

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

In the Matter of the First Amended  
Accusation Against Anthony Heard, Jr., A  
Certificated Employee

Respondent.

CASE NUMBER 2011110787

**DECISION**

The Commission on Professional Competence (Commission) heard this matter on October 1-4 and 8, 2012, in Costa Mesa. The Commission consisted of Commission Members Tim Strand, Joseph Klepadlo, and Administrative Law Judge Chris Ruiz (ALJ), Office of Administrative Hearings, presiding.

Eric BATHEN and Jordan Meyer, Esqs., represented Thelma Melendez de Santa Ana, Ph.D., Superintendent of the Santa Ana Unified School District (District).

Jules Miller, Esq., represented Anthony Heard, Jr. (Respondent or Heard) who was present on each day of hearing.

Oral and documentary evidence was received, argument heard, and the matter was submitted on October 8, 2012. The Commission began its deliberations in executive session October 8, 2012, and concluded on the same day. After due consideration, the Commission makes the following factual findings and legal conclusions.

**FACTUAL FINDINGS**

1. Thelma Melendez de Santa Ana, Ph.D. (Complainant), Superintendent, Santa Ana Unified School District, made the First Amended Accusation in her official capacity.
2. On October 5, 2009, the District served Respondent, by certified and regular mail, with a Notice of Intention to Dismiss, together with a copy of relevant California Education Code sections. Thereafter, Respondent was served with an Accusation and a First Amended Accusation, the latter of which was filed on January 19, 2012.
3. Thereafter, Respondent filed a Notice of Defense which requested a hearing.
4. The First Amended Accusation and First Amended Statement of Charges alleged the following causes for Respondent's dismissal: (1) evident unfitness for service; (2)

immoral conduct; and (3) willful refusal to perform regular assignments without reasonable cause, as prescribed by the rules and regulations of the employing school district. (Cal. Ed. Code §§ 44932, subd.(a) and 44939. The First Amended Statement of Charges contained 33 charging paragraphs which are discussed immediately below.

5. Heard was employed by the District as a certificated employee, and specifically as a Classroom Teacher, subject to the rules and regulations applicable to certificated employees serving as classroom teachers, including without limitation District Board Policy 4117 entitled "Classroom Teacher - Job Description." It was established that Respondent generally performed as a high quality teacher with respect to the overall instruction of his students.
6. It was alleged, but not established, that in March 2008, Ignacio Muniz (Mr. Muniz), assistant principal, noticed that students were left unsupervised in Heard's classroom during the lunch period while Heard was eating lunch outside of his classroom.
7. It was alleged, but not established, that on March 22, 2008, students were left unsupervised in Heard's classroom.
8. On April 22, 2008, Heard arrived to work approximately one and one-half hours late and he failed to contact the school to inform the administration of his tardiness. Claudia Flint (Ms. Flint), assistant principal, went to Heard's classroom to let the students into the classroom and to teach his class. Heard violated his duties as Classroom Teacher in not having lesson plans available in the event he was absent. Ms. Flint could not locate a lesson plan despite her efforts to locate such lesson plans. Later that same day, Ms. Flint met with Heard and discussed his tardiness and the lack of a lesson plan. Heard told Ms. Flint that he was late to school because he overslept. At that meeting, Ms. Flint directed Heard that, among other things: (1) if he were tardy in the future, he must contact the office immediately and (2) he must leave a lesson plan available for a substitute teacher.
9. On May 16, 2008, Heard was again absent from school in the morning, but he did not leave a lesson plan, in violation of his duties as Classroom Teacher. He also failed to obey the clear directives issued to him by Ms. Flint on April 22, 2008.
10. On May 16, 2008, the morning that Heard was absent from school, Heard sent four text messages during school hours to student A ■■■ A ■■■ who was a student in his morning class. Heard asked A ■■■ A ■■■ to look for Heard's lesson plans and to inform the substitute teacher what video to show the class. This was a violation by Heard his duties and of the prior directive issued by Ms. Flint. Rather than calling the office staff at the school and asking them to locate the lesson plans and communicate with the substitute teacher, Heard improperly texted a student.
11. On May 19, 2008, Ms. Flint again met with Heard and directed him to not communicate with students through their cell phones as it was a clear violation of school policy. The

students are required to have their cell phones off during school hours. Ms. Flint directed Heard to keep his interaction with students strictly professional at all times and further directed Heard to follow the District's field trip procedures anytime he met with students away from the classroom.

12. On May 22, 2008, there was a fight between students R [REDACTED] R [REDACTED] and J [REDACTED] A [REDACTED] in Heard's classroom. The fight culminated with R [REDACTED] R [REDACTED]'s punching J [REDACTED] A [REDACTED] in the eye. Heard instructed J [REDACTED] A [REDACTED] to inform the nurse that he sustained the injury by poking himself in the eye, when in fact R [REDACTED] R [REDACTED] had punched J [REDACTED] A [REDACTED] in the eye. Heard's instruction to a student to deceive the school nurse was inappropriate and it jeopardized the health and safety of student J [REDACTED] A [REDACTED]. Heard's conduct also interfered with the discipline policies and procedures of the school that require incidents where a student attempts to injure or injures another student to be reported to an administrator. This was the second time within a week in which Heard improperly involved a student in hiding information from the District administration.
13. It was alleged, but not established, that on May 27, 2008, Ms. Flint was informed by a District teacher that she had repeatedly seen Heard touching the hands, arms and shoulders of female students while he spoke to them during lunch on the school grounds.
14. It was alleged, but not established, that on May 28, 2008, Ms. Flint she saw Heard rub a female student's hair during lunch and put his hands on several female students' shoulders.
15. On May 30, 2008, Ms. Flint met with Heard and discussed Heard's misconduct related to the fight between students R [REDACTED] R [REDACTED] and J [REDACTED] A [REDACTED]. Ms. Flint directed Heard to immediately report all incidents involving student safety to the administrative office. On May 30, 2008, Ms. Flint prepared a "Summary of Conference." Included in that document were directives to Heard which stated: "be on time to school" and "report your absences in a timely manner and leave detailed substitute plans."
16. On or about May 30, 2008, Heard prepared an incident report for the District in which he stated his position regarding the incident of May 22, 2008.
17. On or about June 17, 2008, Heard again failed to send a student to the office to see a nurse after the student injured himself in Heard's classroom. Student M [REDACTED] A [REDACTED] injured himself in Heard's classroom when he tried to cross the room by jumping over desks and tripped, falling on his face and thereby sustaining injuries to his nose and forehead. Heard did not report the incident to the administrative offices or to M [REDACTED] A [REDACTED]'s parents. Heard did not send M [REDACTED] A [REDACTED] to the school nurse at the time of the injury. Heard's conduct violated the directive received in Summary of Conference dated May 30, 2008, wherein he was directed to immediately report all incidents involving student safety to the administrative office. Heard did not send

the student to the nurse because the student did not want to go to the school nurse. However, Heard should have insisted or notified his supervisor.

18. On or about June 19, 2008, Heard delivered an incident report as to the occurrence on June 17, 2003.
19. On June 19, 2008, Ms. Flint met with Heard and gave Heard a verbal reprimand for his inappropriate conduct related to student M [REDACTED] A [REDACTED] and on June 30, 2008, Ms. Flint issued a Summary of Verbal Reprimand to Heard regarding the incident.
20. During October 2008 through December 2008, Heard continued his pattern of arriving at school late without a valid explanation and after having been warned about this conduct.
21. On October 24, 2008, Heard again arrived late to school, at approximately 9:20 a.m., fifteen minutes after his second period class began and one hour and ten minutes after his teacher's duty day began. Heard informed Jan Schwarz (Ms Schwarz), office manager, that he was late because he overslept. Heard's conduct again violated his duties as a classroom teacher, the verbal warning he received in April 22, 2008, and the written directive he received on May 30, 2008.
22. On December 5, 2008, Heard again arrived late to school, at approximately 9:05 a.m., as his second period class was starting, and fifty-five minutes after his teacher's duty day began. Heard informed Ms. Schwarz that he was late again because he overslept. Heard's conduct again violated his duties as classroom teacher, the verbal warning he received in April 22, 2008, and the written directive he received on May 30, 2008.
23. On or around December 8, 2008, Ms. Flint met with Heard and gave him a verbal reprimand. On December 9, 2008, Ms. Flint issued a Letter of Reprimand to Heard regarding his continued tardiness.
24. In January 2009, Heard emotionally abused and verbally harassed students in one of his classes and sought to transfer those students that reported his abuse and harassing behavior. On January 16, 2009, Heard called student D [REDACTED] G [REDACTED] "retarded" and "stupid." Heard said that student D [REDACTED] G [REDACTED] needs to "stop picking his nose and scratching his butt." Heard told the class that D [REDACTED] G [REDACTED] needs to "start using that small brain of his" and the "best thing [D [REDACTED]] could do in class is just sleep." Furthermore, Heard called students "stinky" and said that "they pick their boogers." Finally, one female student in class reported that Heard made her feel uncomfortable in class because Heard "stare[d] at her in class a lot." Some students prepared statements evidencing the inappropriate conduct by Heard. In mitigation, Heard was also occasionally complimentary to D [REDACTED] G [REDACTED].

25. On or about February 20, 2009, Heard demonstrated evident unfitness for service and he willfully refused to perform regular assignments without reasonable cause as prescribed by the rules and regulations of the District when he transported female students to the Segerstrom High School track in his personal vehicle without appropriate parental permission. Heard transported approximately four female students in his personal vehicle to the Segerstrom High School track and had two additional female students meet the group at the track without obtaining prior approval from an administrator to conduct a separate practice or to transport students to another school. Heard did not file the requisite paperwork necessary for taking students on a field trip. Heard's conduct violated District Board Policies for transporting students and conducting field trips with students, and also violated the directive he received in the Summary Conference held on May 30, 2008. Heard's conduct exposed himself and the District to liability and showed poor judgment because Heard had been instructed on multiple occasions to follow District rules and policies.

26. On February 24, 2009, the District issued Heard a Letter of Reprimand and Notice of Suspension without pay for the period of February 24, 2009, through February 26, 2009. The District's Letter of Reprimand directed Heard, among other things, as follows:

- You are not to take any retaliatory action towards any student who provided a statement related to this investigation.
- You are not to contact the students and seek to intimidate them into defending you for your reprehensible behavior.
- You are further hereby direct to not discuss the issues addressed in the Reprimand with other District staff (with the exception of your SAEA representatives) or students, or retaliate in any way against any of the students or staff mentioned or who signed statements related to the investigation.

27. On March 2, 2009, after having received the February 24, 2009 Letter of Reprimand and Notice of Suspension without pay, Heard sent an email to Kathy Brandt (Ms. Brandt), a District counselor, requesting her to transfer student D [REDACTED] G [REDACTED] and other students that had provided witness statements to the administration in connection with the investigation of Heard. Heard asked for confidential health information about student D [REDACTED] G [REDACTED] when he stated in his email to Ms. Brandt, "I still need all the information you have on D [REDACTED] G [REDACTED] as well as the name of the medication he is on, why he is taking it, and any of his behavioral transgressions this school year."

28. On or about March 5, 2009, Heard wrote a letter to Ms. Hinshaw discussing, among other things, the incident with D■■■■ G■■■■. One of his statements in his letter was, "I know that I have rubbed some people the wrong way. The thing is I don't really care. I don't care about the perception of most people." This statement by Heard was quite revealing. While Heard was good at instructing his students, he was not willing to follow the instructions of his supervisors, despite multiple warnings. At the hearing, Heard apologized for his conduct on multiple occasions and promised he would change in the future if given an opportunity to do so. However, the District has already given Heard multiple opportunities to change his conduct and he failed to do so.
29. On March 26, 2009, the District issued Heard a Letter of Reprimand and Notice of Suspension without pay, for the period of March 27, 2009, through April 2, 2009.
30. On April 13, 2009, the District sent Heard a letter stating the period of suspension from March 27, 2009, through April 2, 2009, but mistakenly stated it was a three-day suspension.
31. On April 30, 2009, the District sent Heard a letter stating the period of suspension from March 27, 2009, through April 2, 2009, correctly stating that it was a five-day suspension.
32. On September 22, 2009, the District issued a memorandum to Heard as a reminder that his preliminary credential was going to expire on September 30, 2009.
33. On September 30, 2009, Heard's California Preliminary Teaching Credential expired. The Preliminary Credential authorized Heard to teach in the District for up to five years while he was completing the requirements for his CLEAR Credential. During the five years Heard taught using his Preliminary Teaching Credential, he did not timely obtain an appropriate California CLEAR Teaching Credential or, in the alternative, Heard did not obtain an extension from the California Commission on Teacher Credentialing (CTC) to extend his time to complete the requirements for his CLEAR Credential and thereby extend his Preliminary Teaching Credential for an additional year. As such, as of October 1, 2009, Heard failed to maintain the appropriate, necessary, and required credential that allowed and enabled him to perform the essential functions of his job. The State of California requires teachers to maintain an appropriate teaching credential in order to teach in a public school. Heard did not take the

steps necessary to maintain the appropriate teaching credential necessary to maintain his teaching position and perform the essential functions of his job. As of October 1, 2009, Heard no longer had a credential to teach in the State of California. The District is responsible for ensuring that its teachers have the appropriate credentials necessary to meet the needs of all students who attend school in the District. Because of Heard's failure to complete the CTC requirements to earn a CLEAR Teaching Credential, or take the necessary steps to obtain an emergency extension of his Preliminary Credential, he was unable to comply with the terms of his teaching contract with the District and was further unable to meet the educational needs of the District and the District's students and therefore unfit to teach in a District classroom. The District was notified of the expiration of Heard's Preliminary Credential and thereafter the District notified Heard that his credential had expired.

34. Ultimately, Heard was able to obtain his CLEAR Teaching Credential, either on October 24, 2009, or November 5, 2009. His credential was "back dated" to October 1, 2009, but it was established that Heard was without a credential for at least approximately three weeks in October 2009.

### LEGAL CONCLUSIONS

1. The standard of proof in this proceeding is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)
2. The grounds for the dismissal of a teacher in this state are enumerated in Education Code section 44932, subdivision (a). In this case, the District relies only on the following grounds: (1) evident unfitness for service; (2) immoral conduct; and (3) willful refusal to perform regular assignments without reasonable cause, as prescribed by the rules and regulations of the employing school district. (Cal. Ed. Code §§ 44932, subd. (a) and 44939.)<sup>1</sup>
3. It is the conclusion of the Commission that Respondent engaged in willful refusal to perform regular assignments without reasonable cause, as prescribed by the rules and regulations of the employing school district and is evidently unfit for service. Respondent's conduct did not rise to the level of "immoral conduct" and therefore that charge was not established.
4. The term "immoral conduct" is a basis for dismissal of teachers included in section 44932, subdivision (a)(1). The term was first discussed in the context of a teacher

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

dismissal in *Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, and the court's definition in that case has often been cited by other courts. (See, e.g.: *Palo Verde v. Hensey* (1970) 9 Cal.App.3d 967.)

5. The *Weiland* Court stated: 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 wilful, 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. (*Weiland, supra*, 179 Cal.App.2d at p. 811.) Courts have found immoral conduct where a teacher stated that the district superintendent spent too much time "licking up the Board" as he simulated licking of the wall in an up and down manner (*Hensey, supra*); where a teacher knocked a sheriff deputy down with his car after the deputy discovered a partially naked female student in the car (*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820); where a teacher performed oral copulation in a doorless toilet stall in a public restroom in a department store during business hours (*Governing Board v. Metcalf* (1974) 36 Cal.App.3d 546); and where a teacher purchased and received goods known to be stolen (*Pittsburg Unified School District v. Commission of Professional Competence* (1983) 146 Cal.App.3d 964.) It is the conclusion of the Commission that Respondent's conduct did not rise to the level of immoral conduct.
6. Respondent's conduct was reviewed and analyzed as measured by the Morrison<sup>2</sup> factors. (*Board of Education v. Jack M.* (1970) 19 C.3d 691, 696-697; *Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1173-74.) "Evident unfitness for service" means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) "Evident unfitness for service" connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.*)
7. Respondent's conduct was clearly not remediated merely on receipt of notice that his conduct failed to meet the expectations of the employing school district. Heard was repeatedly given warnings regarding being on time to school. Nevertheless, he thereafter continued to come to work late and only offered the excuse that he had "overslept." It should be expected that a professional would, after repeated warnings, figure out a solution to oversleeping, such as the use of multiple alarm clocks, etc. Heard also did not want to follow the District's rules and his own written statement revealed that he was not concerned with following the rules or how he was perceived by others. For example, after being specifically told to follow the District's protocol regarding the transporting of students, Respondent nevertheless chose to do things his own way, including using a permission slip that he had created and which was not

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



approved by the District. Heard transported students without District approved permission slips. He also failed to report injuries of students, told a student to be dishonest with the school nurse, and attempted to use a student to communicate with his substitute teacher, rather than calling the District administrators, as he had previously been specifically ordered to do. The District warned Heard on numerous occasions and yet Heard did not change his attitude. Then, with all of these warnings having been given, Heard allowed his credential to expire which mandated that the District no longer allow him to teach.

8. It is the conclusion of the Commission that Respondent engaged in conduct which evidenced Respondent's willful refusal to perform regular assignments without reasonable cause.
9. Education Code section 44932, subdivision (a)(7), may be based on violation of school "rules," such as failure to timely submit lesson plans. (*San Diego Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)
10. It is the conclusion of the Commission that Respondent's conduct as set forth in Findings 1-34 was such as to render him unfit to teach, within the meaning of *Morrison, supra*. The Commission specifically considered all criteria described by *Morrison* and compared them to the facts established above. However, it is settled that not all "Morrison factors" need be present to trigger application. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.) Moreover, the *Morrison* analysis need not be conducted on each individual fact established, but rather can be applied to the accumulated facts established collectively. (*Woodland Joint Unified School District, supra*, 2 Cal.App.4th at 1457.) The Commission is of the view that some of *Morrison* factors apply to Respondents conduct as follows:

The likelihood the conduct may adversely affect students or fellow teachers.

Respondent's poor judgment in allowing his credential to expire could be a negative influence on other teachers. In other words, if the District made an exception for Heard to somehow not be terminated because he did not have a credential, other teachers might be able to ask for the same accommodation.

The degree of such adversity.

Respondent's verbal berating of his student D [REDACTED] G [REDACTED] was unwarranted, but did not appear to have long-lasting impact on D [REDACTED] G [REDACTED] who testified at hearing.

The proximity or remoteness in time of the conduct.

The charges that serve as cause for discipline occurred in 2008 and 2009 and are somewhat remote in time. The conduct is remote in time as compared to the date of this Decision. However, the acts took place during Respondent's last two years while on a District campus. Respondent's misconduct was thus proximate to when he last taught in a classroom.

The type of teaching certificate held by the party involved.

The type of teaching certificate is not a relevant factor.

The existence of extenuating or aggravating circumstances, if any, surrounding the conduct.

Respondent offered explanations or denials for his misconduct. On numerous occasions he said, "I am sorry," but this apology was during the hearing, and after he had received numerous warnings.

The praiseworthiness or blameworthiness of the motives resulting in the conduct.

Respondent has been a teacher 10 years and Respondent was given a number of chances to change his conduct and he failed to do so.

The likelihood of recurrence of the questioned conduct.

Respondent was given a number of chances to change his conduct and he chose to not do so. His own conduct established, on multiple occasions, that he is likely to continue a pattern of misconduct. Respondent's own conduct demonstrated he apparently does not have the ability to change the character traits at issue.

The extent discipline may cause adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

The parties presented no direct constitutional arguments.

11. This Commission has the discretion to determine that dismissal is not appropriate even though cause for discipline exists. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208.) Having considered all of the evidence and the *Morrison* factors, it is the decision of the Commission that dismissal of Respondent is appropriate.

## ORDER

The First Amended Accusation against Respondent ANTHONY HEARD, JR., is sustained. Respondent ANTHONY HEARD, JR. is dismissed as a certificated employee of the Santa Ana Unified School District.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Tim Strand, Commission Member

DATED: \_\_\_\_\_

\_\_\_\_\_  
Joseph Klepadlo, Commission Member

DATED: \_\_\_\_\_

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Chris Ruiz, Commission Member,  
Administrative Law Judge