

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

JOSE CHAVARRIA,

A Permanent Certificated Employee,

Respondent.

OA# No. 2012010365

DECISION

On May 29, 30, and 31, 2012, and June 1 and 8, 2012, the Commission on Professional Competence (Commission) heard this matter in Los Angeles, California. The Commission included Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, Davina Keiser, and Enriqueta Ramirez.

L. Carlos Villegas and Martha I. Casillas, Attorneys at Law, Fagan, Friedman & Fulfrost, LLP, represented Complainant, Vivian K. Ekchian, Chief Human Resources Officer, Los Angeles Unified School District (District). Richard J. Schwab, Attorney at Law, Trygstad, Schwab & Trygstad, represented Respondent Jose Chavarria (Respondent), a permanent employee of the District, who was present throughout the hearing.

Oral and documentary evidence was received and the matter was submitted for decision on June 8, 2012. The Commission finds as follows:

FACTUAL FINDINGS

1. On January 24, 2012, Vivian K. Ekchian, Chief Human Resources Officer for the District, made and filed the Accusation and Statement of Charges in her official capacity. The Commission proceeded on the Accusation and Statement of Charges

2. On June 13, 2011, the District provided Respondent with a Notice of Unsatisfactory Service or Act(s) of Certificated Employee alleging that Respondent had committed immoral conduct, unprofessional conduct, inappropriate treatment of a colleague, and poor judgment based upon allegations that Respondent had sexually harassed a coworker. On June 13, 2011, the District also provided Respondent with a Notice of Suspension of Certificated Employee, suspending Respondent from his teaching position at

Hollenbeck Middle School (Hollenbeck) for 15 days. On December 14, 2011, Respondent, through his attorney, submitted his objection to the District's Statement of Charges and the Notice of Intent to Dismiss, and requested a hearing on the charges alleged by the District. The District seeks to dismiss Respondent from service.

3. The District's Accusation and Statement of Charges alleged that between November 1, 2009, and December 31, 2009, Respondent committed inappropriate conduct towards a coworker, Katherine Czujko (Czujko), when he made unwelcomed comments of a sexual nature, unwelcomed sexual advances, unwelcomed and forced touching and groping of a sexual nature, and verbal threats that collectively constituted sexual harassment, unprofessional conduct, immoral conduct, unsatisfactory performance, and evident unfitness for service in violation of the Education Code, sections 44932 and 44939.

4. All pre-hearing jurisdictional requirements have been met by the parties and jurisdiction exists for this hearing.

5. Respondent was born in Mexico and immigrated to the United States in 1989, when he was about 14 years old. He spoke only Spanish when he arrived in this country. In 2003 Respondent enrolled at California State Polytechnic University – Pomona (Cal Poly Pomona) where he received a Bachelor of Science degree in Mathematics. Respondent worked as a teacher assistant at Hollenbeck from approximately 2004 to 2005, and also served as a student teacher at Hollenbeck while receiving his teaching credential from Cal Poly Pomona in 2008. On September 3, 2009, Respondent was hired as a probationary teacher and assigned to Hollenbeck to teach Mathematics. He is a permanent certificated employee of the District. Respondent is married but was separated from his wife from July 2009 to September or October of 2010, when he and his wife reconciled. They remained married as of the date of hearing.

6. Czujko attended the University of California San Diego where she received a Bachelor of Arts degree in 2008 with a major in Political Science and a minor in Education, and a Masters Degree in Education in 2009. In September 2009, Czujko was hired by the District as a Science teacher at Hollenbeck. In September 2009, Czujko and her then fiancé, Ernest Raft, moved to Los Angeles from San Diego, California. They resided together in an apartment in Altadena, California through out the relevant time period for the incidents alleged in the District's Accusation and Statement of Charges. Czujko had dated Raft since she was 16 or 17 years old while in high school, and they became engaged in 2006 when she was 20 years old. On September 30, 2011, she and Raft were married. Czujko told Raft about her friendship with Respondent and the alleged incidents of sexual harassment committed by Respondent.

Respondent and Czujko's Relationship Background

7. Respondent and Czujko met for the first time at a Hollenbeck parent meeting/open house in September 2009. At Hollenbeck, the teachers are grouped into teams based upon the students that are attending their classes. Students have the same English,

Mathematics, History, and Science teachers and these teachers are placed into "teams" that meet with students' parents as a group. Respondent and Czujko taught the same students in their Math and Science classes, respectively, and were in the same teacher team. Consequently, Respondent and Czujko frequently interacted at parent meetings to discuss students' progress and to develop plans to improve students' academic performance. As members of the same teacher team, they also frequently attended team meetings together. These team meetings would take place primarily at Hollenbeck in one of the teacher's classrooms either before or after school hours. As new teachers, they frequently attended the same trainings and conferences.

8. Respondent and Czujko worked very closely as team members during the 2009-2010 school year. They worked closely together as team members to perform their duties. Czujko was initially struggling to adapt to the Latino culture and the predominantly Spanish speaking student population at Hollenbeck. She was concerned about the gang presence on the Hollenbeck campus and on at least one occasion she was threatened by a student. Respondent offered his assistance in translating discussions at parent/teacher meetings and provided suggestions on how to effectively control her classroom, even offering to allow Czujko to send problem students to his classroom when they became unruly. Czujko assisted Respondent in preparing lesson plans and completing health plan enrollment forms.

9. By all accounts, Respondent and Czujko were very good friends from September to the end of November 2009. Czujko admitted that she and Respondent socialized off campus on at least ten occasions between September and November 2009, for school functions, coffee, walks, and dinner. Often they would discuss their students and issues that both were confronting as first year teachers, but frequently they met just to socialize. Respondent and Czujko went for coffee off campus, either during school breaks or after school, and on a few occasions they exercised together, walking in parks near the school. On some of these occasions, Respondent would stop by his parents' house, where he lived, to change clothes and Czujko would accompany him. Respondent usually drove when they went to have coffee or to the park.

10. Towards the end of October 2009, Czujko and Respondent began to socialize more frequently off campus. On October 22, 2009, during "back to school night," Respondent, Czujko, and members of their team went to Respondent's sister's house to have dinner during a break between parent conferences. In late October 2009, Respondent and Czujko went to dinner on Olivera Street in Los Angeles and also met for coffee after Hollenbeck's Halloween party. On November 7, 2009, Respondent and Czujko attended a Beginning Teacher's Support Association (BTSA) meeting together. The meeting occurred on a Saturday morning and Respondent and Czujko met at Hollenbeck and drove together to the BTSA meeting. After the BTSA meeting, Respondent and Czujko went to the mall in Montebello, California and had lunch.

11. Between September and November 2009, Czujko and Respondent communicated frequently by telephone and e-mails, both during and after school hours and on weekends. As their friendship became closer, Respondent and Czujko began to have

discussions regarding personal matters in their lives and provided each other with emotional support. Respondent told Czujko about problems he was having in his life, including that he had separated from his wife and that he was going through a stressful period. Czujko expressed concern and sympathy to Respondent regarding his personal problems and frequently conveyed to him how important their friendship was and that she enjoyed spending time with him. She also sent him an e-mail in early November 2009 stating "Te gusto mucho, Jose" with the symbol of a heart "<3", translated to mean "I care about you a lot, Jose." Czujko sought Respondent's advice and relied on him for assistance in understanding Spanish and the Latin culture. In November 2009, their e-mails to each other began to take on a more intimate tone, although Czujko insisted at hearing she did not perceive the e-mails to be romantic or intimate in nature.

12. Respondent was very familiar with Hollenbeck administration, staff, and personnel prior to being hired as a teacher in September 2009. He was a very popular teacher and well regarded at Hollenbeck. He had a reputation of being very friendly and outgoing. However, Respondent was also considered to be flirtatious, chauvinistic, and macho by female teachers and staff.

13. Respondent often referred to Czujko as "blondehead weda (white girl)." Czujko also testified that Respondent asked her on occasion "if they had babies what color would the babies' eyes be?" Respondent denied ever making this comment to Czujko but the evidence showed that he made a similar comment to another school teacher at Hollenbeck.

14. Respondent would often flirt with Kristine Sheline, a female Math teacher at Hollenbeck. He would comment on her appearance and at one point told her that she looked like a model. Respondent told Sheline, who was married, that she looked nice at least once per week and also asked her "When am I going to find a girl like you?" at least twice. He told Sheline that she was a "Mexican man's dream girl" and asked her why did she "have to be married?" Respondent asked Sheline if she thought "they could make blonde babies," a comment similar to one made to Czujko. Respondent made "strange faces," "googly eyes" and flirted with Sheline, and on one occasion mouthed the words "I want you" to Sheline. As Sheline was walking down the hallway at school one day, Respondent remarked "Wow, I've never seen you wear those pants before. They look really nice on you." He stopped and stared at her while she walked down the hallway and into her classroom. Sheline recalled that Respondent's comments were made in November and December 2009. But during the second semester, in the Spring of 2010, Respondent asked Sheline to "hang out" with him without her husband. Sheline thought Respondent's comments were inappropriate and they made her feel uncomfortable, but she stated Respondent never touched or grabbed her in an inappropriate manner. She did not feel threatened by Respondent because she "redirected" his comments and changed the subject. She admitted that she and Respondent joked sometimes and that she had a joking personality. Respondent admitted flirting with Sheline, but testified that she never told him that he made her uncomfortable, and if she had, he would have stopped.

15. Virginia Elizabeth Escambia, who worked in the Hollenbeck Title One office, stated that Respondent told her that she was beautiful and asked her for her telephone

number, which she declined to give him. She stated that Respondent gave her a bracelet and would write her poems in 2009, which made her feel "awkward" when reading them. Escambia told Respondent several times that she had a boyfriend, and "didn't want anything with him," but Respondent asked her more than once to go to the movies or to have ice cream. He always asked her in a nice way, but she declined his overtures each time. Respondent told Escambia that Czujko wanted to "hang out with him" and that Czujko "gets jealous."

16. Maria Ortiz, a teacher at Hollenbeck, stated that Respondent and Czujko were frequently flirting with each other during the Fall of 2009, and Respondent told her that he and Czujko were dating. She noticed that their relationship changed at the beginning of the second semester in January or February 2010. Respondent told her that Czujko was getting too close and he wanted to go back to his wife. Ortiz testified that Respondent would also frequently tell her that she looked good or pretty and told her that she was a very nice lady. Respondent also told Ortiz to apply for the teacher position at Hollenbeck.

17. In 2006, while working as a teacher assistant at Hollenbeck, Respondent lifted Maria Gomez up from the floor by her waist and twirled her around. Gomez, who worked in the Title One office, admonished Respondent and told him that his conduct was inappropriate. Gomez explained to Respondent that although she was nice and friendly with him, he should not confuse the relationship. The Title One coordinator observed this incident and spoke to Respondent about it. Gomez was also told by Respondent that he and Czujko were dating and that he had broken the relationship off because he did not want to get serious with Czujko.

Causes for Dismissal

18. The District alleges that Respondent committed several acts of sexually harassing conduct, both physical and verbal, against Czujko from November 1, 2009 through December 31, 2009. The incidents have been arranged below in four separate categories: (1) the San Pedro beach incident; (2) the Capturing Kids' Hearts Training incident; (3) the parent/teacher conference incident; and (4) the Hollenbeck classroom incidents (both Respondent's and Czujko's classrooms). The sexual harassing conduct is alleged to have occurred both on and off of the Hollenbeck school campus. The District asserts that although Respondent and Czujko started their relationship as colleagues and good friends, Respondent wanted the relationship to develop into an intimate and romantic relationship, which Czujko at some point rebuffed. According to the District, after Czujko rejected Respondent's advances, his conduct towards her changed and he became forceful in his insistence that Czujko begin to date him outside of their professional relationship at Hollenbeck.

19. Respondent and Czujko had very different perspectives of the nature of their relationship starting in December 2009. Respondent testified that towards the end of October and into November 2009, he and Czujko's relationship became more intimate and was more of a romantic affair. Czujko testified that she continued to perceive their relationship as a good friendship until Respondent began to make sexual advances in late November 2009 which she rejected. According to Czujko, their friendship severed towards the end of

November 2009 when it became apparent that Respondent wanted a more intimate relationship, not just a friendship and cordial professional relationship.

San Pedro Beach Incident

20. Respondent testified that he and Czujko spent a romantic evening on San Pedro beach on either November 7 or 14, 2009. He recalls agreeing to meet Czujko in Altadena near her home around 10:00 or 11:00 p.m. to have coffee, and later the two of them went to San Pedro beach. While having coffee, Czujko told Respondent that she missed the beaches in San Diego and Respondent suggested that they visit a beach in Los Angeles that would remind her of San Diego. According to Respondent, they went to San Pedro beach and spent an intimate, romantic evening, not leaving until approximately 4:00 or 5:00 a.m. in the morning. He stated that they held hands on the return drive home.

21. Czujko recalls the San Pedro beach incident differently. She testified that they went to San Pedro beach on a Saturday towards the end on November 2009. She stated that Respondent picked her up around 5:00 or 6:00 p.m. to go for coffee in Altadena. Respondent offered to show her a beach in Los Angeles that would remind her of San Diego and she agreed to accompany him to the beach. However, she was surprised when they arrived at the beach at around 8:00 p.m. and it was closed and very few people were around. Czujko stated that they walked onto the beach but she became uncomfortable and asked Respondent to take her home. Respondent then threw her down on the sand in a playful manner and began throwing sand at her. When she insisted that they leave the beach, Respondent became upset and stated that he wanted to date Czujko outside of their school relationship. According to Czujko, she then told Respondent they could no longer spend time together or see each other outside of school. Czujko stated that Respondent reluctantly agreed to take her home and that they only spent about 15 minutes at San Pedro beach. While driving home, Respondent tried to grab her thigh and hold her hand, but Czujko rejected his advances. According to Czujko, Respondent became upset and grabbed her jaw and turned her face towards him and said that "if he wanted to spend time outside of school with me, then that is what is going to happen because he gets what he wants." In her statement to the District during the investigation, Czujko stated that Respondent grabbed her jaw and twisted her head towards him and said in an extremely angry voice "Look Czujko, when I want something, look at me, I make sure that I get it." Czujko testified that she returned home to Altadena around 9:00 p.m. that evening. Czujko stated that she was shocked and upset by Respondent's behavior that evening and that she no longer considered Respondent a friend after this incident.

22. Ernest Raft testified that Czujko told him about the San Pedro beach incident when she arrived home from the beach. He was not aware she had gone to the beach with Respondent, but he stated that Czujko got home around 10:00 p.m. and although he did not recall the date, he believed it was on a weekend. He stated that she was upset and withdrawn when she came home, and Czujko told him Respondent had tried to kiss her and was making sexual advances while they were on the beach. Czujko did not provide more specific details to Raft about Respondent's conduct that evening. Raft told Czujko to stay away from Respondent but did not tell her to report the incident because it occurred off of school grounds.

Capturing Kids' Hearts Training Incident

23. On December 1-3, 2009, Respondent and Czujko attended the Capturing Kids' Hearts Training Los Angeles. In addition to Respondent and Czujko, Hollenbeck sent five other teachers to this training, Nana Lopez, Kristen Sheline, Pilar Wright, Emma Veladore, and Claudia Andrade. Czujko drove to the training with Respondent on the first day even though the San Pedro beach incident had occurred prior to this event. She explained that she asked Respondent for the address and driving directions to the training which he stated he would give to her. On the morning of the first day of training, Respondent told Czujko it would be difficult to explain the directions and that she should just ride with him. Czujko believed Maria Ortiz would be driving with Respondent to the training so she agreed to ride with him. However, Ortiz did not attend the training and Respondent and Czujko drove alone together to the first day of training. No incidents occurred either on the drive to, or at the training on the first day.

24. Czujko drove herself to the second day of the Capturing Kids' Hearts Training. She stated that she was seated at a round table along with Respondent and six or seven other teachers. Czujko stated Respondent was seated next to her when he began to kick, flick, and pinch her to get her attention during the training session. According to Czujko, Respondent kicked her leg under the table two or three times, and pinched or flicked her hand and/or arm on the table two or three times as well, and would smile, start laughing, or make strange faces at her. At some point, after getting Czujko's attention, Respondent "mouthed" the words "fuck you" and "I want to fuck you," silently without others at the table seeing. Czujko testified that she felt like she had no control over her own situation because when she switched seats during a break, Respondent moved her materials back so they were right next to where he was seated. Czujko stated she "felt frightened and anxious and extremely stressed" during the training.

25. Czujko testified that she told Kristen Sheline that she was having a difficult time at the training because Respondent was harassing her. According to Czujko, when Sheline asked her what she meant, Czujko told Sheline that Respondent was "verbally and physically doing things that were sexually harassing and making me uncomfortable." Sheline testified that at some point Czujko pulled her aside at the training mentioned that Respondent was "bothering" her but Czujko did not give her any details about Respondent's conduct. Sheline switched seats with Czujko at some point to prevent Respondent from bothering Czujko. Sheline testified that Czujko seemed "annoyed" at the training but did not seem distressed or upset, and she was not crying. Sheline did not know Czujko very well at the time the Capturing Kids' Hearts Training occurred.

26. Respondent agreed that Czujko drove with him on the first day of the Capturing Kids' Hearts Training. But he denied that he kicked, pinched, or flicked Czujko on the second day of the training and denied that he ever "mouthed" the words "fuck you" or "I want to fuck you" to Czujko at the training.

27. Respondent testified that on the first or second day of the training, Czujko received a telephone call from a substitute teacher covering her classroom. The substitute told Czujko that a student in her classroom was misbehaving. Respondent stated that Czujko asked him to call the student's parent and translate for her, and he told her he would make the call later that day. Respondent stated Czujko became angry and demanded that he make the call immediately, and when he refused, she did not speak to him anymore during the training. However, Respondent stated he drove Czujko back to her car that day and she refused to get out of his car because she wanted to spend time with him. Respondent stated he told her he could not spend time with her and Czujko became angry and slammed his car door when she got out of the car. Respondent stated that he and Czujko did not speak again at the training after his incident.

28. Czujko denied that a substitute teacher called her at the training. She stated she would not have known who the substitute was for her class and there was no way the substitute would have had her cellular telephone number. Czujko testified that the normal procedure would have been for the substitute to remove the student from the classroom by sending him or her to the dean, a different classroom, a counselor, or calling security guards to the room. Czujko stated she would learn of the incident only when she returned to class and a note detailing the incident would be left by the substitute or someone in administration. She denied that this incident ever occurred.

29. Raft testified that Czujko told him about the Capturing Kids' Hearts Training incident. He advised her to report the incident to school administrators but that Czujko was afraid because she believed Respondent had a good working relationship with school administrators. Raft stated that Czujko told him that she was afraid of being fired if she reported Respondent's conduct.

Parent/Teacher Conference Incident

30. Czujko testified that during the first two or three weeks of December 2009, she, Respondent, Claudia Andrade, a student, and the student's parent convened a parent/teacher conference in Andrade's classroom. Andrade, the student, and the student's parent were seated at one end of two long rectangular tables that had been placed together. Respondent and Czujko were seated across from each other at the other end of the two tables. Czujko testified that while Andrade was talking to the student and parent at the other end of the table, Respondent was pinching, flicking, and kicking her and "mouthing" the words "I want to fuck you," "fuck you," and "I want to fuck your ass" over the table. Czujko stated that she motioned and mouthed to Respondent to stop and she pushed her chair away from the table. She stated that she did not want to call attention to the incident and that she did not believe Andrade, the student, or the parent observed Respondent's conduct.

31. Respondent testified that this incident never occurred.

32. Czujko told Raft about the parent/teacher conference incident and he advised her to report Respondent to administrators at Hollenbeck. Czujko again declined to report the matter to the District. Czujko also told her mother and two friends, Jeanette Brown and

Veronica Forbes, and Hoisy Tsao, another Science teacher at Hollenbeck, about the incident, but none of these persons testified at hearing.

Hollenbeck Classroom Incidents

33. Czujko testified that during the second or third week of December 2009, there were three occasions where Respondent physically and verbally assaulted her in both Respondent's and her own classroom. There were no other witnesses to any of these events.

(a) Czujko testified that the first classroom incident occurred when Respondent telephoned her to come to his classroom during the third period to call a parent regarding one of their students. Because third period was a free "conference" period for both Respondent and Czujko, there were no students in Respondent's classroom at the time. Czujko testified that she arrived at Respondent's classroom and no other team members were there. She stated Respondent was upset because she would not date him and he would not make the telephone call to the parent unless Czujko gave him a kiss. According to Czujko, when she refused his advances, Respondent "pinned me against the blackboard and held me down and tried to kiss me." Czujko stated Respondent grabbed her jaw, pushed her against the blackboard and placed his forearm across her throat choking her. According to Czujko, she tried to push Respondent away and told him to stop, but he reached his hand down inside her shirt and groped her breast. Czujko testified that she pushed Respondent off of her and told him "fuck you. Get the fuck away from me." Czujko began to run out of the classroom when Respondent grabbed her shoulders and tried to stop her and she told him to stop and get off of her. As she was running out of Respondent's classroom, Respondent said "I want to fuck your ass."

(b) The second classroom incident occurred when Respondent came into her classroom unannounced on another occasion during third period and was very angry with her. Czujko testified that she was standing near a panel of cabinets that are covered by chalkboards and Respondent came in and grabbed her jaw and forced her up against the cabinets and said "Fuck you. You think you can get away with not calling me when I tell you to." Czujko stated she was very afraid because he was so angry. According to Czujko, Respondent then placed one hand over her mouth and his forearm across her throat, and pressed her up against chalkboards and said "your mouth is saying 'no,' but your body is saying 'yes.' You know you are hot and sexual for me." Czujko stated she pushed Respondent away, ducked underneath him and ran out of her classroom into Mr. Hernandez's classroom next door. She did not tell Hernandez about this incident or report the incident to administrators.

(c) Czujko testified that on two other separate occasions Respondent "snuck up" behind her in her classroom during the third period and lifted her dress and slapped and/or pinched her on her buttocks and snapped her bra. She stated that she was working in her classroom and did not hear Respondent come into the classroom either time. Respondent told Czujko that she "wouldn't wear a dress if I didn't want him to do that." On one of these occasions, Czujko ran out of the classroom to the women's

restroom down the hallway, but it's unclear in the record how she diffused or escaped the second incident.

(d) Finally, Czujko testified that on five or six occasions in November and December 2009, Respondent requested her to perform "professional tasks" for him and she refused to assist him. According to Czujko, Respondent would call her over the telephone and say "well, fuck you then" and "you are fucking lazy." Czujko stated Respondent would repeatedly call her on the classroom telephone while students were present to request her to perform tasks for him and when she refused he would tell her she was "fucking lazy then. I can't believe you won't fucking help me with that."

34. Respondent categorically denied that these incidents described by Czujko took place in his and Czujko's classrooms.

35. Czujko told Raft, her mother, and two of her friends about the classroom incidents but she did not report the incidents to Hollenbeck administrators or the police at the time they occurred. Raft encouraged her to report Respondent but she was reluctant because of her fear of losing her job and she did not believe anyone would believe her.

36. Czujko did not report any of the incidents of sexual harassment to the District until November 2010. Czujko testified that she was reluctant to report the incidents because Respondent had threatened her when she told him she would report him to school officials if he did not stop harassing her. She told Raft about all the incidents either immediately after the incidents occurred or shortly thereafter. Raft stated that he encouraged Czujko to report the incidents to Hollenbeck administrators but she was afraid of losing her job and she also feared Respondent. Raft stated he did not report the incidents himself because he did not feel comfortable going over Czujko's head to report the incidents after she had told him she did not want to pursue that course of action.

37. Czujko felt threatened by Respondent because of several threats made by Respondent to her. She stated that in December 2009, Respondent told her that he had treated another female teacher assistant similarly to how he was treating her and the school never found out or did anything about it. Czujko believed that because he had not been disciplined by school administrators, nothing would happen if she complained about Respondent's conduct. She testified that when she told Respondent she would report him if he did not stop harassing her, Respondent threatened to hurt her pets, and on a few occasions grabbed her and choked her, and told her she would be sorry if she reported the incidents and that he would use his "connections" at Hollenbeck to get Czujko fired.

38. Czujko stated that Respondent made several threats to her in December 2009 in an attempt to either force her to date him or to dissuade her from reporting his conduct to school administrators. Respondent called himself "power" as a nickname and told her on one occasion "remember, I am power, and I know where you live." Respondent admitted that his nickname was "power" and that he had gotten the name as a child because he was a very good arm wrestler. Czujko stated that Respondent told her "you won't like my consequences if you defy commands. If you tell anyone what is happening, you will not like

what is happening to you. I will make sure that you are not in good favor here at Hollenbeck." Czujko construed these comments as threats and they made her reluctant to report Respondent to school administration.

39. Czujko testified that in December 2009, Respondent also demanded money from her to stop harassing her. Both Raft and Czujko testified that Respondent had called Czujko and demanded money to leave her alone. Czujko considered paying Respondent the money, but Rath would not agree because of the financial situation he and Czujko were in at the time. Although telephone communication between Respondent and Czujko decreased significantly in December 2009, there were several telephone calls made by Czujko to Respondent during the second and third weeks of December 2009. Czujko stated that the reason for the telephone calls were to discuss their students and to discuss what it would take for Respondent to leave her alone, including paying the money he had requested.

40. Respondent denied making any threats to or demanding any payment from Czujko for any purpose. He stated Czujko was calling him in December 2009 to try and keep their relationship going.

41. Respondent and Czujko had very little social contact, if any, after the second semester began in January 2010 and during the remainder of the 2009-2010 school year. Czujko thought everything would be fine going forward and she decided to return to Hollenbeck for the Fall 2010 semester. Respondent and Czujko again shared the same students and were on the same team for the 2010 Fall semester. In November 2010, another incident occurred that finally made Czujko report Respondent's conduct. According to Czujko, one Friday during an after-school program, Respondent brought his students into her classroom to play with a video gaming system. She stated that while Respondent's students were playing the video games, Respondent walked over to her and held up deck of "Uno cards" that she had given him as a gift. She said Respondent walked by her and whispered very quietly "Remember, I'm still in power." Czujko ran out of her classroom and went home. She stated she was terrified and felt like her personal space had been invaded and she had no control over her environment. After reflecting over the weekend, Czujko decided to report Respondent's conduct to Ms. Luz Cortes, Hollenbeck's Assistant Principal. Respondent filed a complaint with the Los Angeles School Police Department. The investigation that ensued resulted in the Accusation and Statement of Charges upon which this hearing is based.

Credibility Determinations

42. No witnesses other than Respondent and Czujko observed the alleged misconduct by Respondent. Consequently, the credibility of Respondent and Czujko is imperative in determining the facts in this case.

It is settled that the trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the

testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of “one credible witness may constitute substantial evidence”, including a single expert witness. (*Kearl v. Board of Medical Quality Assurance*, (1986) 189 Cal.App.3d 1040, 1052.)

The rejection of testimony does not create evidence contrary to that which is deemed untrustworthy. Disbelief does not create affirmative evidence to the contrary of that which is discarded. “The fact that a jury may disbelieve the testimony of a witness who testifies to the negative of an issue does not of itself furnish any evidence in support of the affirmative of that issue, and does not warrant a finding in the affirmative thereof unless there is other evidence in the case to support such affirmative.” (*Hutchinson v. Contractors’ State License Bd.* (1956) 143 Cal.App. 2d 628, 632-633, quoting *Marovich v. Central California Traction Co.* (1923) 191 Cal. 295, 304.) Discrepancies in a witness’s testimony, or between that witness’s testimony and that of others does not necessarily mean that the testimony should be discredited. (*Wilson v. State Personnel Bd.* (1976) 58 Cal App.3d 865, 879.)

Respondent’s Credibility

43. Respondent’s testimony and prior statements were inconsistent and untruthful to an alarming degree. There are serious inconsistencies in Respondent’s testimony regarding the timing of the San Pedro beach incident and the purported romantic and intimate events that followed. First, the San Pedro beach incident did not occur on November 7 or 14, 2009, as Respondent asserts.¹ Respondent and Czujko attended the BTSA meeting together on Saturday November 7, 2009. Several e-mails between Respondent and Czujko established that the BTSA meeting occurred on November 7, 2009. Czujko also credibly testified that she and Respondent went to lunch after the BTSA meeting and she introduced bank statements that confirmed she incurred credit card charges at the Panda Express in the Montebello mall on November 7, 2009. E-mails exchanged between Respondent and Czujko on November 7, 8, and 9, 2009, conspicuously omitted any reference to meeting for coffee or visiting the San Pedro beach on November 7, 2009. E-mails between them clearly indicated that they were still very good friends on November 7, 2009. E-mails up to this point typically recounted their activities of prior days, but their e-mails during this period made no mention of going to San Pedro beach. The evidence also established that Czujko and Raft were in Disneyland in Anaheim, California on November 14, 2009. Bank statements and

¹ Respondent testified at his deposition that the San Pedro beach incident occurred on Friday November 6, 2009, when he and Czujko met after school for coffee. Thus, Respondent’s testimony regarding this incident is also inconsistent with prior deposition testimony.

invoices confirmed hotel charges for Czujko in Anaheim on November 14, 2009. Further, on December 8, 2010, Respondent told police officers investigating Czujko's sexual harassment complaint that he recalled staying all night on a beach talking with Czujko in September 2009, not November 7 or 14, 2009. Thus, Respondent is not credible on his recall of when the San Pedro beach incident occurred.

44. Respondent was also not credible in his description of his relationship with Czujko after the San Pedro beach incident. He stated that they remained romantic and intimate after the San Pedro beach incident. According to Respondent, they subsequently went to the Santa Monica pier on a date, and on at least three other occasions, Czujko visited his home and they were intimate. Czujko admitted that she had visited Respondent's house two or three times, but denied that she and Respondent were ever romantically involved. She stated that typically she and Respondent would go for coffee or to the park to exercise and Respondent would stop by his house briefly to change clothes. Respondent, however, testified that on three occasions Czujko came to his home and they were in his bedroom with their upper body clothing removed and were kissing and hugging. To support this assertion, Respondent described a tattoo that Czujko had on her side that he could not have been aware unless he had seen Czujko's naked upper body. He described the tattoo as a very colorful flower, possibly roses, with bright red or orange coloring. He could not recall whether the tattoo was on Czujko's left or right side, but recalled that it covered the length of her side from her waist to her armpit.

45. The evidence established that Czujko did in fact have a tattoo, but it was drastically different in appearance from that which Respondent described at hearing. The tattoo was without color and resembled a black ink drawing of a tree, not colorful flowers. Respondent's testimony that the tattoo had colorful flowers or roses was clearly untruthful, and apparently an attempt to buttress his claim that their relationship was intimate and romantic. Respondent could not have mistaken Czujko's tattoo for a colorful depiction of flowers or roses. This was a clear attempt to embellish the nature of his and Czujko's relationship. Respondent's credibility on this point was further eroded when he testified that he and Czujko typically spent two or three hours together in the bedroom on the three occasions she visited him at his home. However, in his deposition, Respondent stated that on the first visit to his home, they were in his bedroom almost six hours. In December 2010, Respondent also told police officers that he never touched Czujko's breasts or buttocks, and that he "never touched" Czujko in anyway. Although he told police that Czujko had gone to his house three times, he declined to tell officers that he and Czujko were intimate and romantic, kissing and hugging in his bedroom as he asserted at hearing. Respondent's testimony was thus clearly inconsistent with prior statements in the record.

46. Respondent's embellishment of the romantic and intimate nature of his relationship with Czujko, and his inconsistent statements in the record, weaken his credibility and raises doubts about the veracity of his version of the alleged incidents of sexual misconduct. He attempted to place the timing of the San Pedro beach incident in early November 2009 to undermine Czujko's testimony that their friendship ended after that incident. The evidence established that the San Pedro beach incident occurred towards the end of November 2009, and that Respondent and Czujko's relationship did in fact

significantly change after this incident. The e-mails and telephone calls between them were reduced significantly and their relationship apparently became strained and less friendly. Respondent testified that the relationship changed in December 2009 because he had decided to go back with his wife. But in February 2010, he was still flirting with Kristine Sheline and asked her to go out on dates with him without her husband. This does not reflect the conduct of a person that was seeking to reunite with his wife in December 2009, and again points to inconsistencies in Respondent's testimony.

47. Finally, Respondent's testimony regarding his flirtatious statements and conduct toward Kristine Sheline was inconsistent with statements made during his deposition. He denied making certain statements to Sheline in his deposition, which were later confirmed at hearing by Sheline.

48. In sum, Respondent's testimony was often untruthful, inconsistent and frequently rebutted by more credible evidence admitted at the hearing.

Czujko's Credibility

49. Czujko characterized the relationship between her and Respondent as "very good friends" from September 2009 until the end of November 2009. Given the nature of the e-mail communications between them and the high volume of telephone calls between them through the end of November 2009, it is clear that they were initially very good friends. However, it is also apparent that the relationship was progressing towards something more than a good friendship, or at least Respondent perceived it to be more than just a friendship. Czujko provided emotional support of a very personal nature to Respondent and some of the e-mails between them included flirtatious comments by both of them. Czujko admitted Respondent was very helpful in assisting her in navigating the cultural barriers that confronted her at Hollenbeck, and that's why she initially spent so much time with him. There was significant social interaction between Respondent and Czujko outside of Hollenbeck between September and November 2009. Unless Czujko was extremely naïve, their relationship to the unknowing eye could have easily been perceived as one of more than just mere friendship. However, even if the relationship had been progressing towards more than a mere friendship, when Czujko signaled that the relationship was over or requested certain boundaries at the end of November 2009, Respondent should have respected those boundaries regardless of the prior nature of the relationship.

50. Czujko credibly testified that Respondent and her relationship changed significantly after the San Pedro beach incident. Czujko remembered that the San Pedro beach incident occurred towards the end of November 2009, and the evidence supported this time period. Czujko stated in her written statement to the District that Respondent apologized for his conduct after the San Pedro beach incident and that their relationship returned to normal for "about 1-2 weeks." An e-mail between them on Thanksgiving Day November 26, 2009, seems to confirm that Czujko had accepted Respondent's apology for the beach incident. However, within the next week, Respondent again began to make aggressive sexual advances towards Czujko at the Capturing Kids' Hearts Training during the first week of December. Respondent admitted that their relationship changed or ceased

in December 2009, although he claimed the relationship ended because of his desire not to get serious and to return to his wife.

51. The diminishing e-mails and telephones calls between Czujko and Respondent at the beginning of December 2009 supported Czujko's claim that Respondent's conduct had become increasingly more sexually aggressive in December 2009 and that their relationship became strained. Although the record showed that Czujko made several calls to Respondent during the second and third week of December 2009, this would not be unusual because they remained on the same teacher team. Czujko also credibly testified that some of her calls to Respondent were in an attempt to discuss what it would take to stop the harassment.

52. Czujko's testimony regarding Respondent's conduct was consistent with prior statements made by her during the investigation and was corroborated by Raft's testimony at hearing. Raft credibly testified that Czujko told him about the incidents involving Respondent when they occurred or shortly thereafter.

53. Kristine Sheline also credibly testified that Respondent made inappropriate comments to her of a sexual nature, some of which were very similar to comments made by Respondent to Czujko. Although Sheline stated that Respondent never touched her in a sexual or inappropriate manner, she corroborated Czujko's claims that Respondent did make inappropriate comments and gestures of a sexually explicit nature while at Hollenbeck. Of significance, Sheline corroborated Czujko's claim that Respondent was bothering her during the Capturing Kids' Hearts Training. Evidence showed that Respondent frequently flirted with other female teachers and staff at Hollenbeck and had asked them out on dates. This evidence controverts Respondent's testimony that he never made any sexual advances towards Czujko or any other teacher while he worked at Hollenbeck.

54. Finally, although Czujko failed to report Respondent's misconduct until November 2010, almost one year after the incidents occurred, she credibly testified that she did not report the incidents because of her fear of not being believed and possibly losing her job. She was a new teacher at Hollenbeck and Respondent enjoyed more influence due to his existing relationship with the administrators at Hollenbeck. She also feared retaliation by Respondent, a fear that was enhanced by Respondent's threats against her in December 2009. Victims of sexual harassment frequently will not come forward or delay coming forward with allegations against the harasser for fear of being disbelieved and/or being accused of bringing the perpetrator's actions upon themselves. That it took Czujko almost one year to come forward with her allegations is not dispositive given her fear of Respondent as a result of the verbal and physical sexual acts committed against her by Respondent and his threats of retaliation if she reported the incidents. Moreover, Respondent claimed at hearing that Czujko's allegations and complaint of harassment arose out her anger for his decision to end their relationship and go back to his wife. However, according to Respondent's own testimony and statements, he told Czujko in December 2009 of his decision to end the relationship. If Czujko's motive was based upon anger because Respondent ended the relationship in December 2009, she would have filed her complaint in December 2009, not November 2010. Czujko's statements have been consistent throughout the investigation and

the hearing in this matter, and should not be viewed with less credibility because of her delay and reluctance to come forward and report Respondent's harassment.

55. On this evidence, it is concluded that Czujko's testimony was more credible than Respondent's testimony. Accordingly, Czujko's testimony regarding Respondent's sexual advances, verbal and physical sexually harassing conduct, and threats is deemed to be credible, and sufficient to conclude that the misconduct occurred as alleged in the District's Accusation and Statement of Charges. Hence, the Commission finds that the San Pedro Beach incident, the Capturing Kids' Hearts Training incident, the Parent/Teacher Conference incident, and the Hollenbeck Classroom incidents as described by Czujko did in fact occur.

56. The District has several policies and guidelines which certificated employees are bound to follow. The District has a Sexual Harassment Policy, Bulletin No. 1893.1 dated August 1, 2005, that prohibits: (1) verbal unwelcome conduct such as the use of suggestive, derogatory, or vulgar comments; the use of sexual innuendo or slurs, making unwanted sexual advances, invitations, or comments, pestering for dates, making threats, etc.; (2) visual unwelcome conduct such as display of sexually suggestive objects, pictures, posters, written materials, cartoons, or drawings, and/or the use of obscene gestures or leering; (3) physical unwelcome conduct such as unwanted touching, pinching, kissing, patting, or hugging; the blocking of movement; stalking; assault, and/or physical interference with work or study directed at an individual because of the individual's sex, sexual orientation or gender; and (4) threats, demands, or pressure to submit to sexual requests in order to keep a job or academic standing or to avoid other loss, and/or offers of benefits in return for sexual favors. The District also has an Employee Code of Ethics which states a goal of creating an environment of trust, respect and nondiscrimination. The Ethics Code specifically provides "We are committed to creating an environment of trust, care and respect. We will not tolerate discriminatory or harassing behavior of students or colleagues."

57. On September 1, 2009, upon being hired by Hollenbeck, Respondent signed an acknowledgement of his receipt of the policies and new hire information for the District, including receipt of the Sexual Harassment Policy and the Employee Code of Ethics. Respondent's conduct described in the San Pedro Beach incident, the Parent/Teacher Conference incident, the Capturing Kids' Hearts Training incident, and the Hollenbeck Classroom incidents, specifically violate the District's Sexual Harassment Policy and Employee Code of Ethics.

58. On April 28, 2010, Respondent received a performance evaluation from Hollenbeck indicating that he "meets" all the criteria for teacher evaluation included in the performance evaluation for that evaluation period, which included the 2009-2010 school year.

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LEGAL CONCLUSIONS

Jurisdiction

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944 and Factual Findings 1 through 5.

Burden and Standard of Proof

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

3. 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 on Professional Competence 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.)

4. Education Code section 44932, subdivision (a), provides in pertinent part that no permanent employee shall be dismissed by a school district except for one or more of the following causes, including for (1) immoral or unprofessional conduct, (4) unsatisfactory performance, (5) evident unfitness for service, and/or, (7) persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.²

5. The District's Accusation and Statement of Charges do not set forth specifically which of the District's factual allegations relate to each of the six alleged bases for dismissal (that is, unprofessional conduct, immoral conduct, unsatisfactory performance, evident unfitness for service, willful refusal to perform regular assignments without reasonable cause, or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district). Rather, the District alleges that all six charges "demonstrate separately and, in any combination," (Accusation, page 4, line 24) support for

² All further statutory references shall be to the Education code unless otherwise specified.

dismissal (Accusation, page 5, lines 23-24). The Commission has examined each charge to determine whether it was proven, and for those proven has determined, as set forth below, whether such charges were a violation of one or more of the six statutory bases for dismissal as alleged.

Unprofessional Conduct and Immoral Conduct

6. "Unprofessional conduct," as used in section 44932, subdivision (a)(1), may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553.) However, the conduct in question, to amount to unprofessional conduct, must indicate unfitness to teach. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.) "Immoral conduct," pursuant to sections 44932, subdivision (a)(1), and 44939, has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. Or, it can be 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. (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

7. As set forth in Factual Findings 12 through 22, and 42 through 55 (San Pedro Beach Incident); 12 through 19, 23 through 29, and 42 through 55 (Capturing Kids' Hearts Training Incident), 12 through 19, 30 through 32, and 42 through 55 (Parent/Teacher Conference Incident), and 12 through 19, 33 through 41, and 42 through 55 (Hollenbeck Classroom Incidents), Respondent engaged in unprofessional and immoral conduct. As set forth in Legal Conclusions 6 and 7, and 10 through 17 below, Respondent's conduct was directly related to his fitness to teach, thereby establishing grounds for dismissal pursuant to section 44932, subdivision (a)(1).

Evident Unfitness For Service

8. Under section 44932, subdivision (a)(5), "Evident unfitness for service" is not synonymous with "unprofessional conduct," and the term means clearly not fit for teaching, ordinarily by reason of temperamental defects or inadequacies; it connotes fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet expectations of the school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) "Evident unfitness" includes in its definition "unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." To terminate the teacher on grounds of immoral conduct, unprofessional conduct, or evident unfitness for service, it must also be established that the conduct renders the teacher unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230.) Thus a determination of evident unfitness requires an analysis based on criteria set forth in *Morrison*. In reaching a conclusion that grounds exist to dismiss a certificated employee on the basis of evident unfitness for service, not all *Morrison* factors need be

examined, only the pertinent ones. (*Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384.)

9. As set forth in Factual Findings 12 through 22, and 42 through 55 (San Pedro Beach Incident), 12 through 19, 23 through 29, and 42 through 55 (Capturing Kids' Hearts Training Incident), 12 through 19, 30 through 32, and 42 through 55 (Parent/Teacher Conference Incident), and 12 through 19, 33 through 41, and 42 through 55 (Hollenbeck Classroom Incidents), Respondent's conduct evidenced a temperamental defect or inadequacy which renders him unfit to teach. Respondent's repeated verbal and physical unwelcomed sexual conduct towards Czujko included sexual slurs, vulgarities, and obscenities direct toward Czujko, unwanted physical touching and kissing, slapping of her buttocks, lifting of her dress, grabbing her breast, and making threats and demands for sexual relations. These acts were perpetrated against a colleague and clearly indicate that his temperament is unsuited for teaching. In addition, significant evidence showed that Respondent had made sexual advances, although not as egregious as the conduct directed at Czujko, towards other teachers and staff at Hollenbeck. Respondent's misconduct evidenced a pattern of inappropriate sexual behavior towards his colleagues, conduct which primarily occurred on the Hollenbeck school campus during school hours. As set forth in Legal Conclusions 8 and 9, and 10 through 17 below, Respondent's conduct showed his unfitness to teach, thereby establishing grounds for dismissal pursuant to section 44932, subdivision (a)(5).

Application of Morrison Factors

10. Even where immoral conduct, unprofessional conduct, or evident unfitness for service is established, it must also be established that such immoral conduct, unprofessional conduct, or evident unfitness renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230 (*Morrison*); *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208 (*Fontana*); *Woodland, supra*, 4 Cal.App.4th at 1444-1445.) Application of the *Morrison* standards indicates that the Commission has broad discretion in disciplinary matters. The role of the Commission is not merely to determine whether the charged conduct in fact occurred, but to decide whether the conduct, as measured against the *Morrison* criteria, demonstrates unfitness to teach. (*Fontana, supra*, 45 Cal.3d at 220.)

11. In *Morrison, supra*, 1 Cal.3d at 235, the California 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." In general, the determination of fitness requires an analysis based on the criteria set forth in *Morrison*, to determine whether, as a threshold matter, the questioned conduct indicates unfitness for service. In the *Morrison* case, the Supreme Court of California held that the determination whether a person is fit to teach must be based on an objective and analytical approach. The *Morrison* court identified the following factors to be considered in determining whether a teacher's conduct indicates unfitness 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 party involved; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the questioned conduct; and (8) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.* at pp. 229-230.)

12. The Commission members considered the findings in their entirety and the factors set forth in *Morrison* in assessing Respondent's fitness to teach. The Commission members unanimously agreed that Respondent's conduct in its entirety reveals that he has a character flaw that makes him unfit to teach within the meaning of section 44932, subdivisions (a)(1) and (a)(5).

13. Respondent's conduct, although over a relatively short period of time, nonetheless was egregious, persistent, and is likely to recur if he is retained to teach. Respondent disrespected appropriate boundaries between him and his fellow colleague, Czujko. He committed multiple instances of unwelcomed sexual conduct toward Czujko, including sexual advances, physical touchings, verbal vulgarities, sexual innuendos and slurs, obscene gestures and leering, and threats and pressure on Czujko to submit to his sexual requests. The likelihood of Respondent repeating this conduct, if not against Czujko, but also another teacher or colleague is high. The evidence showed that Respondent has made sexual advances and overtures towards other teachers and staff, and although these sexual advances did not rise to the level of the physical and verbal harassment to which he subjected Czujko, the possibility of the recurrence of Respondent's conduct is real. He is clearly viewed as a person with a flirtatious and strong personality and is unable to adhere to school policies and guidelines regarding sexual harassment and unwilling to respect the appropriate boundaries of his female colleagues.

14. Respondent's conduct impaired the student/teacher relationship in that Czujko and Respondent worked on the same teacher team, had the same students and frequently were required to conduct parent/teacher conferences together. Czujko relied on Respondent to assist her with Spanish translations during conferences for many of her students and Respondent made her submission to his sexual advances a condition of his assisting Czujko with her teaching duties. Respondent's conduct frequently occurred during the school day and/or at school sanctioned events. He disrupted the educational process because Czujko was forced to endure the sexually harassing conduct while attempting to perform her duties as a teacher at Hollenbeck.

15. There were also aggravating factors attendant to Respondent's misconduct. His conduct was particularly physical and of an aggressive nature. On more than one occasion, he groped Czujko's breasts and slapped her buttocks, physically restrained her either by her cheek or throat, and used threats and intimidation to dissuade Czujko from reporting his misconduct. These acts frequently occurred either in Respondent's or Czujko's classrooms and/or at other school related functions or events. This physical and verbal sexual harassment on the Hollenbeck school campus and during school sanctioned events constitutes aggravating factors that warrant serious consideration. Respondent also lied

about or embellished the nature of his relationship with Czujko to lead investigators to believe that he and Czujko's relationship was something more than a friendship that had become sexual in nature.

16. There was no evidence that the students, teachers, or staff were aware of Respondent's harassing conduct towards Czujko, although it was general knowledge that Respondent was considered flirtatious and unable to respect appropriate boundaries of female staff and teachers. There was also no apparent motive for Respondent's sexually harassing conduct, other than his belief that Czujko was sexually attracted to him because of the close relationship they developed during the first three months of the 2009 school year. Finally, although the incidents of harassment against Czujko by Respondent curtailed significantly in January 2010, and thereafter, and Czujko did not report the harassment until November 2010, the egregious nature of Respondent's conduct and his apparent inability to respect appropriate boundaries for female teachers and staff at Hollenbeck raises serious concerns that these incidents may reoccur. Czujko delayed reporting the incidents of harassment due to fear and intimidation by Respondent. Another incident of harassment by Respondent in November 2010 triggered Czujko's complaint to Hollenbeck administration, indicating that Respondent was capable of, and would continue his harassing conduct if not reported and addressed.

17. The application of the *Morrison* factors support the conclusion that Respondent is unfit to teach. The District appropriately concluded that Respondent should be dismissed. Respondent's immediate dismissal was necessary to protect the health and safety of the students, faculty, staff, and administrators at Hollenbeck.

Persistent Violation of School Rules

18. Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.) Under section 44932, subdivision (a)(7), the violation of school rules must be persistent or "motivated by an attitude of continuous insubordination." (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.)

19. As set forth in Factual Findings: 12 through 22, and 42 through 55 (San Pedro Beach Incident), 12 through 19, 23 through 29, and 42 through 55 (Capturing Kids' Hearts Training Incident), 12 through 19, 30 through 32, and 42 through 55 (Parent/Teacher Conference Incident), and 12 through 19, 33 through 41, and 42 through 55 (Hollenbeck Classroom Incidents), Respondent's conduct constituted verbal and physical unwelcomed sexual conduct against Czujko. He also subjected her to threats and demands for a sexual relationship. Respondent's conduct, in its totality, was persistent and egregious, and thus constituted a violation of the District's Sexual Harassment Policy and the Employee Code of Ethics. It is cause for discipline under Education Code section 44932, subdivision (a)(7).

Unsatisfactory Performance (Ed. Code 44932(a)(4)) and Willful Refusal to Perform Regular Assignments Without Reasonable Cause (Ed. Code section 44939).

20. The District also alleged that Respondent was subject to immediate suspension and dismissal under Section 44939 because of his "willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district." However, there was insufficient evidence to support this charge. In addition, the District alleged unsatisfactory performance by Respondent under Education Code section 44932, subdivision (a)(4). Again there was insufficient evidence to establish that Respondent's performance as a teacher in his classroom was unsatisfactory. In fact, the only evidence introduced related to Respondent's performance as a teacher was his performance evaluation from April 28, 2010, which indicated that Respondent met all of the evaluation criteria included in the performance evaluation. It is noted however, that this evaluation occurred prior to the November 2010 complaint lodged against Respondent by Katherine Czujko which resulted in his ultimate dismissal by the District.

21. Cause exists to dismiss Respondent for unprofessional conduct, pursuant to section 44932, subdivision (a)(1), for the reasons set forth in Factual Findings 12 through 55, and Legal Conclusions 3 through 7, and 10 through 17.

22. Cause exists to dismiss Respondent for immoral conduct, pursuant to sections 44932, subdivision (a)(1), and 44939, for the reasons set forth in Factual Findings 12 through 55, and Legal Conclusions 3 through 7, and 10 through 17.

23. Cause exists to dismiss Respondent for evident unfitness for service, pursuant to section 44932, subdivision (a)(5), for the reasons set forth in Factual Findings 12 through 55, and Legal Conclusions 3 through 5, and 8 through 17.

24. Cause exists to dismiss Respondent for persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him, pursuant to section 44932, subdivision (a)(7), for the reasons set forth in Factual Findings 12 through 57, and Legal Conclusions 3 through 7, and 10 through 19.

25. Cause does not exist to dismiss Respondent for unsatisfactory performance pursuant to section 44932, subdivision (a)(4), or willful refusal to perform regular assignments without reasonable cause pursuant to section 44939, by reason of Factual Findings 12 through 58, and Legal Conclusions 3 through 5, and 20.


26. Respondent should be terminated from his position as a certificated employee of the District. In reaching these Factual Findings and Legal Conclusions, the determinations that there are causes to dismiss Respondent and that Respondent should be terminated from employment were made by a unanimous vote of the Commission.

ORDER

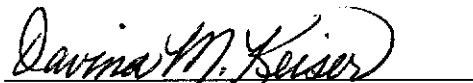
WHEREFORE, IT IS HEREBY ORDERED:

Respondent Jose Chavarria is dismissed from his employment as a permanent certificated employee of the Los Angeles Unified School District.

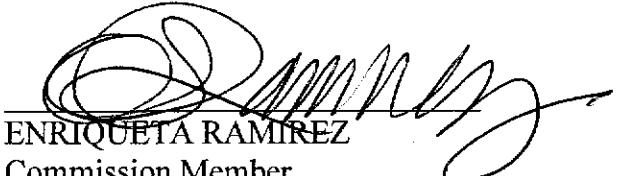
DATED: October 24, 2012


MICHAEL A. SCARLETT
Administrative Law Judge,

DATED: November 1, 2012


DAVINA KEISER
Commission Member

DATED: 10-26, 2012


ENRIQUETA RAMIREZ
Commission Member