the period from on or about January 2006 through on or about June 2006, respondent invited P [REDACTED] P. to his classroom during recess or lunch on no fewer than two occasions and committed the following acts:

- a. Placed a blindfold on her;

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<sup>2</sup> On April 16, 2013, the District issued respondent a Notice of Unsatisfactory Service or Acts and Notice of Suspension in relation to conduct alleged to have occurred between January and June 2006. The District asserted respondent's conduct constituted immoral conduct, unprofessional conduct and persistent violations of and/or refusal to obey policies, regulations and/or laws governing the LAUSD Code of Conduct with Students.

<sup>3</sup> All further statutory references shall be to the Education Code unless otherwise specified.

<sup>4</sup> On May 13, 2015, respondent filed a Motion to Strike or Dismiss Charge Nos. 1 through 3. Respondent argued that these charges were barred by the four-year statute of limitations in former section 44944 because the alleged conduct occurred in 2006, and the District's Notice of Intent to Dismiss was not issued until March 11, 2015, almost nine years later. Section 44944 was amended effective January 1, 2015, to provide an exception to the four-year rule and extend the limitations period for sexual misconduct which violated specified provisions of the Penal Code. (Educ. Code 44944, subdivision (b)(2)(B).) At hearing, the ALJ denied respondent's motion ruling that section 44944, subdivision (b)(2)(B), applied to this proceeding and the alleged sexual misconduct in Charges Nos. 1 through 3, fell under its exception to the four-year rule.

- b. Placed a “taffy-like” object into her mouth while she was blindfolded;
- c. Put an object into her mouth while she was blindfolded, which she believed to have been his penis and told her “not to bite” but to “suck on it;
- d. Pulled down her pants after he blindfolded her and told her to get on her knees;
- e. After pulling down her pants, digitally penetrated her vagina for approximately five minutes; and
- f. Told her that “she better not tell anyone.”

3. All jurisdictional requirements were met to proceed to hearing before the Commission.

#### *Background*

4. In July 2003, respondent was hired as a 5th grade elementary school teacher at Vermont Elementary School (Vermont) within the District. Major DeBerry (DeBerry) was respondent’s principal at Vermont during the 2005-2006 school year. On August 31, 2006, after respondent voluntarily transferred from Vermont, he was assigned to Lillian Elementary School (Lillian). Susan Ahern (Ahern) was the principal at Lillian and she hired respondent to teach 4th and 5th grade. Ahern supervised respondent at Lillian for almost six years from August 2006 until March 2012.

5. As part of respondent’s duties as a 5th grade teacher at Vermont, respondent was required to perform physical education (PE) assessment tests for his students. These PE tests included having the students perform certain exercises including “push-ups” and stress tests. Respondent sometimes had physical contact or “prompting” with the students to assist them in performing the exercises properly. For example when the students performed “push-ups,” sometimes respondent was required to adjust their hands and knees to physically prompt proper form for the exercise. He also would tap student’s shoulders to prompt proper positions. Respondent also testified that at times he would give students a “high five” or pat them on their “backs” to encourage or reward good performance in performing the exercises.

6. In June 2006, K [REDACTED] A., a student in respondent’s 5th grade class at Vermont during the 2005-2006 school year, claimed that respondent inappropriately touched her at least three times in his classroom. Subsequently, after learning of K [REDACTED] A.’s allegations, several other female students in respondent’s 5th grade class, including P [REDACTED] P. and C [REDACTED] V., came forward and asserted that respondent had also touched them inappropriately. After an investigation by the Los Angeles Police Department (LAPD), no criminal charges were brought against respondent and the District returned respondent to work in August 2006, without imposition of discipline. Thereafter, in March 2012, almost six years later, P [REDACTED] P. again claimed that respondent had inappropriately touched her in 2006, but additionally alleged that on at least four different occasions in 2006, respondent

also sexually assaulted her by rubbing or fingering her vagina (skin-to-skin), and blindfolding her and putting an object believed to be his penis into P [REDACTED] P.'s mouth. Consequently, in April 2013, the District brought a Statement of Charges and Accusation against respondent alleging immoral conduct and egregious misconduct based upon both the original 2006 allegations by K [REDACTED] A, P [REDACTED] P., and C [REDACTED] V., and the more egregious allegations of sexual assault made by P [REDACTED] P. for the first time in March 2012.

7. At all times relevant to the Accusation and Statement of Charges, the following District policies or guidelines were in effect: the LAUSD Code of Conduct with Students (effective July 15, 2008); the LAUSD Child Abuse and Neglect Reporting Requirements Policy Bulletin (Bul-1347.2, dated July 1, 2011); the LAUSD Employee Code of Ethics (adopted September 1998; Revised December 2000 and February 2003); and the LAUSD Sexual Harassment Policy Bulletin (Bul-3349.0, dated November 29, 2006). Respondent was familiar with, and received annual training on these policies and guidelines.

#### *K [REDACTED] A. Allegation – Charge No. 1*

8. On June 5, 2006, K [REDACTED] A. filed a report with the LAPD alleging that respondent inappropriately touched her in a sexual manner on three different occasions. LAPD Officers J. Wells (Ofc. Wells) and W. Young (Ofc. Young) interviewed K [REDACTED] A. and her parents and prepared an investigative report dated June 6, 2006. (Exh. 25.) K [REDACTED] A. stated that on January 12, 2006, respondent took her behind a bookshelf in the classroom out of the view of the other students, and told her to do push-ups for a PE test. She stated respondent placed his hands on her buttocks and vagina to guide her body up and down to perform the push-ups. The next day, January 13, 2006, during lunch break with no other students in the classroom, K [REDACTED] A. claimed that respondent, while lifting her up to place alphabet letters on the wall, put his hands on her buttocks and her vagina, squeezing her private parts hard. Finally, in 2006 (dates uncertain but after the first two incidents), K [REDACTED] A. claimed that respondent placed a blindfold over her and M [REDACTED] B.'s eyes and told them to crawl around the classroom on their hands and knees to play a game. She stated that respondent told them to stand up and touch their toes, and then touched both girls on their buttocks.

9. On June 7, 2006, Liset Diaz Covarrubias<sup>5</sup>, a one-to-one aide and teacher assistant in respondent's 5th grade class, was directed by principal DeBerry to obtain written statements from the female students in respondent's class, including K [REDACTED] A.<sup>6</sup> Several of the other female students claimed that respondent either touched them, or that they witnessed respondent touching other students, on the buttocks, lower back, stomach, breast,

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<sup>5</sup> Liset A. Diaz testified that her former name was "Liset Diaz Covarrubias." Because she currently uses the name "Liset A. Diaz," she will be referred to as "Diaz" in this proposed decision.

<sup>6</sup> The female students' written statements were not offered into evidence. The content of the written statements was derived from the LAPD investigation reports.

thigh or leg during PE exercises. One student claimed respondent touched her buttocks during a school photography session.

10. In June 2006, the District placed respondent on administrative leave pending the LAPD investigation of the allegations made by K [REDACTED] A. and the other female students in his class.

11. In June 2006, LAPD officer C. Schlund (Ofc. Schlund) investigated K [REDACTED] A.'s allegations and prepared an investigation report and a follow-up investigation report on June 20, 2006, and July 7, 2006, respectively. (Exh. 25, pp. 6-18.) Ofc. Schlund interviewed ten female students in respondent's 5th grade class, including K [REDACTED] A. and P [REDACTED] P. K [REDACTED] A. provided a description of the three incidents that was consistent with the statement she previously provided to Ofcs. Wells and Young. She additionally stated that respondent was a mean teacher and that she became upset when respondent told her parents she had a boyfriend. P [REDACTED] P. told Ofc. Schlund that she saw respondent "pat" K [REDACTED] A. on the buttocks one time, and that he "patted" her (P [REDACTED] P.) on the buttocks one time as well. However, P [REDACTED] P. stated that respondent never touched her leg, thigh or genitals, and that in June 2006, when respondent asked her to help him clean the classroom during recess, respondent did not inappropriately touch her at that time. M [REDACTED] B. told Ofc. Schlund that respondent massaged her shoulders on one occasion and once tried to touch her buttocks but she avoided the contact. M [REDACTED] B. also stated that respondent blindfolded her and K [REDACTED] A. and made them crawl around the classroom on their knees, but she denied respondent touched their buttocks. M [REDACTED] B. stated that respondent touched several female students on their lower backs during PE tests, but that she never saw him touch any student's genitals.

12. Ofc. Schlund interviewed seven other female students in respondent's 5th grade class. Six of the students recanted their allegations that respondent had inappropriately touched them. Most of the students stated that respondent touched them when performing push-up exercises in in PE class, but they did not think the touching was inappropriate. One student continued to claim that respondent touched her buttocks during a school photography session, but she did not think anything of the contact.

13. Ofc. Schlund interviewed Ms. Diaz who stated that she had never seen respondent doing anything "suspicious or inappropriate" with his students. She stated that respondent assisted female students in performing push-ups during PE tests by adjusting their arms and posture, which sometimes required touching their backs, but that this touching was not inappropriate.

14. On June 27, 2006, Ofc. Schlund interviewed respondent, who admitted that he touched his students' backs and arms to adjust their body positions while doing push-ups during PE tests. However, he denied ever touching a student's buttocks, vagina, lower back or stomach area during these exercises. He admitted giving student's an occasional "pat on the back" as a reward for a job well done, but denied having any intimate contact with his students. Respondent stated that he tutored students after school, but denied having students in his classroom during lunch break. Respondent denied ever making M [REDACTED] B. and K [REDACTED] A. crawl on their knees blindfolded in his classroom during lunch break.

15. On July 6, 2006, the LAPD submitted the case against respondent to the Deputy District Attorney's office for prosecution, but the case was rejected for lack of evidence. Subsequently, in August 2006, the District returned respondent to work without imposing any discipline. Thereafter, in August 2006, respondent requested, and the District granted, a voluntary transfer from Vermont to Lillian Elementary.

16. In May 2012, in connection with the LAPD investigation into P [REDACTED] P.'s new allegations against respondent, Detective Curtis Morton (Det. Morton) interviewed K [REDACTED] A. and six other female students from respondent's 5th grade class at Vermont. K [REDACTED] A.'s statement to Det. Morton in 2012 was significantly different from the statements she gave to investigators in 2006. K [REDACTED] A. again claimed that respondent touched her buttocks in 2006, but she denied that he touched her vagina and stated that respondent touched her when she did push-ups exercises in PE class. Significantly, K [REDACTED] A. omitted any reference to two incidents she reported in 2006, that respondent inappropriately touched her buttocks and vagina while lifting her to place alphabets on the classroom wall, and that respondent made K [REDACTED] A. and M [REDACTED] B. crawl around the classroom blindfolded. K [REDACTED] A. denied that she was aware respondent told her parents she had a boyfriend in 2006, even though Ofc. Schlund's investigative report indicates she became mad and angry when respondent told her parents about her boyfriend.

17. Det. Morton interviewed five female students from respondent's 5th grade class, D [REDACTED] V., Y [REDACTED] S., M [REDACTED] L., N [REDACTED] O. and K [REDACTED] P. They all denied respondent inappropriately touched them in a sexual manner. The students recanted their allegations against respondent, stating that although he touched them while they performed PE exercises, they did not believe the touching was inappropriate or sexual. The students generally stated that they were immature when they made the allegations in 2006, and could not distinguish between inappropriate and appropriate touching at that time. The five students Det. Morton interviewed all said that respondent was a good teacher who they liked. D [REDACTED] V. and N [REDACTED] O. also stated that K [REDACTED] A. lied about her allegations against respondent because respondent told K [REDACTED] A.'s parents that she had a boyfriend.

18. P [REDACTED] P. testified that she saw respondent "grab" K [REDACTED] A.'s buttocks and pull her next to his desk in the classroom. She also stated she witnessed respondent take K [REDACTED] A. up to his classroom and close the classroom door, and thereafter, saw K [REDACTED] A. come out of the classroom visibly upset. In 2006 and 2012, P [REDACTED] P. told investigators that she saw respondent "pat" K [REDACTED] P. on the buttocks one time, but she never told investigators respondent "grabbed" K [REDACTED] A.'s buttocks in the manner she described at hearing or that respondent took her to his classroom and closed the door.

19. In October 2012, Detective Ray Jordan (Det. Jordan), Employee Relations Investigation's Unit, LAUSD School Police Department, initiated an investigation into the allegations made by K [REDACTED] A. and P [REDACTED] P. against respondent. Det. Jordan did not interview K [REDACTED] A. because she could not be located. He doubted the truthfulness of K [REDACTED] A.'s allegations because she originally claimed in 2006 that respondent touched her vagina, but in 2012 she told Det. Morton respondent did not touch her vagina at all. Det.

Jordan investigation report noted that all of the female students in respondent's 5th grade class, except K [REDACTED] A. and P [REDACTED] P., recanted their allegations against respondent, which lead him to believe that K [REDACTED] A.'s allegation was not credible.

20. Det. Jordan interviewed M [REDACTED] B. who was friends with K [REDACTED] A. and P [REDACTED] P. M [REDACTED] B. told Det. Jordan that respondent never touched her in an inappropriate manner and that she had never seen respondent touch any other student inappropriately. She stated that K [REDACTED] A. made up the allegations against respondent because she was mad respondent told K [REDACTED] A.'s parents about K [REDACTED] A. having a boyfriend. M [REDACTED] B. also stated that P [REDACTED] P. never told her that respondent touched P [REDACTED] P. inappropriately. M [REDACTED] B.'s testimony was consistent with her statement to Det. Jordan. She testified that respondent never placed a blindfold over her and K [REDACTED] A.'s eyes and never made them crawl around the classroom or touch their buttocks. She denied respondent ever touched her inappropriately and testified that she never saw respondent touch any other student inappropriately. M [REDACTED] B. also testified that respondent was a good teacher and she liked his class. She was disappointed when respondent did not attend Vermont's 5th grade class graduation in 2006. Finally, M [REDACTED] B. stated that K [REDACTED] A. was mad at respondent because he told K [REDACTED] A.'s parents she had a boyfriend.

*P [REDACTED] P. Allegations – Charges No. 3 and 4*

21. In June 2006, Ofc. Schlund interviewed P [REDACTED] P. in connection with the K [REDACTED] A. investigation. At that time, P [REDACTED] P. stated that respondent "patted" her on the buttocks one time, and that he did not touch her thighs, legs, or genitals at any time. She stated that in June 2006, respondent asked her to help clean the classroom during recess on one occasion, but that he did not touch her inappropriately at that time.

22. In 2012, however, for the first time P [REDACTED] P. alleged respondent had sexually assaulted her in 2006. In March 2012, P [REDACTED] P. told one of her high school teachers that respondent sexually assaulted her in 2006, and that she was fearful and distrustful of male teachers because of this experience. She testified that she became withdrawn and stopped associating with other students after 2006, and that her academic performance was negatively impacted as a result of respondent sexually assault. P [REDACTED] P. testified that she was frequently referred to the school dean and removed from classes taught by male teachers because she would not participate in class. In 2012, she also told one of her foster parents that respondent sexually assaulted her in 2006, and the foster parent reported the incident to the Department of Children and Family Services (DCFS), which resulted in a Suspected Child Abuse Report (SCAR) being filed in March 2012 with the LAPD, and a new investigation being initiated regarding the 2006 allegations against respondent. She claimed that in 2006, on multiple occasions, respondent called her into his classroom during lunch break or recess and inappropriately touched her in a sexual manner by fingering and fondling her vagina, skin-to-skin, and placing a blindfold over her eyes and putting what P [REDACTED] P. believed was respondent's penis into her mouth and telling her to suck on it.<sup>7</sup>

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<sup>7</sup> M [REDACTED] B. also originally alleged that respondent placed a blindfold over her eyes. However, M [REDACTED] B. later recanted her allegations and stated that she was never

23. On March 14, 2012, officer Yesenia Avalos of the LAPD (Ofc. Avalos) was assigned to investigate a SCAR that indicated P [REDACTED] P. had been “raped” by her teacher five years earlier in 2006. As part of her investigation, Ofc. Avalos reviewed the June 20, 2006, and July 7, 2006, police reports prepared by Ofc. Schlund in connection with the K [REDACTED] A. allegations, and interviewed P [REDACTED] P. and M [REDACTED] L. (P [REDACTED] P.’s mother). She prepared an investigative report dated March 23, 2012. (Exh. 25, pp. 19-22.)

24. On March 14, 2012, P [REDACTED] P. told Ofc. Avalos that she had not been raped by respondent, but she stated that in 2006 respondent would call her into his classroom during lunch break or recess to count money that had been collected for a class field trip. P [REDACTED] P. stated that respondent closed the classroom door, covered the windows with paper, placed a blindfold over her eyes, and rubbed her vaginal area, making skin-to-skin contact, and placed an object into her mouth that she believed was respondent’s penis (hereafter referred to as the “blindfold incident”). She abruptly terminated the interview with Ofc. Avalos because school was ending and she wanted to go home. P [REDACTED] P. told Ofc. Avalos that it was an inconvenient time for her to speak with the officer and that she was not interested in continuing the interview.

25. On March 15, 2012, Ofc. Avalos completed her interview with P [REDACTED] P. In describing the blindfold incident, P [REDACTED] P. stated that while she was counting the field trip money, respondent approached her from behind and placed a blindfold on over her eyes and told her he was going to do an experiment. He sat her down on a chair then placed something in her mouth, which P [REDACTED] P. described as “having the texture of taffy candy, but not the taste.” (Exh. 25, p. 21.) While standing over her, P [REDACTED] P. stated that respondent told her to open her mouth and he then placed a “soft item with the texture of a sponge in her mouth.” She told Ofc. Avalos “I thought it was his penis but can’t say for sure because I was blindfolded. It had that guy smell. I think it was. I just didn’t see it. He told me not to bite on it, just suck on it,” which she did. (Exh. 25, p. 21.) P [REDACTED] P. stated respondent called her into his classroom and did the exact same thing (blindfold incident) five or six times.

26. On April 17, 2012, Det. Morton interviewed P [REDACTED] P. regarding the blindfold incident. She generally described the incident as she had in her earlier interview with Ofc. Avalos, except that she did not tell Det. Morton that respondent rubbed or touched her vagina. P [REDACTED] P. also told Det. Morton that respondent blindfolded her, told her to get down on her knees on the floor, and then placed objects into her mouth. In contrast, she told Ofc. Avalos, that respondent blindfolded her, sat her down in a chair, and then placed objects into her mouth. P [REDACTED] P. also told Ofc. Avalos that respondent committed the blindfold incident five to six times, but only disclosed one such incident to Det. Morton. Det. Morton interviewed seven of the 13 female students in respondent’s 5th grade class in 2006 at Vermont, including P [REDACTED] P. and K [REDACTED] A. With the exception of K [REDACTED] A. and

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inappropriately touched or blindfolded by respondent. P [REDACTED] P. and M [REDACTED] B. were friends in 2006, and P [REDACTED] P.’s allegation that respondent blindfolded her may have been influenced by M [REDACTED] B.’s original false allegation.

P [REDACTED] P., all the female students recanted their prior allegations that respondent had touched them inappropriately or in a sexual manner in 2006.

27. On October 26, 2012, Det. Jordan interviewed P [REDACTED] P. in connection with LAUSD's investigation into the allegations against respondent. She told Det. Jordan that respondent inappropriately touched her in a sexual manner in his classroom five times. She stated that on two occasions respondent placed a blindfold over her eyes and put an object into her mouth that she believed was his penis. In describing the "blindfold incident" P [REDACTED] P. stated respondent called her into the classroom to count money for a field trip to Knott's Berry Farm,<sup>8</sup> closed the classroom door, and covered the windows. Contrary to her statements to Ofc. Avalos and Det. Morton, however, P [REDACTED] P. told Det. Jordan that prior to being blindfolded, respondent "put his finger inside of her vagina," and continued "fingering" her for approximately five to seven minutes. Her previous statements to both Ofc. Avalos and Det. Morton indicated that respondent placed a blindfold over her eyes prior to committing any sexual act. P [REDACTED] P. also told Det. Jordon that respondent called her into his classroom on three different occasions separate from the blindfold incidents, and put his hand into her pants or pulled her pants down and touched or fondled her vagina making skin-to-skin contact. She was not blindfolded during these three incidents. P [REDACTED] P. had not previously told Ofc. Avalos or Det. Morton about these three incidents.

28. Det. Jordan interviewed four female students from respondent's 5th grade class, D [REDACTED] R., K [REDACTED] A., J [REDACTED] C. and M [REDACTED] B., who had not been interviewed by Det. Morton in 2012. All four students stated that they were never touched inappropriately by respondent and that they had never seen respondent touch any other student inappropriately. The four students recanted their 2006 statements that respondent had touched them inappropriately, generally stating that they were young and immature 2006 and did not understand the difference between appropriate touching and inappropriate sexual touching. All four students stated respondent was a good teacher that was liked by all of his students.

29. At hearing, P [REDACTED] P. testified that respondent touched her in an inappropriate sexual manner on four different occasions in 2006. She again asserted that respondent called her into his classroom to count money for a field trip to Knott's Berry Farm each time, closed the door and covered the windows. She testified that during the first three incidents, respondent did not place a blindfold over her eyes and put his hand inside of her pants and rubbed her vagina making skin-to-skin contact. In describing the fourth incident (blindfold incident) she testified that respondent blindfolded her, sat her down in a chair, and put an object into her mouth that she believed was candy and told her to suck on it. She stated respondent then told her to take the candy out and put an object into her mouth she believed was his penis. Although she could not clearly see the object, she testified that the object was "round, pink, and squishy." Piedad P. recalled hearing respondent zip his pants up just before he removed the blindfold and told her that she could leave the classroom. She testified that respondent blindfolded incident occurred just one time.

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<sup>8</sup> Both respondent and Ms. Diaz testified that respondent's 2006 fifth grade class did not take a field trip to Knott's Berry Farm.

30. P [REDACTED] P. also testified that respondent was "creepy" because he stared at her in class, "looking her up and down from head to toe," which made her feel very uncomfortable. She testified that respondent stared at her when she went to his desk to turn in school work, which prompted her to ask classmates to turn in her school work to avoid respondent's stares. P [REDACTED] P. also claimed that respondent touched her on her butt or waist approximately seven times when she went to the blackboard to do school work or when she went to his desk to turn in school work. She stated that on a few occasions respondent stood very close behind or next to her and took her hand and wrote on the blackboard, which made her feel very uncomfortable. P [REDACTED] P.'s testimony that respondent touched her buttocks seven times contradicted her 2006 statement that respondent patted her on the buttocks only one time, and in 2012 she never reported these incidents to Ofc. Avalos, Det. Morton or Det. Jordan.

31. P [REDACTED] P. claimed that in June 2006, she told her mother, M [REDACTED] L., Ms. Diaz and principal DeBerry about the "blindfold incident" and respondent touching her vagina. However, M [REDACTED] L. stated that in 2006 P [REDACTED] P. only told her that respondent touched her buttocks on one occasion. M [REDACTED] L. did not become aware of that P [REDACTED] P. claimed respondent touched her in the manner disclosed in 2012, until the incidents were discussed at the DCFS meeting by P [REDACTED] P.'s foster parents in 2012. M [REDACTED] L. stated that in 2012, P [REDACTED] P. falsely accused M [REDACTED] L.'s brother, P [REDACTED] P.'s uncle, and M [REDACTED] L.'s boyfriend of inappropriately touching P [REDACTED] P. M [REDACTED] L. testified that P [REDACTED] P. later admitted the allegations were false. M [REDACTED] L. stated P [REDACTED] P. also made false allegations of child abuse against her (M [REDACTED] L.) to DCFS. M [REDACTED] L. testified that P [REDACTED] P. has a tendency to lie and exaggerate, and M [REDACTED] L. did not believe the allegations P [REDACTED] P. made in 2012 were true. M [REDACTED] L. believed P [REDACTED] P. was telling the truth in 2006 when she reported respondent touched her buttocks one time.

32. M [REDACTED] L. stated that P [REDACTED] P. had been diagnosed with depression and that she was hospitalized in February 2012, after attempting suicide by overdosing on pills. The mother believes that P [REDACTED] P. is mentally disturbed. At hearing, P [REDACTED] P. confirmed that she had been seeing a therapist, but testified that she never told the therapist that respondent had inappropriately touched her the sexual manner as alleged in the Accusation.

33. Ms. Diaz did not become aware of any allegations against respondent until June 7, 2006, when the female students in respondent's class submitted written statements regarding respondent's 5th grade class. She credibly testified that prior to the written statements no student, including P [REDACTED] P., had ever complained that respondent touched them in an inappropriate or sexual manner. P [REDACTED] P. also claimed she told principal DeBerry about the "blindfold incident" within two days after the incident occurred. However, there is no evidence that P [REDACTED] P. reported the "blindfold incident" to principal DeBerry. To the contrary, the evidence showed that P [REDACTED] P. did not prepare a written statement with the other female students on June 7, 2006, because P [REDACTED] P. left the campus before she could prepare her written statement when the school bell rang for class dismissal. Consequently, P [REDACTED] P. did not discuss her allegations against respondent with principal DeBerry or Ms. Diaz in 2006.

34. P [REDACTED] P. also never told LAPD investigators in 2006 that respondent touched her in the sexually inappropriate manner she disclosed in March 2012. Ofc. Schlund's 2006 investigation report indicated that P [REDACTED] P. only stated respondent touched her on the buttocks one time and there is no mention of the "blindfold incident." Ofc. Avalos asked P [REDACTED] P. why she did not disclose the "blindfold incident" in 2006, and she stated that she was never interviewed by police officers or detectives in 2006. Ofc. Avalos testified that P [REDACTED] P. denied any knowledge that LAPD had investigated allegations against respondent in 2006. Det. Morton also asked P [REDACTED] P. why she did not report the "blindfold incident" in 2006, and in contrast to her statement to Ofc. Avalos, she told Det. Morton that she had spoken to several police officers about the incident in 2006, but could not recall who they were or the content of her statements. When asked by Det. Jordan why she had not told anyone about the "blindfold incident" in 2006, P [REDACTED] P. only stated she told her mother (M [REDACTED] L.) and Ms. Diaz.

35. Ofc. Avalos, Det. Morton and Det. Jordan all expressed concerns that P [REDACTED] P.'s statements were inconsistent and contradictory. Det. Jordan testified that he did not believe P [REDACTED] P.'s statements and noted that P [REDACTED] P.'s mother, M [REDACTED] L., also believed her daughter had a tendency to lie and exaggerate. Det. Jordan believed P [REDACTED] P.'s mother.

#### C [REDACTED] V. Allegation – Charge No. 2

36. The District alleged that between January 2006 and June 2006, respondent touched C [REDACTED] V.'s hips and massaged her neck. C [REDACTED] V. was a female student in respondent's 2006 fifth grade class, and this allegation is apparently based on a written statement prepared by C [REDACTED] V. on June 7, 2006. However, Ofc. Schlund was unable to interview C [REDACTED] V. during her investigation in June and July 2006, and the student was not interviewed in 2012 by Ofc. Avalos, Det. Morton, or Det. Jordan. C [REDACTED] V. was not called as a witness by the District in this proceeding, and there was no evidence offered by the District to substantiate this allegation.

#### *Credibility Determinations*

37. Respondent consistently and credibly denied the allegations in the District's Accusation. His statements to investigators in 2006 and 2012 were consistent in asserting that he never touched any student in an inappropriate or sexual manner. At hearing, respondent presented as a credible witness, exhibiting an open and forthright demeanor when testifying. He appeared genuinely sincere in denying the allegations and was emotionally distraught when discussing the misconduct attributed to him by P [REDACTED] P. and K [REDACTED] A. Respondent admitted that during PE tests, he touched students' arms or knees to properly position them to do push-ups, but he denied ever touching a student's buttocks, hips or waist. Respondent denied ever being alone with any student in his classroom during recess or lunch, except on a few occasions that he used small groups of students to help him file or shelve books. He denied asking P [REDACTED] P. to help him count money for a field trip and stated that his 2006 fifth grade class never took a field trip to Knott's Berry Farm in 2006. Respondent's statements and testimony that he had never inappropriately touched any female student were corroborated at hearing by Ms. Diaz and Martha B. Ms. Diaz and Det. Jordan

also confirmed that respondent's fifth grade class never planned or took a field trip to Knott's Berry Farm in 2006, contradicting P [REDACTED] P.'s claim that respondent called her into his classroom to count money collected for a fieldtrip to Knott's Berry Farm.

38. At hearing, P [REDACTED] P. appeared mature and confident in her testimony. She did not appear distraught, flustered or anguished and showed little or no emotion when testifying. P [REDACTED] P.'s testimony, however, was inconsistent and contradictory to prior statements she had given to investigators in 2006 and 2012. In 2006, P [REDACTED] P. initially told investigators that respondent had touched her buttocks one time, and she described another incident in which she help respondent clean his classroom during recess and specifically stated that he did not inappropriately touch her at that time. P [REDACTED] P. gave inconsistent versions of the blindfold incident to investigators in 2012, and at hearing her description of the number of times the blindfold incident occurred changed yet again. P [REDACTED] P. also disclosed new allegations that respondent had touched her buttocks seven times in the classroom during class that had not been previously disclosed to investigators. At hearing, Ofc. Avalos, Det. Morton and Det. Jordan identified multiple inconsistencies and contradictions in P [REDACTED] P.'s statements during the investigation which suggested they were not convinced P [REDACTED] P.'s allegations were truthful. P [REDACTED] P. was untruthful in stating that she disclosed the more serious sexual misconduct allegations against respondent in 2006, and gave conflicting explanations for why she had not told investigations about these allegations before 2012. P [REDACTED] P.'s extended delay in asserting the 2012 allegations, and her dishonesty in claiming that she reported the allegations in 2006 diminished the credibility of her claims. P [REDACTED] P.'s mother also did not believe P [REDACTED] P. was being truthful regarding the 2012 allegations. P [REDACTED] P.'s inconsistent and contradictory statements throughout the investigation and hearing raise serious concerns regarding her credibility and the truthfulness and validity of her allegations.

#### *Other Factors*

39. Prior to the allegations and charges in this matter, there is no prior history of discipline by the District against respondent. Respondent's performance evaluations in May 2004, June 2005, and May 2006, all while at Vermont, indicated that respondent met the standard of performance required and expected by the District. After September 2006, when respondent transferred to Lillian, respondent's performance evaluations continued to indicate that he met the standard of performance required by the District though May 2011.

40. Susan Ahern, the principal at Lillian who hired respondent in 2006, testified that she worked closely with respondent at Lillian from August 2006 until March 2012. Ms. Ahern became aware of the allegations against respondent in March 2012. She was very surprised and believed the allegations were out of character based on her six years supervising respondent. She stated that respondent was very active and engaged as a teacher at Lillian, serving on multiple committees and acting as chairperson for several. Respondent served on committees to promote school safety at Lillian and assisted in writing the School Safety Plan, which included policies and procedures to protect against sexual abuse of students. Respondent was involved on Schoolwide Positive Student Discipline committee, which implemented guidelines for positive student discipline training for teachers at Lillian.

Ms. Ahern testified that respondent was among the top five percent of teachers at Lillian. She described respondent as a strong teacher who was respected by his colleagues and students. He cared deeply and had an excellent rapport with his students and developed students emotionally and motivated them academically. Respondent always fostered a positive and safe environment in his classroom and his students' "academic outcome" was the highest of all the teachers at Lillian. Ms. Ahern expressed that she did not regret hiring respondent even after becoming aware of the allegations in this matter.

41. Three of respondent's former colleagues at Vermont also offered character references in respondent's behalf. Cynthia Baker, a 5th grade teacher at Vermont from 2003 to 2006, Sandra Vallecillo, a 5th grade teacher at Vermont during the 2005-2006 school year, and Ms. Diaz, who worked as a one-to-one aide and teacher assistant in respondent's 5th grade class during the 2005-2006 school year, all provided declarations attesting to respondent's good character and professionalism as a teacher. Based on their observations and interactions with respondent at Vermont, all three expressed that respondent was an excellent teacher whose students respected him as a teacher. All three stated that they were aware of the allegations against respondent and expressed that they had never seen respondent engage in any inappropriate conduct with any of his students.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. The District has the burden of proof in this matter and 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, 1038-1040.) Proof by a preponderance of the evidence requires a showing that it is more likely than not to be true. In other words, the evidence is more convincing than that which is offered in opposition. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.) When a school board recommends dismissal for cause, a Commission may only vote for or against the dismissal; the Commission may not dispose of a charge seeking dismissal by imposing probation or an alternative sanction. (Ed. Code, § 44944, subds. (c)(1)-(3).) The Commission's decision is deemed to be the final decision of the District's governing board. (*California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327, 331.) A Commission has broad discretion to determine the issues before it, including whether dismissal is the appropriate sanction. (*Ibid.*, at p. 343.)

### *Applicable Law*

3. Section 44932, subdivision (a)(1), provides that: 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.<sup>9</sup>

4. “Immoral conduct,” pursuant to sections 44932, subdivision (a)(1), and 44939, has been defined to mean conduct that is willful, flagrant, or shameless, conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. It is sometimes used as synonymous with “dishonesty” or a high degree of unfairness. (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.) Immoral conduct can be construed according to common usage. “The term ‘immoral’ has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.” (*Palo Verde Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

#### *Determination of Charges*

5. Cause does not exist to dismiss respondent for immoral conduct, including egregious misconduct, pursuant to section 44932, subdivision (a)(1), by reason of Factual Findings 4 through 41.

#### *K [REDACTED] A. - Charge No. 1*

6. There is insufficient evidence to support the District’s allegation that respondent inappropriately touched K [REDACTED] A.’s buttocks between January and June 2006. K [REDACTED] A. did not testify at hearing and her statements to investigators in 2006 and 2012 contained contradictions and inconsistencies that raise serious concerns about the validity of her allegations. Significantly in 2012, K [REDACTED] A. denied that respondent touched her vagina, although in 2006 she stated that respondent touched her vagina on two different occasions. K [REDACTED] A. also failed to tell investigators in 2012 about two of the three incidents that she had reported in 2006. When questioned by Det. Morton in 2012, K [REDACTED] A. did not mention that respondent had inappropriately touched her vagina and buttocks

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<sup>9</sup> Section 44010 defines “sex offense” to include specified offenses under the Penal Code, including in relevant part, section 288 (lewd or lascivious acts involving children); section 647.6 (annoying or molesting children under the age of 18); section 243.4(e)(sexual battery, i.e., touching an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual battery); section 647 (disorderly conduct); section 11165.3 (willful harming or injuring of a child); and section 272 (contributing to the delinquency of a minor).

when he lifted her to place alphabets on the classroom wall or that he had touched her buttocks when he made she and M [REDACTED] B. crawl around the classroom blindfolded. In 2012, K [REDACTED] A. also told investigators that respondent only touched her buttocks while she was doing push-ups in PE class. The evidence, however, established that respondent assisted his students in performing push-ups by positioning their arms and lower backs to achieve proper exercise form, but this touching was not inappropriate or of a sexual nature. Several of respondent's female students who initially claimed in 2006 that respondent touched them inappropriately during PE exercises, recanted their allegations in 2006 and 2012, stating that they misinterpreted respondent touching them while performing PE exercises because of their immaturity.

7. The evidence also established that K [REDACTED] A. had an ulterior motive for making her allegations against respondent. Respondent credibly testified that he believed K [REDACTED] A. harbored ill will towards him because he told her parents she had a boyfriend at school and that he thought this was inappropriate for a fifth grade student. K [REDACTED] A. made conflicting statements about her recollection of respondent telling her parents she had a boyfriend. K [REDACTED] A., after initially admitting in 2006 that respondent notified her parents that she had a boyfriend angered her, denied in 2012 that she was aware respondent discussed a boyfriend with her parents. Several of K [REDACTED] A.'s female classmates stated that K [REDACTED] A. made the allegations against respondent because she was angry he told her parents about K [REDACTED] A.'s boyfriend.

8. At hearing the District primarily relied on P [REDACTED] P.'s statements and testimony to support the K [REDACTED] A. allegation. However, P [REDACTED] P.'s testimony conflicted with K [REDACTED] A.'s statements to investigators and with P [REDACTED] P.'s own statement to investigators in 2006. Finally, Det. Jordan, the District's investigator, doubted the truthfulness of K [REDACTED] A.'s allegations. He noted that K [REDACTED] A.'s statements in 2006 and 2012 were inconsistent and contradictory, specifically her initial assertion that respondent touched her vagina and her subsequent denial that he ever touched her genitals. Det. Jordan also believed the female students' statements made in 2012 recanting their allegations against respondent were truthful and credible, which further convinced him that K [REDACTED] A.'s allegations were untruthful.

9. The District failed to establish by a preponderance of the evidence that respondent inappropriately touched K [REDACTED] A.'s buttocks in a sexual manner.

P [REDACTED] P. - Charge Nos. 3 and 4

10. There is insufficient evidence to support the District's allegations that respondent inappropriately touched P [REDACTED] P. in a sexual manner between January and June 2006. The evidence also did not establish that respondent sexually assaulted P [REDACTED] P. in the manner she alleged in Charge Nos. 3 and 4. There are multiple inconsistencies and contradictions in P [REDACTED] P.'s statements to investigators and her testimony at hearing. She first stated in 2006 that respondent touched her buttocks one time, but inconsistently testified at hearing that respondent touched her buttocks at least seven times in the classroom during the class period.

11. In 2012, P [REDACTED] P. disclosed new and more egregious allegations against respondent that she did not report to investigators in 2006 even though she was interviewed by investigators at the time these incidents were allegedly occurring in June 2006. However, P [REDACTED] P.'s description of these new allegations changed significantly each time she was interviewed by investigators in 2012, and when she testified in this proceeding. She told Ofc. Avalos that the blindfold incident occurred five to six times, but later told Det. Morton the incident occurred just one time. P [REDACTED] P. told Det. Jordan that the blindfold incident occurred two times, and at hearing she testified that "blindfold incident" occurred just one time. In describing the "blindfold incident," P [REDACTED] P. told Ofc. Avalos respondent touched her vagina but she failed to tell Det. Morton that respondent touched her vagina at all. She told Ofc. Avalos and Det. Morton that respondent placed the blindfold over her eyes before committing any sexual act, but she told Det. Jordan that, before she was blindfolded, respondent touched her vagina in a manner that had not been disclosed to Ofc. Avalos or Det. Morton. P [REDACTED] P. told Ofc. Avalos and Det. Jordan that respondent blindfolded her and sat her down in a chair before placing his penis into her mouth, but she told Det. Morton that respondent placed the blindfold over her eyes and made her get down on her knees before placing his penis in her mouth. Finally, P [REDACTED] P. described three incidents Det. Jordan and in her testimony at hearing, other than the blindfold incidents, in which respondent touched her vagina in his classroom that she did not disclose to Ofc. Avalos or Det. Morton.

12. P [REDACTED] P. also made multiple inconsistent and contradictory statements to investigators regarding the reason she failed to disclose her new allegations against respondent until 2012. P [REDACTED] P. testified that she told her mother, Ms. Diaz, and principal DeBerry in 2006 about the "blindfold incident" and that respondent touched in the sexual manner she described in 2012. However, both M [REDACTED] L. and Ms. Diaz denied P [REDACTED] P. told them about these allegations in 2006, and the evidence established that P [REDACTED] P. did not prepare a written statement in June 2006, which suggest she was not interviewed by Ms. Diaz or principal DeBerry. The evidence also established that P [REDACTED] P. failed to disclose the "blindfold incident" to investigators in 2006. To the contrary, she told Ofc. Schlund that respondent had touched her buttocks one time, and specifically stated that respondent did not touch her inappropriately at any other time. When asked by Ofc. Avalos why she did not disclose the incidents to Ofc. Schlund in 2006, P [REDACTED] P. stated she was never interviewed by police officers in 2006. In contrast, she told Det. Morton that she was interviewed by police officers in 2006 but could not recall what the content of those interviews. When asked by Det. Jordon why she did not report the 2012 allegations to investigators in 2006, P [REDACTED] P. claimed she told her mother and Ms. Diaz, but did not state she had told police investigators in 2006.

13. The District offered no credible explanation for why P [REDACTED] P. did not disclose the more egregious allegations in 2006. It is particularly troubling that even though she was interviewed by officer Schlund in June 2006 about respondent's class and respondent's conduct with his students, she still did not disclose that she had been sexually assaulted by respondent. P [REDACTED] P. testified that all of the incidents in which respondent allegedly touched her in a sexual manner occurred within a four to five week period in or about June 2006. She stated that the incidents occurred during the same period the K [REDACTED] A.

incidents occurred in June 2006. Thus, the K [REDACTED] A. investigation was ongoing during the same time that P [REDACTED] P. alleges that respondent committed the “blindfold incident” and the more egregious sexual acts, and she was interviewed by LAPD investigators during the course of that investigation. It is inexplicable why P [REDACTED] P. failed to disclose in 2006 that respondent had sexually assaulted as she described six years later in 2012.

14. The District did not offer an expert opinion regarding P [REDACTED] P.’s state of mind which might explain why she repressed or failed to disclose the “blindfold incident” and the sexual assault allegations she disclosed six years later in March 2012. P [REDACTED] P.’s only explanation for why she did not disclose the incidents in 2006 was that she was afraid, and that she did disclose the incidents to her mother and Ms. Diaz, which was not true. M [REDACTED] L. credibly testified that her daughter had a tendency to exaggerate and lie and that she did not believe the allegations P [REDACTED] P. disclosed in 2012. The LAPD investigators, Ofc. Avalos and Det. Morton, who were called as witnesses by respondent at hearing, both admitted that P [REDACTED] P.’s statements in 2006 and 2012 were contradictory and inconsistent. Det. Jordon, the District’s investigator, also admitted that P [REDACTED] P.’s statements were inconsistent and that he did not believe she was being truthful when he interviewed her in 2012. The District primarily relied on P [REDACTED] P.’s statements and testimony to prove its allegations that respondent sexually assaulted this student. However, P [REDACTED] P.’s statements and testimony were shown to be inconsistent and contradictory, and thus, not sufficiently credible to support a determination that respondent committed the sexual misconduct alleged.

15. In contrast, respondent consistently maintained that he did not commit the conduct alleged by the District. Respondent credibly testified that he did not inappropriately touch any of his students in a sexual manner. He admitted that he assisted his students in performing PE exercises, but denied this physical contact was inappropriate. The evidence showed that respondent frequently assisted his students in performing push-ups by adjusting their arms and touching their lower backs and shoulders to achieve proper form in doing the exercise. Several students recanted their statements that respondent had touched them inappropriately and admitted that they misinterpreted respondent’s touching during the PE exercises as inappropriate touching. All of respondent’s students in his 2006 fifth grade class, with the exception of K [REDACTED] A. and P [REDACTED] P., ultimately told investigators that they thought respondent was a good teacher, and that they had not been touched in a sexual manner by respondent. Ms. Diaz believed that respondent was a very good teacher, had never seen respondent inappropriately touch any student, and did not believe respondent was capable of such conduct.

16. The District failed to establish by a preponderance of the evidence that respondent inappropriately touched or sexually assaulted P [REDACTED] P. as alleged in Charge Nos. 3 and 4.

C [REDACTED] V. Charge No. 2.

17. The District failed to establish that respondent inappropriately touched C [REDACTED] V.’s buttocks as alleged in the Accusation. The District offered no direct evidence to support this allegation.

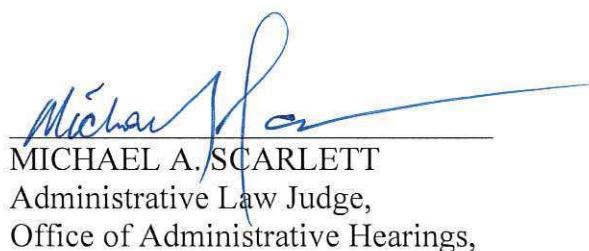
*Morrison Factors*

18. After consideration of the totality of the evidence presented, it is determined that the District failed to establish by a preponderance of the evidence that respondent committed the immoral conduct, including egregious misconduct, alleged in the Accusation. Consequently, the ALJ need not consider whether such conduct rendered respondent unfit to teach as set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214.

ORDER

The determination of the Governing Board of the Los Angeles Unified School District seeking to dismiss respondent Nicholas Camonte (EN 722915) pursuant to Education Code sections 44932, subdivision (a)(1), and 44939.1 is not upheld. Accordingly, the Accusation is dismissed. Respondent shall be reinstated as a certificated employee of the District.

DATED: October 20, 2015



MICHAEL A. SCARLETT  
Administrative Law Judge,  
Office of Administrative Hearings,