

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
OF THE STOCKTON UNIFIED SCHOOL DISTRICT  
COUNTY OF SAN JOAQUIN  
STATE OF CALIFORNIA

In the Matter of the Amended Accusation  
Against:

HUBERT CRAFT,

A Permanent Certificated Employee,

Respondent.

OAH No. 2010090117

**DECISION**

This matter was heard before a Commission on Professional Competence (Commission) of the Stockton Unified School District in Stockton, California, on December 6, 8, 9, and 10, 2010. Commission members were Kelly Maxwell, Kathy Miracle, and Dian M. Vorters, Administrative Law Judge (ALJ), Office of Administrative Hearings.

Ronald J. Scholar, Attorney at Law,<sup>1</sup> represented Stockton Unified School District (District). The District's Interim Assistant Superintendent, Human Resources Department, Ronnie Small, was present.

Eric D. Rouen, Attorney at Law,<sup>2</sup> represented respondent Hubert Craft, who was present.

Evidence was received, the record was closed, and the matter was submitted for decision on December 10, 2010.

**ISSUES**

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<sup>2</sup> Eric D. Rouen, Driscoll & Associates, 801 South Ham Lane, Suite H, Lodi, California 95242.

Did the District prove by a preponderance of the evidence that respondent should be dismissed from his position as an elementary school teacher based upon evident unfitness for service and/or persistent violation of or refusal to obey school laws of the state or reasonable regulations of the school and/or district governing board under Education Code section 44932, subdivisions (a)(5) and/or (a)(7)?

## FACTUAL FINDINGS

### *Jurisdictional Matters*

1. Respondent received his bachelor of arts degree in 1974 and his clear credential in 1977. Prior to employment with the District, he worked for school districts in Cupertino, Emeryville, and San Jose. Respondent has been employed as a certificated teacher in the District since 1985. He was initially assigned to Garfield Elementary where he taught sixth grade for four years. He was assigned to El Dorado Elementary (El Dorado) in 1991. El Dorado contains grades kindergarten through eighth. Respondent has taught grades one through four at El Dorado over the past ten years.

2. Effective May 12, 2009, respondent was placed on paid administrative leave, pending further action by the District's Governing Board (Board) regarding his continued employment as a teacher at El Dorado. Respondent was advised by letter that he would be on "paid work status" pending the outcome of the District's investigation.

3. The District filed an original Statement of Charges with the Board on September 22, 2009. The District filed an Amended Statement of Charges with the Board on June 22, 2010. The Statement of Charges asserted that respondent should be dismissed for the reasons identified. The District further amended the Amended Statement of Charges pursuant to an October 21, 2010 pre-hearing conference order. This Second Amended Statement of Charges was filed at hearing on December 6, 2010. The Second Amended Statement of Charges detailed specific acts/omissions by respondent occurring in 2008 and 2009, in support of his dismissal on grounds of evident unfitness for service and/or persistent violation of or refusal to obey school laws or district regulations. At hearing, the District moved to dismiss paragraph seven of the Second Amended Statement of Charges to conform to proof.<sup>3</sup> Paragraph seven was dismissed without objection.

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<sup>3</sup> Paragraph seven alleged misconduct occurring on August 9, 2007, at the home of one of respondent's students. No evidence regarding this incident was produced at hearing.

4. On September 22, 2009, the Board passed Resolution No. 09-11, Resolution of the Board of Education of the Stockton Unified School District Relating to the Intention to Dismiss Hubert Craft (Resolution). The Resolution authorized the Board to give notice to respondent of the District's intent to dismiss him upon stated grounds.

5. On September 30, 2009, Assistant Superintendent and Interim Superintendent Steve Vaczovsky signed the District's Amended Notice of Intention to Dismiss respondent. Respondent was served with Notice on this same date. He timely filed his demand for hearing.

6. On December 8, 2009, Interim Superintendent Vaczovsky filed a written Accusation against respondent, based upon and incorporating the Statement of Charges, which requested that the Commission dismiss respondent. On June 22, 2010, the District served respondent with its Notice of Amended Accusation, Statement to Respondent, and Notice of Defense form.

7. Respondent timely filed his Notice of Defense and the matter was set for hearing.

#### *Statement of Charges*

8. The Statement of Charges alleged that four specific incidents of misconduct constituted evident unfitness for service and persistent violation of or refusal to obey school laws and/or reasonable regulations of the Governing Board. The specific acts/omissions are set forth below.

9. On May 11, 2009, respondent slapped the hand of a male nine-year-old student, in the presence of his classmates. The boy ran from the room and was pursued by respondent. They went to the principal's office and reported the matter.

10. On February 28, 2008, respondent grabbed a male student by the back of the neck, walked him to his desk, and physically forced the boy to sit in his chair.

11. In April 2009, respondent made statements regarding two students' medical and hygienic issues within earshot of other students and staff. The statements caused the children to be humiliated and embarrassed. One condition related to a child with encopresis and the other to a child with head lice.

12. In August 2008, respondent engaged in acts of sexual harassment with a female employee at the school. The acts involved him placing his arm around her shoulder and introducing her to his class as his wife, making her uncomfortable.

13. The Statement of Charges further alleged that the District had previously directed respondent to comply with the plan of improvement outlined in an October 14, 1993 Notice of Deficiencies.<sup>4</sup>

14. The Notice of Deficiencies recommended that respondent participate in professional development and follow behavioral guidelines for improvement as follows:

1. You are to refrain from all nonessential physical contact with students.
2. You are to refrain from using any physical consequences to discipline students.
3. You shall maintain a calm outward demeanor at all times and shall not address staff or students in a harsh or angry tone of voice.
4. Whenever it may be necessary to correct a student's behavior, you shall avoid doing so in the presence of other students, or do so in a manner so as to avoid embarrassment to the student.

*February 2008 Incident with T. H.*

15. The District alleged that on or about February 28, 2008, respondent used physical force to discipline T.H., when respondent grabbed the back of T.H.'s neck, ushered him to his chair, and pushed him down into his seat. Respondent admitted directing T.H. to his seat, but denied any intent to punish or hurt T.H.

16. T.H. testified at hearing. He is currently 12 years of age and attends sixth grade in the District. At the time of the incident, he was a third grade student in respondent's class, and the school day was almost at an end. He had twice previously missed his bus ride home and was anxious to be packed and ready to leave when the dismissal bell rang. As such, he went to stand at the door while other students were still seated. T.H. admitted that respondent asked him to sit down and he did not comply. Respondent approached T.H. and according to T.H., "He grabbed my shoulder and squeezed and pushed me down in my chair." T.H. stated that it hurt and qualified the pain as "medium." He stated that his back hit the back of the chair as he

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<sup>4</sup> The 1993 plan of improvement was admitted as "evidence of records regularly kept by the governing board concerning the employee" relevant to notice of appropriate conduct. (Ed. Code, § 44944, subd. (a)(5).) The 1993 Notice of Deficiencies was not used by the Commission to establish knowledge of school rules and appropriate conduct, as other more recent evidence of notice was presented.

was forced down. T.H. began crying at this point and cried until he got home. He stated that he cried because “it hurt.” He also stated that he was angry at respondent at the time. He told his sister what happened at the bus stop and his mother when he got home. He recalled that his mother inspected his back at home and noted a scrape.

17. Cresha H., T.H.’s mother, testified at hearing. T.H. told his mother that night that he got up without permission, respondent told him to sit down, and he did not. Respondent then grabbed his shoulder and pushed her son into his chair, scraping his back in the process. Cresha H. is a nurse. She observed what she described as a “superficial scratch” that was “already healing.” She said that T.H. was “teary eyed that night” and seemed “scared.” He had nightmares that went on for two to three weeks. He told his mom he was “scared of big people now,” and that he did not like it when “big people are over me and mad.” In response to his emotional distress, Cresha H. took T.H. for mental health counseling. His problems cleared up after three weeks.

18. The next day, T.H.’s parents met with the Assistant Principal Bernard Flores. Both parents were very upset. Mr. Flores spoke to all members of the family, completed an Emergency Site Incident Report, and forwarded it to the District office. He also called Stockton Unified School District (SUSD) Police. Officer Nida interviewed parties and made a report. Cresha H. believes that these interviews also contributed to T.H.’s emotional distress. Mr. Flores testified that he took the matter seriously. However, after forwarding the incident report to the District office, there is no evidence that the District took further action with respondent.

19. Cresha H. complimented respondent’s teaching abilities and stated that he had improved her son’s hand-writing and math aptitude. They had no problems with respondent prior to this incident which she explained is “why we were shocked.” She stated that she and her husband “have to think about safety first” and that T.H.’s academics could not continue if he did not feel safe. For that reason, the family subsequently transferred T.H. to another school within the District.

18. Fellow student Ta’Veone T. testified at hearing. He stated that respondent “grabbed [T.H.’s] neck, was walking with him and put him into his seat.” Ta’Veone demonstrated the distance traveled as approximately eight to nine feet between where respondent first grabbed T.H. and his desk. He recalled that T.H. was crying and mad. After this incident, T.H. was the last student in the line and last to leave the classroom.

19. Respondent testified that prior to hearing T.H.’s testimony, he did not recall that he had put his hands on the child. He subsequently recalled that after asking T.H. to sit down two to three times, T.H. remained standing. Respondent stated that he walked over to T.H., put his “hand on his back and guided him towards his seat.” Respondent demonstrated the encounter by placing his right hand on his attorney’s right shoulder. He estimated that on a scale of force from one (minimal) to

ten (maximum), he used between five and six. He noticed that T.H. was upset because he saw tears in his eyes. Respondent asked T.H. why he was crying and the child told him that respondent had “hurt his back.” Respondent did not respond because he did not see any way that he could have hurt the child’s back.

*May 2009 Incident with Carlos G.*

20. The District alleged that on or about May 11, 2009, respondent used physical force to discipline Carlos G., when respondent slapped the child’s hand in an attempt to re-direct him. Respondent admitted “tapping” Carlos G. on the hand, but denied any intent to hurt him.

21. Carlos G. testified at hearing. He is currently 10 years of age and attends fifth grade in the District. At the time of the incident, he was a third grade student in respondent’s class. He recalled that there was a red binder on his desk. Respondent had placed on Carlos G.’s desktop two binders in an upright position with the backs overlapping to form a visual barrier. Respondent used binder clips to hold the back sides of the binders together.

Carlos G. stated that he was trying to look over the top of the binder and slid it around, in an effort to view a projector image on the opposite wall. Respondent came around to Carlos’ side and hit him on the hand. Carlos G. stated that his hand stung for about five seconds. Respondent apologized after hitting him and offered him some stickers. But, Carlos G. ran out of the room through the door leading to a playground. After attempting to flee over a fence, Carlos G. ran back through the classroom and ultimately to the principal’s office. During this time, respondent and Carlos G.’s sister, Sylvia, were in pursuit.

22. Respondent testified that on the day of the incident, Carlos G. had been causing disruption. Carlos G. normally sat in a four-desk cluster. By math period, at approximately 1:00 p.m., respondent had isolated him at a desk by himself. Also, respondent placed upright binders in front of Carlos G. and asked him to put his head down and rest for the day. Respondent stated that Carlos G. continued to be disruptive by making sucking noises with his mouth and making facial expressions to get other children’s attention. Respondent was teaching from a centrally located computer desk station. Several times he walked over to ask Carlos G. to stop making noise. After respondent walked back to his computer desk, Carlos G. would resume the noise behind respondent’s back. Respondent believes that Carlos G. had not taken his “medication” that morning. Respondent did not know what medication Carlos G. was taking, but knew the child was administered medication at school.

After respondent returned to his computer station, he heard clicking. Carlos G. was opening and closing the binder clips. Respondent told him to “knock it off.” Respondent stated that he walked over to Carlos G, saw his hands were on top of the desk, and reached over and tapped him on the hand. He estimated his use of force as

a four or five. After he tapped Carlos G., he noted that the child was upset, so respondent apologized to him. He saw that Carlos G. was “tearing up” so he told him he was sorry and asked him if he wanted some stickers. Respondent stated he was trying to calm him down. When respondent went to get the stickers, Carlos G. left the classroom.

Respondent pursued Carlos G. outside and inside for approximately five to ten minutes. At some point, respondent saw Carlos G.’s sister Sylvia outside of the office and enlisted her assistance on finding Carlos G. Sylvia was in eighth grade at the time. They ultimately ended up in the principal’s office. After giving a statement to the Assistant Principal, Eileen Blough, respondent was placed on administrative leave. He has been on paid leave since the Spring of 2009.

Respondent realizes that his action was not appropriate. He stated that as an alternative, he could have radioed the office for help as he normally did. In the past, he has also requested assistance from one of the neighboring teachers. On this day, however, all of the neighboring pods had substitute teachers.

23. Assistant Principal Eileen Blough is familiar with Carlos G. because he often comes to the office to talk to her. She stated that he is usually aloof and nonchalant. This time, he was upset, breathing heavily, and crying. She asked him to calm down and tell her what was wrong. She recalled that Carlos G. excitedly stated, “[Respondent] just hit me!” Respondent was present and responded, “I did not hit you I tapped you.” Carlos then said, “No, you didn’t you slapped me... hard!” Respondent then replied, “Well, you weren’t behaving correctly so I slapped you.” Ms. Blough recalled that respondent used the word “tapped” the first time and “slapped” the second time.

After that, Ms. Blough went to report the incident to Principal Teresa Oden. Ms. Oden directed her to contact the SUSD Police and to have respondent and Carlos G. write statements. Ms. Blough also wrote a site incident report. The statements were given to police and forwarded to the District Director of Elementary Education.

#### *Communication of Sensitive/Confidential Information*

24. The District alleged that in April 2009, respondent made inappropriate statements about the sensitive medical condition of two students in the presence of other students. Respondent stated he was simply trying to get support for his students. He denied that his comments were disparaging or loud enough for the class to overhear.

25. Assistant Principal Blough and Mary Jo Cowan, the school nurse, testified about respondent’s inappropriate communications. Ms. Cowan explained that a student, V.M., had encopresis, a medical condition involving involuntary bowel movements. The child was seen at the school’s health center often as he had daily

episodes. He required cleansing and a change of clothes. Respondent made several referrals to the health center for information and recommendations.

Ms. Cowan testified that on an occasion in April 2009, she was walking by his classroom or pod when respondent called her over and told her to take the child with her “because he smells.” She was standing outside of the classroom and assumed that students inside heard the comment. She stated that respondent engaged in this type of communication about V.M. in the presence of other students “on more than one occasion.” On another occasion, the child brought a book bag that smelled strongly of cat urine. Respondent told Ms. Cowan to “take him out of here, he stinks.” Respondent also stopped by the health center on numerous occasions to discuss V.M.’s referrals when other students and adults were present. On another occasion, respondent spoke openly about a student’s head lice. Ms. Cowan told respondent that she would not discuss the issues “right now.”

Ms. Cowan sent an e-mail to Ms. Blough on April 28, 2009, to report respondent’s conduct which she believed was inappropriate and insensitive. She stated, “The emotional impact on a student with this condition can be devastating [.] [P]ublic discussion is not appropriate and [sic] lead to low self esteem issues and creates barriers to social and academic development.” She added that she had “repeatedly discussed” her concerns with respondent and he continued the same behavior.

26. Ms. Blough testified that on April 15, 2009, as she was walking by respondent’s classroom pod, he came out with V.M. to discuss the problem. Ms. Blough observed that V.M. was “extremely uncomfortable,” as he kept looking around to see if anyone was walking by and kept “shushing” respondent. Ms. Blough told respondent they could discuss the matter later if he would come to her office. Respondent said that he was going to send the child with a health notice that said, “Had an accident.” Respondent said the smell was “horrible” and that he was frustrated at V.M.’s repeated accidents.

The discussion took place two to three feet outside of respondent’s classroom opening. There are three pods of classrooms that open into a common atrium. None of the classrooms have doors. Ms. Blough recalled that respondent was not yelling but was not talking softly either. She felt that if the students inside were listening, they could have overheard.

V.M. had told Ms. Blough in her office that he did not like to talk about his problem in front of other kids and he was embarrassed. After the incident on April 15, 2009, Ms. Blough discussed the incident with respondent telling him “let’s be a little bit more discreet.” She explained to respondent that open discussion of the matter made V.M. uncomfortable.



27. Respondent testified that he often sent the child with a referral for assistance after an episode. Sometimes V.M. would return with soiled clothes in a bag and the smell would permeate the classroom. Respondent stated that he worked with the children not to tease V.M. but the problem was a distraction to the class. He also felt that the encopresis posed a health risk. He arranged for the custodian to disinfect V.M.'s chair to get rid of the odor. Respondent stated that one day, he forgot and the next day, the "stench was so bad" he had to place the chair outside after wiping it.

Respondent admitted to stopping Ms. Blough outside of his classroom to discuss V.M.'s odor. He stated he was in the middle of the pod area at the time. He did not believe he was loud enough that the class overheard the discussion. He recalled that Ms. Cowan spoke to him one time in her office about V.M. After that, he stopped discussing the matter with her. He also recalled discussing the matter with Jennifer Bonzi, the school counselor. She came to his classroom to discuss confidentiality. Respondent recalled that he went into the pod area with her, he saw a student peeking around the opening and he asked the child to go back. Ms. Bonzi told him that discussing confidential information could affect him as a credentialed teacher.

#### *Sexual Harassment Allegation*

28. Razan Retiz (aka Fikrat) was a school based therapist at El Dorado from August to December 2008. It was necessary for her to pull children out of class to provide individual counseling sessions. She testified that on several occasions she felt "uncomfortable" when she went to respondent's class. On one occasion, inside his classroom, he put his arm around her so that the right side of her body was touching his left side. He then stated, "Class, this is my new wife. Have you met my wife?" Ms. Retiz stated that the contact was unwanted.

Subsequently, while Ms. Retiz was sitting in Ms. Bonzi's office, respondent entered. He put his arm around Ms. Retiz and told Ms. Bonzi that Ms. Retiz had previously come into his class and introduced herself as his wife. He stated that Ms. Retiz had "teased" him. Respondent admitted at hearing that he made this untrue statement, apparently in jest. Ms. Bonzi told respondent that he was "stepping over sexual harassment boundaries and asked him to stop." Respondent "laughed it off" and walked out of the office.

On numerous occasions, Ms. Retiz felt that respondent was inappropriately seeking her out. He would see her and try to talk to her about issues not relevant to her job. He would deliberately seek her out when she was in her office or in meetings. Ms. Retiz told respondent that the issues he was coming to her with were not her concern. She did not tell him that he made her uncomfortable. Ms. Retiz stated that respondent never propositioned her or asked her out on a date or to dinner.

Ms. Retiz wrote a letter to Ms. Oden, dated September 18, 2008. She outlined the above two instances of what she characterized as “unwanted sexual advances.” She submitted the letter to her employer at Valley Community Counseling Services, with whom the District contracted for services. The letter was not forwarded to Ms. Oden until December 2008. Ms. Oden received the letter on December 11, 2008, and immediately spoke to respondent. Respondent subsequently apologized directly to Ms. Retiz for his conduct. Ms. Retiz avoided respondent after that. After December 2008, Ms. Retiz was laid off and had no further contact with respondent at El Dorado.

29. Respondent admitted at hearing to twice putting his arm around Ms. Retiz’s shoulder. He stated he was just kidding around. They were standing either on the threshold or inside of his classroom. Respondent did not recall at hearing if Ms. Bonzi told him his behavior was inappropriate. He stated that she could have. He could not explain why he would have laughed in response to such advice. Had he known that his conduct made Ms. Retiz uncomfortable, he would have apologized at that time. The first he heard of it was when Ms. Oden spoke to him in December 2008.

#### *Teacher Evaluation*

30. Respondent submitted his Final Evaluation dated April 21, 2008. Ms. Flores completed the evaluation. Under the Stull Act (Ed. Code, § 44600 et seq.), the governing board of a school district must establish a uniform system of evaluation and assessment of the performance of its certificated employees. Education Code section 44662, subdivision (b), provides that school districts must evaluate and assess the certificated employee’s performance as it reasonably relates to: (1) the progress of pupils toward academic standards, (2) the instructional techniques and strategies used by the employee, (3) the employee’s adherence to curricular objectives, and (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee’s responsibilities.

As a general rule, permanent certificated employees must be evaluated by a district “at least every other year.” (Ed. Code, § 44664, subd. (a)(1).) A permanent certificated employee who has received an “unsatisfactory evaluation” must be annually evaluated by his school district, and the district must provide the employee with recommendations as to areas of improvement in performance, “until the employee achieves a positive evaluation or is separated from the district.” (Ed. Code, § 44664, subd. (b).)

31. Respondent received satisfactory scores in this evaluation. The evaluation does not mention or reference any of the conduct alleged in the Statement of Charges. It is noted that two of the alleged incidents occurred after April 21, 2008. Also, according to Mr. Flores, the teacher is only evaluated on criteria selected at the start of the school year by the teacher and the evaluator. Hence, discipline issues not identified at the start of the school year would not be addressed at all.

Even so, Ms. Flores noted in the Final Evaluation Summary that, “[Respondent] will need to use appropriate consequences and time limit for behavioral issues.” Mr. Flores testified that he wrote this comment to address respondent’s use of time-out periods. Mr. Flores had observed respondent use the common area outside of the classroom for time-outs. He stated that some of the children were sitting out there for more than 15 minutes. In Mr. Flores’ opinion, that was excessive. Mr. Flores told respondent that he needed to keep children in the classroom.

### *School Policy*

32. By accepting employment in the District, respondent agreed to abide by the Board policies and the California Education Code. At the beginning of each school year, he signed a Letter of Understanding, agreeing to these terms.

33. Interim Assistant Superintendent Ronnie Small testified about the District’s policy on corporal punishment. Board Policy AR 5144, approved by the Board on November 9, 1999, sets forth guidelines for teachers and administrators pertaining to student discipline. Section eight of this policy states, “Corporal punishment shall not be used as a disciplinary measure against any student. Corporal punishment includes the willful infliction of, or willfully causing the infliction of, physical pain on any student. (Ed. Code, § 49001.)”

34. Board Policy AR 4119.11 et seq., approved by the Board on June 28, 2005, sets forth guidelines for district employees on sexual harassment of personnel. Sexual harassment and retaliatory behavior against employees or complainants is prohibited. All complaints and allegations must immediately be reported to a supervisor, principal, district administrator, or superintendent.

Pursuant to Board policy, prohibited sexual harassment includes unwelcome sexual advances, unwanted requests for sexual favors or other unwanted verbal, visual or physical conduct of a sexual nature made against another person of the same or opposite gender, in the work or educational setting when “... (3) The conduct has the purpose or effect of unreasonably interfering with the other individual’s work performance, creating an intimidating, hostile or offensive work environment; or adversely affecting the other individual’s evaluation, advancement, assigned duties, or any other condition of employment or career development.”

Actions that might constitute sexual harassment include, but are not limited to, “... (3) Unwelcome physical conduct such as massaging, grabbing, fondling, stroking or brushing the body; touching an individual’s body or clothes in a sexual way; cornering, blocking, leaning over or impeding normal movements.”

35. In addition to Board Policies, each school disseminates a staff handbook with rules and procedures. Ms. Oden testified about relevant provisions in the El Dorado Staff Handbook for 2008-2009 (Handbook). The staff handbook is made available to teachers each year on the day before school starts, at an orientation meeting. The handbook reiterates the District's policies toward sexual harassment and student discipline. Forms and rules for issuance of citations, "green slips" to administration, noticing parents of detention and disobedience, and logging parent contacts are included. Forms include the hall pass to be used by students who may not be out of class without approval. Also included is a Referral Form for use in sending students to the office, school nurse, or counselor. This form has spaces for the teacher's referral reasons including bathroom use, head lice, inattentiveness, and learning problems. Respondent testified that he had used the Referral Form.

## LEGAL CONCLUSIONS

1. A school district which seeks to dismiss a permanent certificated employee from its employment bears the burden of proof and the standard of proof is by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035; *Bevli v. Brisco* (1989) 211 Cal.App.3d 986.)

2. 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 evident unfitness for service, and/or 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. (Ed. Code, § 44932, subd. (a)(5), (7).)

3. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 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." The *Morrison* court recommended seven criteria be considered relevant in determining whether a teacher's conduct indicates that he or she is not fit to teach:

- a. The likelihood that the conduct may have adversely affected students or fellow teachers,
- b. The degree of such adversity anticipated,
- c. The proximity or remoteness in time of the conduct,

- d. The type of teaching certificate held by the party involved,
- e. The extenuating or aggravating circumstances, if any, surrounding the conduct,
- f. The praiseworthiness or blameworthiness of the motives resulting in the conduct,
- g. The likelihood of the recurrence of the questioned conduct, and
- h. 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.)

4. Evident unfitness for service means “clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies ... [The term] 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.” (*Woodland Joint Unified school District v. Commission of Professional Competence* (1992) 2 Cal.App.4th 1429.)

5. In order for a teacher to be terminated under Education Code section 44932, subdivision (a)(7), for violations of law or rules, the violations must be “persistent” or motivated by an attitude of continuous insubordination. (*Gov. Bd. of Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 81.)

6. The use of corporal punishment upon children by public school employees is prohibited by law. (Ed. Code, § 49000.) “No person employed by or engaged in a public school shall inflict, or cause to be inflicted corporal punishment upon a pupil.” (Ed. Code, § 49001, subd. (b).) The Education Code defines corporal punishment to mean “the willful infliction of, or willfully causing the infliction of physical pain on a pupil.” (Ed. Code, § 49001, subd. (a).)

#### *Cause for Dismissal*

7. Respondent engaged in corporal punishment of two students in violation of the law and school policy. Additionally, his conduct in handling the sensitive medical problems of his students was highly inappropriate and detrimental to their emotional and academic well-being. Pursuant to Legal Conclusions 10 and 11, respondent’s conduct constitutes “evident unfitness for service” within the meaning of section 44932, subdivision (a)(5).

8. Respondent violations of school policy on corporal punishment occurred during two separate school years. His insensitive comments about the medical conditions of his students occurred repeatedly. Pursuant to Legal Conclusions 10 and 11, respondent's knowing and willful violation of the school policy constitutes "persistent violation of or refusal to obey the school laws of the state or reasonable regulations" of the District within the meaning of section 44932, subdivision (a)(7).

9. During the 2007/2008 and 2008/2009 school years, respondent engaged in separate acts of corporal punishment on students. In February 2008, respondent caused T.H. physical and emotional harm by his actions as described in Factual Findings 15 through 19. In May 2009, respondent caused Carlos G. physical pain and emotional harm by his actions as described in Factual Findings 20 through 23. At the start of each school year, respondent was present at a teacher orientation where District policies were reviewed.

Further, respondent has been employed by the District since 1985, has been present at yearly orientations, and should be well versed on school policy. He nevertheless engaged in knowing and willful physical discipline amounting to corporal punishment. Additionally, his actions during two consecutive school years amount to persistent violation of school laws, district rules, and regulations within the meaning of the Education Code.

10. Respondent engaged in a pattern of addressing the sensitive medical condition of his students in a careless and public manner. His approach affected V.M. detrimentally as set forth in Factual Findings 24 through 27. The Handbook provided to respondent at the start of the school year contains a Referral Form that is to be used to send students for care. Respondent admitted previously using the Referral Form. Out of frustration, he sometimes chose more direct and inappropriate means of obtaining assistance. V.M.'s situation was admittedly trying and called for patience. However, the substance and manner of respondent's repeated comments was indefensible.

11. There is insufficient evidence that respondent engaged in sexual harassment towards a school employee. His actions as stated in Factual Findings 28 through 29, do not rise to the level prohibited by school policy. After Ms. Oden informed him that his interactions were perceived as inappropriate, he apologized and his conduct appears to have ceased.

12. The Commission has considered the *Morrison* factors in light of the record as a whole. When these factors are analyzed, respondent's conduct poses a significant danger of harm to students, school employees, or others who might be affected by his actions as a teacher. Based on the facts and circumstances of each incident, the District established that respondent is "unfit" to teach and that his conduct amounted to a persistent violation of or refusal to obey school laws or

reasonable regulations. The misconduct as set forth in Legal Conclusions 7 through 10, is supported by the evidence and is serious enough to support dismissal. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 219.)

13. Consequently, the District sustained its burden of proving, by a preponderance of the evidence, the allegations set forth in the Second Amended Statement of Charges. Respondent shall be dismissed as an elementary school teacher from the Stockton Unified School District, pursuant to Education Code sections 44932, subdivisions (a)(5), and (a)(7), and 44944, subdivision (c)(1)(A).

### ORDER

Hubert Craft, respondent, is dismissed as a permanent certificated employee of the Stockton Unified School District.

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

\_\_\_\_\_  
KELLY MAXWELL, Member  
Commission on Professional Competence

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

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KATHY MIRACLE, Member  
Commission on Professional Competence

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

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DIAN M. VORTERS, Chair  
Commission on Professional Competence