

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS AND A  
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE  
LOS ANGELES UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

IGNACIO GIL,  
A Permanent Certificated Employee,

OAH No. 2018070558

Respondent.

DECISION

This matter was heard by the Commission on Professional Competence (Commission) in Los Angeles on January 11, 24, 25, 28-31, 2019, and February 1, 2019. The Commission consisted of Edward Gil de Montes, Monica Lukesh, and Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, who presided.

Kelly Kim, Assistant General Counsel, represented the Los Angeles Unified School District (District).

Ignacio Gil (respondent) was present and represented himself.

Oral and documentary evidence was received. As stated on the record, the ALJ ordered that student names would appear in the hearing transcript as first name and last initial. In addition, when noted by the Commission and/or as stated on the record, documentary evidence was redacted to show student names in that format.

The record closed and the case was submitted for decision on February 1, 2019.

FACTUAL FINDINGS

*Parties and Jurisdiction*

1. Respondent is a permanent certificated employee of the District.

2. On June 13, 2018, the District served respondent with a Notice of Intention to Dismiss and Placement on Immediate Suspension (Notice of Intent), which notified respondent of the District's intent to dismiss him within 30 days unless he made a written request for a hearing, and notified respondent of his immediate suspension without pay. The Notice of Intent included a Statement of Charges with exhibits, a Request for Hearing form, and copies of relevant Education Code sections.

3. On July 12, 2018, respondent, through his previous counsel, served the District with a Notice of Defense and Request for Hearing, which contained respondent's demand for a hearing pursuant to Education Code section 44941, in response to the June 13, 2018 Notice of Intent.

4. On July 23, 2018, the District filed and served the Accusation dated July 20, 2018, which is the operative pleading in this case. (Exh. 5.)

5. All jurisdictional requirements have been met.

#### *Respondent's Background*

##### EDUCATION / CREDENTIALS

6. Respondent is originally from Mexico. He earned his bachelor's degree in Spanish literature from California State University, Fresno in 1999. He earned his master's degree in psychology from National University in 2012.

7. Respondent has a teaching credential from California State University, Fresno. He received a pupil personnel services credential in 2012. Respondent meets the District's requirements to teach Spanish language classes in the District's schools.

##### EMPLOYMENT WITH DISTRICT

8. Respondent has been employed by the District as a Spanish teacher since 1999. He has worked at various high schools in the District over the years, including King/Drew Magnet High School, Hollywood High School, and Helen Bernstein High School. He had brief assignments at Dorsey High School, Crenshaw High School, and Washington High School. Respondent also worked as a floater teacher in the District.

9. The charges in this matter relate to respondent's assignments at Burroughs Middle School and Hollywood High School. Respondent was assigned to Burroughs Middle School for the 2015-2016 school year. He worked at the school in the 2015 fall semester. On December 7, 2015, respondent was reassigned to Local District West. He remained assigned to Local District West for the rest of the 2015-2016 school year and for most of the 2016-2017 school year. In May 2017, respondent was reassigned to a vacant position at Hollywood High School for the last two weeks of the 2016-2017 school year. In August 2017, respondent was assigned as a Spanish teacher at Hollywood High School for the 2017-

2018 school year. He taught during the 2017 fall semester. Respondent has been on unpaid status from June 2018 to the present time.

#### *District Policies*

10. The following policies and procedures of the District were presented at the hearing: Employee Code of Ethics (Exh. 25); Code of Conduct with Students (Exh. 26); Board Resolution to Enforce the Respectful Treatment of All Persons (Exh. 28); Non-Discrimination and Anti-Harassment Policy and Complaint Procedure (Exh. 31); Discipline Foundation Policy Bulletin: School-Wide Positive Behavior Intervention and Support (Exh. 32); Child Abuse and Neglect Reporting Requirements (Exh. 33); and Abolition of Corporal Punishment (Exh. 34); Guidelines for Student Suspensions (Exh. 35). Additionally, the School-Wide Positive Behavior Support and Discipline Plan for Hollywood High School was presented. (Exh. 37.)

11. The District's Code of Conduct with Students states, in pertinent part:

The most important responsibility of the [District] is the safety of our students. All employees, as well as all individuals who work with or have contact with students, are reminded that they must be mindful of the fine line drawn between being sensitive to and supportive of students and a possible or perceived breach of responsible, ethical behavior.

While the District encourages the cultivation of positive relationships with students, employees and all individuals who work with or have contact with students are expected to use good judgment and are cautioned to avoid situations including, but not limited to, the following:

[¶ . . . ¶]

3. Engaging in any behaviors, either directly or indirectly with a student(s) or in the presence of a student(s), that are unprofessional, unethical, illegal, immoral, or exploitive.

[¶ . . . ¶]

5. Making statements or comments, either directly or in the presence of student(s), which are not age-appropriate, professional, or which may be considered sexual in nature, harassing, or demeaning.

Even though the intent of the employee/individual may be purely professional, those who engage in any of the above

behavior(s), either directly or indirectly with a student(s) or in the presence of a student(s), are subjecting themselves to all possible perceptions of impropriety. Employees/individuals are advised that, when allegations of inappropriate conduct or behavior are made, the District is obligated to investigate the allegations and, if warranted, take appropriate administrative and/or disciplinary action.

(Exh. 26.)

12. The District's Board of Education Resolution to Enforce the Respectful Treatment of All Persons provides, in pertinent part, that the District reaffirms its policy that "students and adults in both schools and offices should treat all persons equally and respectfully and refrain from the willful or negligent use of slurs against any person on the basis or [sic] race, language spoken, color, sex, religion, handicap, national origin, immigration status, age, sexual orientation, or political belief." (Exh. 28.)

13. The District's School-Wide Positive Behavior Intervention and Support Bulletin states, in part: "All LAUSD students will attend schools with climates that focus on safety, teaching, learning and interpersonal relationships that enhance student learning and well-being. [¶ . . . ¶] School-wide positive behavior and support fosters a culture of discipline grounded in positive behavior intervention. Positive behavior support is a systems approach for establishing the social culture and individualized behavioral supports needed for schools to achieve both social and academic success for all. [¶ . . . ¶] Modeling appropriate behavior should be embraced by all staff, students and parents for creating a positive school climate. The most effective discipline systems use proactive strategies designed to prevent discipline problems. Before consequences are given, students must first be supported in learning the skills necessary to enhance a positive school climate and avoid a negative behavior." (Exh. 32, pp. 640, 641, 642.)

14. As noted in the District's Code of Conduct with Students, the District is obligated to investigate allegations of inappropriate conduct or behavior by teachers. Generally speaking, the District's investigatory process regarding student complaints against teachers involves interviewing the student making the complaint and randomly selected students from the same class. All students are interviewed separately and may be asked to write down the statements made in their interview. If the complaint is corroborated, a conference is held with the teacher to discuss the allegations made by students against the teacher. At the conference, the teacher is allowed to respond to the allegations, and the teacher may be given assistance and guidance, and directives. The teacher is issued a conference memorandum that summarizes the discussion at the conference and the assistance and guidance, and directives given to the teacher. (See e.g., Exhs. 14, 15, 19, 20.) Administrative investigations of student complaints may be conducted by school site administrators and/or the District's Student Safety Investigation Team. (See e.g., Exh. 38.) The Commission finds that the administrative investigations in this case (discussed below) were conducted fairly and in accordance with the District's policies.

15. Hollywood High School's School-Wide Positive Behavior Support and Discipline Plan provides, in part, that the role of teachers is to "provide a well-planned, standards-driven curriculum in a clean, safe, nurturing environment. They should model respectful communication, mature decision-making and life-long learning skills along with teaching the course content." (Exh. 37, p. 744.)

*Burroughs Middle School*

16. Respondent was a Spanish teacher at Burroughs Middle School for the 2015-2016 school year. Steve Martinez (Martinez) was the principal at Burroughs Middle School during that school year.

17. Martinez has been employed by the District for 20 years. He is currently the principal at Burroughs Middle School, and has been the principal at the school for the past seven years. Prior to becoming principal, Martinez was also an assistant principal at the school for approximately four to five years. Martinez holds a bachelor's degree in earth science, a master's degree in education leadership, and an education doctorate degree. Martinez has teaching and administrative credentials. Martinez testified credibly at the hearing.

INAPPROPRIATE COMMENTS

18. In October 2015, Principal Martinez was informed by Assistant Principal Arturo Enriquez (Enriquez) that a student in respondent's sixth period class reported that respondent made inappropriate comments during class. Student T█ G. (T█) reported that, on October 16, 2015, respondent told T█, in the presence of his classmates, "white boy, you're rich," or words to that effect. Respondent asked T█ about his living situation, which the student described in class, to which respondent stated, "you are rich, you're white," or words to that effect.

19. At the hearing, respondent testified that he told Tim "you're rich" during a class discussion about the value of having classroom materials. Respondent testified that he brought culture to his classes and often spoke about Mexico and Central America. Respondent was telling his students about his cultural background and that when he lived in Mexico, he could not afford a typewriter and students in Mexico have to buy their own desks. During the discussion, T█ raised his hand and said, "I'm poor, too." Respondent testified he explained that, in America, there are services and education is free. Respondent told T█, "you're not poor, you're rich." Respondent testified that T█ was smiling and laughing when he made the comments.

20. Assistant Principal Enriquez initiated an administrative investigation regarding respondent's remarks. Other students in the sixth period class were randomly selected and interviewed. The other students, in their interviews, corroborated T█'s allegations. For example, J█ A. reported that when T█ said he was poor, respondent said, "no, white people are rich." S█ K. reported that respondent asked T█ if his family was wealthy,

and T█ said it wasn't. When T█ finished the writing assignment, respondent took his paper and read it out loud to the class. Respondent then said he did not believe T█ rode the bus and that T█ lived in a rich neighborhood. (See Exh. 14, p. 32.)

21. The statements obtained from the student interviews disclosed other inappropriate comments made by respondent to students on October 15, 2015, during the sixth period class. Students reported that respondent made reference to student J█ A. (J█) in a manner implying a connection to a drug dealer or drug lord. For example, J█ himself reported that when taking roll, respondent called him "F█," in reference to a drug dealer or drug lord, instead of his real name. J█ reported that respondent's comment made him feel disrespected. Another student, J█ L., reported that when taking attendance, respondent said J█'s last name was a drug dealer name and then asked J█ if he or his parents were drug dealers. Another student, M█ C. reported that respondent called J█ the name of a famous drug dealer because of J█'s last name and his race (Mexican).

22. At the hearing, respondent testified that J█ was an outspoken student who often distracted his classmates away from the classroom lessons. Respondent would try to regain control of the class by playing music on the radio. On one occasion, the song on the radio was a "narco corridos" song about illegal drug dealers and drug lords. Respondent admitted he made a comment that a name mentioned in the song sounded like J█'s last name. Respondent testified he cannot control the music played on the public radio.

23. On November 17, 2015, Principal Martinez was informed by Assistant Principal Enriquez that students from respondent's sixth period class reported that, during class, respondent said, "Every time I go to the shooting range, I imagine my annoying kids," or words to that effect (shooting range comment). Martinez and Enriquez notified the Los Angeles Police Department (LAPD) and the Operations Coordinator at Local District West of respondent's shooting range comment. LAPD declined to initiate a criminal investigation and advised the District the matter could be handled administratively. The District conducted a threat assessment and determined respondent to be a "moderate risk." (Exh. 38.)

24. On December 4, 2015, Principal Martinez held an intake meeting with respondent in the main office regarding his return to school. During the meeting, Principal Martinez asked respondent threat assessment questions, specifically, did he have any weapons on his person or in his car; did he have a gun or plan to bring a gun to school; did he plan to inflict harm on anyone at the school or anywhere; did he plan to harm himself; and did he have a weapon with him at the meeting. Respondent refused to answer any of Principal Martinez's questions. Respondent's refusal to answer made Principal Martinez uncomfortable having respondent present at the school. Principal Martinez informed respondent he was directing him to go home, and told respondent to wait in the main office while he made arrangements to have him escorted off campus. Instead of waiting in the main office, respondent ran off. Principal Martinez was notified by an office technician that respondent ran off. Principal Martinez was concerned he did not know where respondent was, given that the intake meeting did not go well. Principal Martinez ordered a school-wide lockdown of the campus while a search was conducted to locate respondent. During the

search, a witness notified Principal Martinez that the witness saw respondent get into a car and leave the campus. The lockdown of the campus lasted 15 minutes.

25. At the hearing, respondent testified that he did not answer Principal Martinez's questions during the intake meeting because his UTLA representative told him he did not have to answer any of the principal's questions. Respondent testified that when the meeting was over, he called Uber for a ride home. He left when his Uber driver arrived at the school. Respondent testified he did not remember Principal Martinez telling him to let him (Martinez) know when he was leaving the campus. The Commission finds it was not appropriate for respondent to refuse to answer Principal Martinez's threat assessment questions at the December 4, 2015 intake meeting, purportedly based on his union representative's advice. The purpose of the questions was to assess whether respondent posed a threat to the students and staff at the school related to weapons. The questions were appropriate given respondent's shooting range comment. The Commission also finds it was not appropriate for respondent to have left the main office without first notifying Principal Martinez, as he had been instructed to do.

26. On December 7, 2015, respondent was assigned to Local District West, pending the District's administrative investigation of respondent's shooting range comment. The District's Student Safety Investigation Team (SSIT) conducted the investigation, which included interviewing students from respondent's sixth period class, interviewing respondent, and preparing a written report. (See Exh. 38.) The students' statements corroborated the allegation that respondent made the shooting range comment during the sixth period class. During his interview with the SSIT investigators, respondent denied making the shooting range comment. Respondent admitted that he used a laser pointer in class but denied that he ever pointed it at students. Respondent stated that a male student once referred to the laser pointer as a gun.

27. At this hearing, respondent testified that he used a laser pointer during class, which he pointed at images, and he sometimes made a laser noise. Respondent testified he never pointed the laser at students, as he is aware that a laser can damage eyes. Respondent testified that he made the comments about guns and going to the shooting range because students repeatedly asked him the same question, and respondent nodded and automatically responded "yes" just so he could get back to keeping the class going. Respondent testified he was just agreeing with whatever the students were saying.

28. A [REDACTED] O. (A [REDACTED]) testified at this hearing. A [REDACTED] is currently a tenth grader in high school. A [REDACTED] was a seventh grader at Burroughs Middle School in the 2015-2016 school year. He was a student in respondent's sixth period Spanish class. A [REDACTED] thought respondent was "a pretty good teacher." A [REDACTED] testified there were approximately 35 to 40 students in the class, mostly Latino students. In November 2015, respondent, in a loud voice, called A [REDACTED] "retarded" in front of the entire class. Respondent made the comment after A [REDACTED] gave a wrong answer in class. Additionally, A [REDACTED] heard respondent make the shooting range comment during the sixth period class. A [REDACTED] testified that respondent made a gun gesture with his hand and pointed at the students when he said the shooting range comment.

A [REDACTED] testified that when a student asked respondent a question, respondent mentioned he had guns and went to the shooting range. A [REDACTED] testified that everyone in the class was shocked by respondent's comments and felt they should be reported. A [REDACTED]'s testimony was consistent with his written statement dated November 19, 2015, regarding the comments he heard in respondent's class. (Exh. 39.)

#### FAILURE TO SUBMIT STUDENT ATTENDANCE

29. As a teacher at Burroughs Middle School, respondent was required to submit mandated student attendance through the MISIS computer system on a daily basis. Teachers are given a password to access the MISIS system. If the MSIS system is not available, teachers submit student attendance on paper.

30. In October 2015, Principal Martinez received a complaint from the School Administrative Assistant, Ms. Suppal, that respondent failed to submit his mandated student attendance through MSIS on October 19, 2015. During that school day, Ms. Suppal reminded respondent to enter his student attendance in MSIS as he had not yet done so. Respondent indicated to Ms. Suppal that his MSIS password was not working. At the end of the day, Ms. Suppal spoke with respondent in the main office. When Ms. Suppal offered to re-set respondent's password so he could enter the attendance for that day, respondent replied that he had done his part in requesting a new password and he would not be submitting the attendance that day and would do it tomorrow. When Ms. Suppal informed respondent she never received a request for another password from him, respondent walked away from her desk. Assistant Principal Ms. Lee entered the main office, introduced herself to respondent, and reminded him to submit the mandated student attendance for the day on MSIS. Respondent stated to Ms. Lee that he needed to leave and she should enter the attendance for him. Respondent left the school without submitting the student attendance for the day.

31. At the hearing, respondent testified that he recalled this incident clearly because it occurred on his second day at Burroughs Middle School. Respondent claimed he did not have a MSIS password. Respondent testified the only way he could take attendance that day was on paper. Respondent testified he sent one of his students to the main office to ask the secretary to send respondent a MSIS password. The student returned and reported to respondent that no one was in the main office. Respondent testified he took attendance on paper. At the end of the school day, when respondent was in the main office signing out, a secretary pointed him out to Assistant Principal Ms. Lee. Respondent testified he had the paper attendance with him that he took that day, he handed it to Ms. Lee and asked her to enter it in MSIS, and then told Ms. Lee he had to leave because he had a meeting.

#### UNAPPROVED LETTER TO PARENTS

32. On October 20, 2015, Principal Martinez found a letter generated by respondent in his mailbox at the school's main office. Respondent's letter was addressed to Burroughs Middle School parents and included the following statements: "The previous substitute had a nervous breakdown"; "It is impossible for me and for any other teacher to

teach two extremely different levels of Spanish"; and "Come and visit my classroom (229) to see for yourself how difficult my job is right now." (Exh. 5.) The letter had not been approved for distribution to parents by Principal Martinez or any administrators.

33. Upon finding the letter in his mailbox, Principal Martinez requested two assistant principals, Ms. Lee and Mr. Bolanos, to immediately inform respondent the letter was not approved for distribution to parents. Principal Martinez, in testimony, explained the letter was inappropriate because it contained "sensitive information" related to a prior teacher's mental health issue. As directed by Principal Martinez, Assistant Principals Ms. Lee and Mr. Bolanos contacted respondent in his classroom regarding the letter. They reported to Principal Martinez that respondent was uncooperative and refused to tell them which class periods he distributed the letter, stating words to the effect "we will let the union decide" and "I will not tell you." (Exh. 14.) The assistant principals were able to recover some, but not all, of the letters respondent distributed to his students.

34. At the hearing, respondent admitted the contents of the letter as alleged in Charge 11 of the Accusation. (Exh. 5.) Respondent testified that he called the "personnel office" and informed them of the statement regarding the prior teacher's mental breakdown. Respondent claimed he was told he could send the letter to parents. Respondent testified that he placed a copy of the letter in Principal Martinez's mailbox, early in the morning, as a way of asking permission for the letter. Later the same day, two assistant principals came to see him and asked about the letter. Respondent testified that he told them that the principal approved the letter and he had already distributed the letter to his students. Respondent testified that he felt "a little bothered" that the two assistant principals "burst in [his] classroom" and took away something he felt he had permission to send to parents. The job description for respondent's position as a secondary teacher in the District provides, in part, that teachers are "[r]esponsible to [the] School Principal or designee." (Exh. 11.) By refusing to cooperate with the two assistant principals, respondent was not being responsible for his actions to the principal's designees.

#### CONFERENCE MEMORANDUM DATED FEBRUARY 12, 2016

35. On February 12, 2016, Assistant Principal Enriquez held a conference with respondent at the Local District West office, where respondent was assigned at the time. Also present at the meeting was respondent's union representative and a Staff Relations Field Director for the District. During the conference, the following matters from October 2015 were discussed: respondent's comments to his sixth period class, including the comments regarding students T[ ] G. and J[ ] A.; respondent's failure and refusal to submit the mandated student attendance through MSIS; and respondent's unapproved letter to parents. Although he was given the opportunity to respond to the allegations at the conference, respondent indicated he would respond in writing. (No evidence of a written response by respondent was presented.) During the conference, Assistant Principal Enriquez provided respondent with assistance and guidance, and specific directives. Enriquez issued a conference memorandum dated February 12, 2016, which summarized the discussion at the conference and the assistance and guidance, and directives, given to respondent. The

conference memorandum also identified the various District policies to which respondent was expected and directed to adhere. (Exh. 14.)

36. At the February 12, 2016 conference, Assistant Principal Enriquez gave respondent assistance and guidance, and directives, that included the following:

1. Cease immediately from making any demeaning or derogatory comments about race, references to race, or racial stereotypes to students or in the presence of students.
2. Treat all students, staff members, and parents with respect, sensitivity, and fairness.
3. Cease immediately from humiliating students and never question or engage in a discussion about their home life in front of the class. This is both unprofessional and highly inappropriate. Students should be able to expect to learn in a non-threatening, non-hostile environment.
4. You are to conduct yourself appropriately, fairly, honestly, in a professional manner with the highest integrity.
5. Treat all students equally regardless of gender, race, ethnicity, creed, educational status or any other cultural or visual differences.
6. Maintain a professional demeanor and do not yell, use demeaning language, toward any student, staff member, parent or administrator under any circumstances.
7. Cease immediately from generating and distributing any correspondence intended for the school community without the consent and authorized approval of the administrator.
8. Refrain immediately from making any negative comments toward your colleagues and or administrators, that can be interpreted as discourteous and disrespectful.

(Exh. 14, p. 38.)

CONFERENCE MEMORANDUM DATED APRIL 19, 2017

37. On April 19, 2017, Principal Martinez held a conference with respondent at the Local District West office, where respondent was assigned at the time. Also present at the conference was respondent's UTLA representative and a Staff Relations Field Director

for the District. During the conference, the following matters were discussed: respondent's shooting range comment on November 17, 2015; his refusal to answer questions at the December 4, 2017 intake meeting and running off, resulting in a school-wide lockdown; the unapproved letter respondent sent to parents in October 2015; and an incident in November 2015 reported to Assistant Principal Enriquez involving respondent's comments and conduct towards a student with gender identity issues. When given the opportunity to respond to the allegations at the conference, respondent stated, "Nothing to say at this time." (Exh. 15, p. 29.) During the conference, Principal Martinez provided respondent with assistance and guidance, and specific directives. Principal Martinez issued a conference memorandum dated April 19, 2017, which summarized the discussion at the conference and the assistance and guidance, and directives, given to respondent. The conference memorandum also identified the various District policies to which respondent was expected and directed to adhere. (Exh. 15.)

38. The directives given to respondent during the April 19, 2017 conference included the following: maintain appropriate and professional relationships with students, parents and staff at all times; treat students, parents and staff with respect, courtesy, and sensitivity; refrain from making demeaning or derogatory comments about students; set a safe, respectful classroom and school environment; read, review, and adhere to enumerated district policies and the California Standards for the Teaching Profession; and refrain from yelling, name-calling, demeaning or physically handling students as a disciplinary technique. (Exh. 15, p. 31.)

39. Principal Martinez testified he would not request to have respondent assigned to his school because he would worry about the safety of the students. Respondent engaged in behavior indicating a disregard for student safety and a lack of cooperation with the administrative team.

#### SPECIFIC CHARGES IN ACCUSATION

40. It was established, as alleged in Charge 1, that on October 15, 2015, respondent stated to student T [REDACTED] G., during the sixth period Spanish class, in the presence of other students, words to the effect that T [REDACTED] was "rich" because he was "white," and that respondent did not believe T [REDACTED] rode the bus because he lived in a rich neighborhood.

41. It was established, as alleged in Charge 4, that on October 15, 2015, respondent stated to student J [REDACTED] A., during the sixth period Spanish class, in the presence of other students, words to the effect that associated J [REDACTED] and his parents to illegal drug dealers and drug activity. Respondent, in testimony, explained he made the comments about J [REDACTED] because a "narco corrido" song came on the radio, and that he cannot control what music plays on the radio. The Commission finds respondent's explanation did not excuse or mitigate his statements regarding J [REDACTED]. While respondent could not control the music played on the radio, he did control the radio in the classroom and could have turned it off when there was an inappropriate song.

42. It was not established, as alleged in Charge 7, that on October 15, 2015, during the sixth period Spanish class, that respondent stated he “hated Black people” or words to that effect. The District’s hearsay evidence was insufficient to establish this charge.

43. It was established, as alleged in Charge 10, that on October 19, 2015, respondent refused to complete his mandatory student attendance on MSIS, despite several reminders from the administration, and that he suggested someone else (i.e., the assistant principal) should complete his work instead.

44. It was established, as alleged in Charge 11, that on October 20, 2015, respondent sent, or attempted to send, a letter to parents without prior administrative approval. It was also established, as alleged in Charge 12, that on October 20, 2015, when respondent was questioned about the parent letter by two assistant principals, he was uncooperative and refused the assistant principals’ directive to disclose which classes he distributed the letter.

45. It was established, as alleged in Charge 15, that on November 17, 2015, respondent called student A [REDACTED] O. “retarded.”

46. It was established, as alleged in Charge 18, that on November 17, 2015, respondent, in the presence of students during his sixth period Spanish class, said words to the effect that every time he went to the shooting range, he imagined his annoying students. It was further established that when making that comment, respondent made a gun gesture with his hand and pointed at the students in the class. It was not established, as alleged in Charge 18, that respondent pointed a laser at students and made shooting noises.

47. Regarding Charge 21, the District’s hearsay evidence was insufficient to establish this charge. (See Exh. 15, p. 29.)

48. It was established, as alleged in Charge 24, that on December 4, 2015, during a threat assessment meeting, respondent refused to answer any questions posed by Principal Martinez and subsequently ran off campus, resulting in a school-wide lockdown.

#### *Hollywood High School*

49. Hollywood High School is organized into four academic programs: the School for Advanced Studies, the Performing Arts Magnet, the New Media Academy, and the Teaching Career Academy. For the 2017-2018 school year, respondent was assigned as a Spanish teacher in the Performing Arts Magnet. Alexandra Sanchez (Sanchez) was the principal at Hollywood High School for the 2017 fall semester.

50. Sanchez has been employed by the District for 21 years. She has worked as an administrator in the District for 10 years. Sanchez was the principal at Hollywood High School for five years, from fall 2012 through fall 2017. She left Hollywood High School at the end of the 2017 fall semester because of her promotion to Staff Relations Field Director

at Local District West, which is her current position. Sanchez testified credibly at this hearing.

51. In August 2017, prior to the start of the 2017-2018 school year, Sanchez and Assistant Principal Sam Dovlatian (Dovlatian) met with respondent in Sanchez's office at Hollywood High School. The purpose of the meeting was to inform respondent of his teaching schedule and provide the instructional materials for his classes. Sanchez testified that, during the meeting, respondent repeatedly asked her why she did not offer him the position the previous school year. Respondent was upset and raised his voice. Respondent claimed that Sanchez did not like him; Sanchez disputed and corrected that claim during the meeting. Because of respondent's disrespectful attitude, Sanchez stopped the meeting and walked out, with respondent storming after her. Sanchez testified that later that evening, she received an email from respondent in which he stated he wanted to "start over" and he would come by her office to get his teaching materials.

OCTOBER 19, 2017 CONFERENCE MEMORANDUM

52. On September 22, 2017, Principal Sanchez visited respondent's sixth period Spanish class. The students in the class were ninth graders. At the end of the class, Sanchez handed out an instructional survey to the students to obtain their anonymous responses to the following four questions: What do you like about the class? What could be improved? How can you learn more of the material? What can the teacher do differently to help learn the material? (See Exh. 96.) The purpose of the survey was to get the students' perspective about what was happening in respondent's classroom.

53. Principal Sanchez testified that she found the students' anonymous responses to the survey were "concerning." The students' responses included comments that respondent spoke inappropriately to the class, he called students racist terms, he called students "savages," he yelled and screamed at students, and he insulted students and their parents. Based on the survey responses, Principal Sanchez initiated an administrative investigation of respondent's conduct in his sixth period Spanish class.

54. Principal Sanchez and the administrative team obtained a student roster for the sixth period class and randomly selected every other student on the roster to be interviewed. The administrative team interviewed a total of 15 students from the sixth period class. The students were interviewed separately by a member of the administrative team. Each student was asked open-ended questions about respondent's class. At the end of the interview, the student was asked to write a statement of what he or she said during the interview. The statements obtained from the students during the interviews corroborated the allegations from the instructional survey responses, including that respondent called the whole class "savages" when only some of the students were being disruptive; respondent told two students who came to see him after school, "Get the hell out of my class"; and respondent did not allow African-American students to go to the restroom, resulting in one female student urinating on herself during class.

55. On October 19, 2017, Principal Sanchez held a conference with respondent. Also present was Assistant Principal Dovlatian and respondent's UTLA representative. During the conference, the following matters were discussed: the allegations made in the students' instructional survey responses and the allegations made by students who were interviewed as part of the administrative investigation. Respondent was allowed to respond to the students' allegations against him. Principal Sanchez issued a conference memorandum dated October 19, 2017, which summarized the discussion at the conference and the assistance and guidance, and directives given to respondent. The conference memorandum also identified the various District policies to which respondent was expected and directed to adhere. (Exh. 19.)

56. During the October 19, 2017 conference, in response to the students' allegations, respondent stated that the students in the sixth period class were "all difficult students." (Exh. 19, p. 73.) Regarding the allegation that one female student urinated on herself during class because he would not let her go to the restroom, respondent explained: "The girl who peed on herself went out [of the classroom] three times. I thought it was common sense to say no, her mom is aware, her social worker knows she leaves and doesn't come back." (*Id.*) Respondent also stated: "All these kids are late. I've invited you and Mr. Lazo to come in. I was afraid to be there alone. Of course they're going to have a problem because they're African American. I sent you emails." (*Id.*) Respondent complained that the students who were interviewed were "not randomly selected" because "they're friends of each other." (*Id.*) Respondent stated: "I'm here to teach them. I'm not a horrible teacher. You're crucifying the teachers. I'm going to let them know after all this." (*Id.*)

57. As stated in the conference memorandum issued by Principal Sanchez, the directives given to respondent during the October 19, 2017 conference included the following:

[¶] . . . [¶]

C. Refrain immediately from engaging in conduct that is disrespectful, discourteous, unprofessional, and insulting toward students.

D. Never make inappropriate remarks directed to your students such as "*get the hell out of my classroom*", "*get out*", or "*I don't want you in my class*." As a district employee, you are expected to providing [*sic*] the best example that you can, striving to demonstrate excellence, integrity and responsibility in your work, and creating an environment of trust, care and respect for your students.

E. Never make demeaning comments such as calling students "*savages*" or telling students that their parents are "*bad parents*" or any similar comment. I reminded you that as a

district employee you are expected to act as role model and never engage in discriminatory or harassing behaviors with our students. I reminded you that you were given this directive of acting in a professional manner at all times on February 12, 2016 and April 19, 2017.

F. Immediately cease from screaming and yelling at any students when they ask you for help, experience behavioral problems and/ or [sic] any other circumstances. I reminded you that as a district employee you are expected to act as a role model, to maintain your composure in the classroom and create an environment conducive to learning.

(Exh. 19, p. 78 (italics in original).)

58. Principal Sanchez also directed respondent to follow all District policies listed in the conference memorandum, and to take specified classroom management training sessions through the Learning Zone.

59. Principal Sanchez testified that respondent did not follow the directives given to him during the October 19, 2017 conference. Sanchez received new student complaints regarding respondent's fourth period and fifth period classes.

#### DECEMBER 2017 CONFERENCE MEMORANDUM

60. On October 25, 2017, while supervising the lunch period, Principal Sanchez was approached by student B [REDACTED] C. (B [REDACTED]), who appeared upset. B [REDACTED] was a student in respondent's fifth period class. B [REDACTED] reported to Principal Sanchez that, during class the previous day, when B [REDACTED] asked respondent what she should do after finishing a task, he yelled "I don't know" and told her to sit down. B [REDACTED] also reported that respondent made another student in the fifth period class feel bad. Student N [REDACTED] P. (N [REDACTED]) was a tenth grader and respondent told the class she was "a sophomore with freshman credits." B [REDACTED] also reported to Principal Sanchez that respondent "talks about how he doesn't like freshmen and how they stress him out." B [REDACTED] also reported that respondent once told a fifth period student to "stop speaking Spanish like a white person," and he does not clarify things and told students, "I'm tired of you asking stupid questions." (Exh. 20.)

61. Principal Sanchez initiated an administrative investigation of B [REDACTED]'s complaints regarding respondent's fifth period Spanish class. Students from respondent's fifth period class were randomly selected and interviewed, and written statements were obtained from them. The other students' statements corroborated B [REDACTED]'s allegations. For example, students reported that respondent displayed disrespectful and unprofessional conduct towards the fifth period class, he made discriminatory comments towards students, and he did not answer students' questions about the classwork and ignored their requests for help.

62. Principal Sanchez also initiated an administrative investigation of respondent's fourth period Spanish class after receiving complaints that respondent displayed disrespectful and unprofessional conduct towards students in that class. Students from the fourth period class reported that respondent made sexist comments in class. Student A [REDACTED] A. (A [REDACTED]) reported that respondent made a comment that "young girls not knowing how to cook" was "shameful." Respondent also reportedly made discouraging comments about the students' command of the Spanish language. Student Y [REDACTED] P. (Y [REDACTED]) reported that respondent told students that he was embarrassed they were Latinos and did not know Spanish. When Y [REDACTED] mentioned English was her first language, respondent added he was embarrassed to tell parents their student did not know Spanish. Student A [REDACTED] M. (A [REDACTED]) reported that respondent told him, in Spanish, not to help his African-American friends because they should learn for themselves. A [REDACTED] also reported that respondent would answer his (A [REDACTED]'s) questions with no problem, but when an African-American student asked a question, respondent would tell the student he or she should have been paying attention. Students from the fourth period class were randomly selected and interviewed, and written statements were obtained from them. The students' statements corroborated the complaints about respondent making sexist, racist and discouraging comments to students during class.

63. On December 5, 2017, Principal Sanchez held a conference with respondent to discuss the allegations made by students in his fourth and fifth period classes. Also present at the conference were Assistant Principal Dovlatian and respondent's UTLA representative. Principal Sanchez prepared and issued a conference memorandum dated December 5, 2017, which summarized the students' allegations and the investigation findings, respondent's comments during the conference, and the assistance and guidance and directives given to respondent by Principal Sanchez. The conference memorandum identified the various District policies to which respondent was expected and directed to adhere. The conference memorandum also directed respondent to take classroom management training sessions. (Exh. 20.)

64. During the December 5, 2017 conference, respondent was allowed to respond to the allegations made against him. Respondent denied the allegations. Respondent claimed that certain students made allegations against him because those students were failing his class and other classes. Respondent stated that he treated all of his students with respect and has always been nice to his students and their parents. He complained that students interviewed during the investigation were not randomly selected but were the ones that had been giving him problems. He claimed student B [REDACTED] C. initiated the investigation because B [REDACTED] wants to run the classroom and the school, and she gets away with it because she is a good student. Respondent also explained: "My intention is to motivate them to speak their language, if they misinterpret it, I just want them to speak the language." (Exh. 20, p. 94.)

65. In the December 5, 2017 conference memorandum, Principal Sanchez reminded respondent of the assistance and guidance, and directives given to him by Assistant Principal Enriquez on February 12, 2016, and by Principal Martinez on April 19, 2017, as well as the assistance and guidance and directives she gave him in her October 18, 2017

conference memorandum. The December 5, 2017 conference memorandum included additional directives including, but not limited to, refrain immediately from engaging in conduct that is disrespectful, discourteous, unprofessional, and insulting toward students; never make negative comments about students' academic progress, or negative comments about parents and guardians, in front of other students or adults on campus; never use discriminatory remarks such as "stop speaking Spanish like a white person"; cease from making discriminatory and offensive remarks such as "acting white" or "being too Americanized"; and never make discriminatory or inappropriate comments directed to female students. (Exh. 20, pp. 102-104.)

66. Principal Sanchez testified that she would not ask respondent to return to his job assignment at Hollywood High School. Respondent was given directives, and assistance and guidance, prior to his assignment at Hollywood High School and then in the two conference memos she issued to respondent in the 2017 fall semester. Respondent did not adhere to those directives. For example, respondent, admitted in testimony, that he did not take the classroom management training sessions as directed by Principal Sanchez. Principal Sanchez testified that her "strong opinion" is that respondent's misconduct with students cannot be corrected.

#### TESTIMONY OF STUDENT WITNESSES

##### *STUDENT SAMANTHA C. (FOURTH PERIOD)*

67. S [REDACTED] C. (S [REDACTED]) testified at this hearing. S [REDACTED] is currently an eleventh grader at Hollywood High School. For the 2017-2018 school year, S [REDACTED] was a tenth grader in respondent's fourth period Spanish class. S [REDACTED] testified that, at first, she thought respondent was "okay" as a teacher, but then he "started to speak his mind" and the class became "hectic." S [REDACTED] testified that her relationship with respondent was "not good," but it got better as her grade in the class improved. S [REDACTED] testified she was kicked out of respondent's class on four occasions, and admitted that she did things that justified her being kicked out of class.

68. S [REDACTED] testified that, as part of the class routine, respondent had the students write in their journals. Respondent wrote a question or topic on the board and instructed the class to write about the question or topic in their journals. S [REDACTED] understood the purpose of the journal writing was to get the students to practice writing in Spanish. Respondent encouraged the students to speak only in Spanish in the classroom and to speak with each other in Spanish. However, in seeking to motivate the class to write and speak in Spanish, respondent would go off topic and make inappropriate comments.

69. S [REDACTED] testified credibly that respondent made inappropriate comments and remarks during the fourth period class, including the following:

(A) When the King of Nigeria visited the school, respondent told the class the King's country was "dirty and poor." S [REDACTED] was bothered by respondent's comment because she felt it was rude, uncalled for, and ignorant.

(B) Respondent made racist comments about Hispanics. S [REDACTED], in her testimony, did not remember respondent's exact words, but she recalled they were words a teacher is not supposed to say and were disrespectful and rude. S [REDACTED] testified respondent's words made her angry. She admitted that she responded to him with words she should not have used and words that were disrespectful to adults.

(C) Respondent made sexist comments in class. He said that a woman's only purpose is to get pregnant and have children. Samantha did not like this comment because it was directed at her gender group. Respondent also told the class that "girls are emotional." S [REDACTED] felt that comment was an ignorant statement and wrong.

(D) Respondent called S [REDACTED] and another student (A [REDACTED]) "dumb." Respondent called a male student who was acting out "retarded" before kicking the student out of class. S [REDACTED] testified that respondent called students "dumb" or "stupid" at least once a day, during class. Respondent called students "dumb" when they made a mistake or were misbehaving. S [REDACTED] testified that respondent insulted her multiple times by calling her "dumb," "rude," and "disrespectful." S [REDACTED] testified she was "negative" in respondent's class because he made inappropriate comments and gave her low grades for her work. S [REDACTED] testified that respondent argued with the students who misbehaved during class, and he would call the student's parents.

(E) S [REDACTED] testified that respondent said her grade out loud, during class. Respondent had a list of students who did badly. S [REDACTED] testified she got up and told respondent not to read the grades out loud, because she already knew her grade.

(F) Respondent talked about the television show "Portlandia" and told the class they probably did not watch it because the jokes were "smart" and they would not understand them. S [REDACTED] felt this comment was respondent's way of calling the students stupid and dumb. In S [REDACTED]'s opinion, respondent's most disrespectful comments were those that made S [REDACTED] and her classmates feel uneducated. Additionally, respondent made comments about the students "acting white" or being "too Americanized." S [REDACTED] testified respondent called the students in her class "Americanized" three times per week. S [REDACTED] testified that respondent encouraged the students to speak Spanish and tried to make the students feel proud of their Spanish heritage. Respondent played music and showed videos that were not part of the lesson.

(G) When respondent made insulting and inappropriate comments, S [REDACTED] admitted that she fought back and responded with similar words. S [REDACTED] believes respondent insulted her because she "argued with him a lot" about his comments when they made her feel angry and mad. S [REDACTED] felt respondent's comments were inappropriate and, as a teacher, he should know how to handle himself better. S [REDACTED]

testified that, during the fourth period class, respondent talked about the students in his first period and fifth period classes.

*STUDENT K [REDACTED] W. (FIRST PERIOD)*

70. K [REDACTED] W. (K [REDACTED]) testified credibly at the hearing. K [REDACTED] is currently an eleventh grader at Hollywood High School. For the 2017-2018 school year, K [REDACTED] was a tenth grader in respondent's first period Spanish class. K [REDACTED] described respondent as a teacher who had good days and bad days. One minute he would be all right with you and the next minute he would be mad at you. K [REDACTED] testified that on a "good day," respondent was funny and relaxed, he did not argue or make inappropriate remarks, and the class was comfortable. K [REDACTED] testified that on a "bad day," respondent would argue with students and make "smart remarks" (i.e., racial slurs, say things that "irked" students). K [REDACTED] felt respondent made racial slurs when he referred to black students as "these people" and "you people." Respondent's remarks made K [REDACTED] feel upset, and she would argue with respondent and then get kicked out of class. K [REDACTED] testified that respondent kicked her out of class "a lot" because of their arguments. She raised her voice when respondent raised his voice at her. K [REDACTED] testified that her relationship with respondent improved not because his behavior changed but because she decided to "fall back" and stop arguing with respondent and just "let him do him." K [REDACTED] did not enjoy having respondent as a teacher. Respondent's class was not "comfortable" and she felt as if she were "walking on egg shells" in his class.

71. K [REDACTED] testified that, during the first period class, respondent talked about students in his sixth period and fifth period classes, and how those classes did not get things done. K [REDACTED] did not care that respondent spoke about his other classes during her class.

*STUDENT J [REDACTED] K. (FIFTH PERIOD)*

72. J [REDACTED] K. (J [REDACTED]) testified credibly at the hearing. J [REDACTED] is currently an eleventh grader at Hollywood High School. For the 2017-2018 school year, J [REDACTED] was a tenth grader in respondent's fifth period Spanish class. J [REDACTED] felt respondent did not set a good example for the class and he was irresponsible. J [REDACTED] testified the fifth period class was pretty loud and rambunctious, everyone was ready to finish the school day, work never got done, and the students argued with respondent all the time. J [REDACTED] felt that respondent wasted so much instructional time during class arguing with student, and that it was stressful to be in that classroom environment every day. J [REDACTED] testified she received an "A" grade in respondent's class.

73. J [REDACTED] testified that respondent displayed racist behavior in class. During class, respondent asked student A [REDACTED] if the music she was listening to was rap or hip-hop. When A [REDACTED] asked respondent why he thought she was listening to rap or hip-hop, respondent replied it was because she was black. J [REDACTED] heard respondent's comment and thought it was racist. On another occasion, respondent made a comment that the music played in the quad is always rap or hip-hop because the students who dance in the quad are

mostly African-American. J█████ felt this comment was prejudiced because everyone dances in the quad, not just African-American students. Respondent also made comments that black people are lazy and Hispanic people work harder than black people.

74. Respondent told J█████ she was becoming a bad student and misbehaving because she was hanging out with the black kids. Respondent called J█████'s mother and told her J█████ was being extremely negative in class and playing games on her phone. J█████ did not care that respondent called her parents. J█████ testified her parents understood what was going on in respondent's class and they were not disappointed in her. J█████ testified that she had negative interactions with respondent, mostly because she called him out for being racist or making racist comments. J█████ also testified that respondent expressed favoritism towards certain students. When respondent planned a field trip for the class, respondent told J█████ he would only take his "favorite students."

75. J█████ testified that respondent had an argument with student N█████ P. during class and respondent said her parents would be disappointed in her and her behavior. J█████ felt respondent's comment was inappropriate to say in front of the entire class and disrespectful towards N█████. Respondent also talked about N█████'s credits during class. He said that N█████ did not pass with enough credits the previous year so she's just a ninth grader. J█████ felt respondent's comments were inappropriate and humiliating for N█████ because her grades were not the best grades.

76. Respondent often mentioned students grades and how many students failed in the class. J█████ testified she never asked her friends about their grades.

77. J█████ testified that respondent made comments about his sixth period Spanish class in her fifth period class. Respondent said the sixth period class was extremely loud. Respondent also said his other classes were better than the fifth period class. J█████ thought respondent's comment was inappropriate and that it was unfair to compare her fifth period class to respondent's other classes because every class is different.

#### FEBRUARY 1, 2018 CONFERENCE MEMORANDUM

78. Edward Colacion (Colacion) is currently the principal at Hollywood High School. He became the principal in January 2018. Colacion has been employed by the District for over 15 years. He has a bachelor's degree in environmental planning and a master's degree in education administration. Colacion currently holds single-subject credentials in biology, chemistry, and physics, a BCLAD certificate in Spanish, a supplemental credential in elementary education, and an administrative credential. Colacion testified credibly at this hearing.

79. When he arrived at Hollywood High School in January 2018, Principal Colacion was made aware of pending administrative investigations involving respondent. Eric Maxie of Local District West informed him of the student allegations against respondent. Principal Colacion worked with Assistant Principal Dovlatian and made

findings regarding the allegations, which are summarized in a conference memorandum dated February 1, 2018. (Exh. 21.) Principal Colacion discussed the conference memorandum with respondent at a meeting on February 1, 2018. Assistant Principal Dovlatian was also present at the meeting. During the meeting, respondent was given the opportunity to respond to the allegations, which are summarized in the conference memorandum. Respondent stated, among other things, that every student mentioned in the allegations “has had discipline issues in my class,” and he complained the District’s investigations were not done in a “clear and fair way.” (Exh. 21, p. 111.) Respondent was given assistance and guidance, and directives, by Principal Colacion, as documented in the conference memorandum. Principal Colacion also reminded respondent of prior assistance and guidance, and directives, previously given to him by Principal Sanchez and Principal Martinez.

80. On February 22, 2018, Principal Colacion met with respondent and gave him a Notice of Unsatisfactory Performance. (Exh. 17.) On March 9, 2018, Principal Colacion met with respondent and gave him a Notice of Suspension which imposed a 15-day suspension. Principal Colacion determined a 15-day suspension was appropriate, given the pattern of respondent’s behavior and incidents. There were a number of incidents involving respondent’s treatment of students, his comments on gender and race, as well as other comments not appropriate in a learning community. Principal Colacion testified that teachers must be role models for the students. There was no change in respondent’s behavior despite the assistance and guidance given to him over multiple school years. Principal Colacion believes respondent’s dismissal is appropriate.

#### SPECIFIC CHARGES IN ACCUSATION

81. It was alleged in Charge 25, but not established by sufficient evidence, that during the period August 15, 2017, to September 22, 2017, respondent, in the presence of students during the sixth period Spanish class, would not allow African-American students to use the restroom or use the drinking fountain. The District’s hearsay evidence was insufficient to establish this charge. (See e.g., Exh. 19, p. 72; Exh. 77.)

82. It was established, as alleged in Charge 28, that during the period August 15, 2017, to September 22, 2017, respondent, in the presence of students during the sixth period Spanish class, said to the class they were all “savages” (Charge 28a), and said words to the effect “No I don’t want to hear it, I don’t want you in my class.” (Charge 28b.) Respondent testified he called some students “savages,” but not the whole class, and clarified that he said “some of you act like savages.” Regarding Charge 28b, respondent testified he was under so much stress and “many times, I hate to admit it, I lost my temper and raised my voice.” He admitted he probably told the students “I don’t want to hear it” in order maintain his authority in the classroom. The Commission finds that respondent’s explanations do not excuse or mitigate his conduct described in Charges 28a and 28d. The Commission finds the District’s evidence was insufficient to establish the remaining allegations in Charges 28b and 28c. As to those charges, respondent denied those allegations and claimed the students and administrators misconstrued his statements.

83. It was established, as alleged in Charge 31, that during the period August 15, 2017, to October 19, 2017, respondent, on at least one occasion did not allow a ninth grade African-American student (C [REDACTED] S.) to use the restroom. However, it was not established by sufficient evidence that, as a result, the student urinated in her pants. Respondent admitted that, on this one occasion, he did not allow C [REDACTED] to go to the restroom because she had on previous occasions left the classroom to use the restroom but did not return to class. Respondent testified that, on this one occasion, C [REDACTED] had asked multiple times to use the restroom and respondent told her to wait. Respondent testified no one told him C [REDACTED] had urinated on herself until the administrative investigation. Respondent denied that C [REDACTED] urinated on herself in class. The District's evidence, consisting of hearsay statements by students, was insufficient to establish the student, in fact, urinated on herself in class.

84. (A) It was established, as alleged in Charge 34, that during the period August 15, 2017, to December 5, 2017, in the presence of students during the fifth period Spanish class, respondent said words to the effect, "Stop speaking Spanish like a white person" (Charge 34a), and "I don't know why every time they play rap music in the quad, there are so many black kids" (Charge 34b), and he referred to African-Americans as "those people" as a racial slur (Charge 34c).

(B) The District's evidence was insufficient to establish the allegation in Charge 34d that respondent said words to the effect "Blacks in his class are rude." The evidence established that respondent commented that students in his classes were "rude," but there was insufficient evidence to establish respondent directed the comment towards Black students.

(C) It was established, as alleged in Charge 34e, that respondent said words to the effect "That's why I only pick my favorite students and that's why I prefer Latino students." Respondent, in his testimony, did not deny this charge but, instead, claimed his comment was taken out of context. He explained the context for his comment. Respondent testified that he asked some students to come on a field trip to the Mayan Theater to watch a movie in Spanish. Respondent testified the lady in charge of the Spanish Department invited respondent and his class to go with her class to watch the movie. The Commission finds respondent's comment was not appropriate because expressing favoritism towards certain students is not conducive to creating a supportive learning environment for all the students.

(D) It was established, as alleged in Charge 34f, that respondent said words to the effect that kids sound funny when trying to learn Spanish. However, it was not established that respondent specified that "Black kids," in particular, sounded funny when trying to learn Spanish. Respondent testified that he told students about how much he enjoyed teaching Spanish, and how cute they sound when they're first learning Spanish (they sound like babies), which makes him happy. Respondent testified he did not intend his students to take his comment as being derogatory.

85. It was established, as alleged in Charge 37b, that during the period August 15, 2017, to December 5, 2017, respondent, in the presence of students during the fifth period Spanish class, refused to take a tardy slip from a student and said, "I am not going to accept this because I am in America and I have rights," or words to that effect. Respondent, in his testimony, admitted this charge. The District's hearsay evidence was insufficient to establish the remaining allegations in Charges 37a, 37c, and 37d.

86. It was established, as alleged in Charge 40, that during the period August 15, 2017, to December 5, 2017, in the presence of students during the fifth period Spanish class, respondent told tenth grade student N█ P., on at least one occasion, words to the effect that she is in the tenth grade with only ninth grade credits. Respondent denied the allegations in Charge 40, again claiming that his comments were misconstrued by the students.

Respondent explained that N█ was in her second year at Hollywood High School and she had not passed a class in two years. The Commission finds that respondent's explanation does not excuse or mitigate his comments, in the presence of other students, that N█'s credits were not at grade level.

87. (A) It was established, as alleged in Charge 43, that during the period August 15, 2017, to December 5, 2017, respondent, in the presence of students during the fourth period class, made comments or statements that the students considered to be racist, sexist, insulting, offensive and/or inappropriate. This finding is based on the credible testimony of student S█ C., as supplemented by student statements contained in the conference memoranda issued by Principal Sanchez (Exhibits 19 and 20).

(B) Respondent, in his testimony, explained that his statements were misconstrued by the students, he explained the context for his statements, and he claimed he was simply trying to motivate the students to speak and write in Spanish. For example, respondent discussed gender roles in reference to his upbringing in Mexico and told the class that his mother and sister did all the household chores and cooking. He told the students to write in their journals about what they thought of gender roles in Mexico as he explained them. Respondent, at the start of class, wrote a topic or question on the board to get the students to write, in Spanish, in their journals. The journal topics varied and, for example, covered gender issues (e.g., empowerment of women and the "Me Too" movement) as well as racial and ethnic stereotypes. Respondent explained that he told the students they were "too Americanize" to motivate them to speak in Spanish. If he referred to students being "white," which he did not remember saying, it was not with the intent to make students feel inferior.

(C) The Commission finds that, in trying to motivate his students to write in their journals (which is commendable), respondent made negative, insulting, offensive, and/or inappropriate statements, especially when giving further explanation for the journal-writing topics he wrote on the board. Respondent's contention that his statements were misconstrued by the students did not excuse or mitigate his conduct. Respondent, as an experienced educator, can reasonably be expected to know the types of statements or comments that are inappropriate in a classroom setting. The Commission finds respondent

was unprofessional by making inappropriate and offensive statements to the students in his fourth period class.

88. It was established, as alleged in Charge 46, that during the period August 15, 2017, to December 5, 2017, respondent told student A [REDACTED] M., on at least one occasion, words to the effect that he should not to help his African-American friends because they should learn for themselves. Respondent, in his testimony, did not deny this charge but, instead, explained the context for his statements to the student. He testified this was “a perfect example” of how his good intention was turned into a negative by administrators. Respondent testified that A [REDACTED] was Latino and knew Spanish but was placed in the non-Spanish speaking class. A [REDACTED] gave answers to his peers (black students and white students). Respondent told A [REDACTED] not to give answers to the other students and to let them do their own work. After A [REDACTED] was switched to the appropriate Spanish class, respondent continued to be his teacher. Respondent testified there were no further issues with A [REDACTED] giving answers to other students. Respondent’s conduct, however, was perceived by A [REDACTED] as example of respondent’s bias against his African-American classmates. (See Exh. 20, p. 90.)

89. It was established, as alleged in Charge 49, that during the period August 15, 2017, to December 5, 2017, respondent told student A [REDACTED] A., on at least one occasion, words to the effect, “You guys have to get married to husbands and have kids for the sake of the next generation.” Respondent, in his testimony, did not deny making this statement but, instead, claimed his statement was misconstrued. Respondent spoke to the class about gender roles and asked the students if they thought about getting married. A [REDACTED] asked respondent why he assumed they would be getting married. Respondent replied that if people are not married, they cannot procreate, so some people need to get married.

90. It was established, as alleged in Charge 52, that during the period August 15, 2017, to December 5, 2017, respondent told ninth grade student Y [REDACTED] P. words to the effect, “Why are you wearing Chapstick? You look too pretty already.” Respondent, in his testimony, admitted making these statements the student and was “proud” to have done so. Respondent explained that female students look up make-up tutorials on their phone. His intent was to compliment Y [REDACTED] that she was already pretty and did not need to put on make-up. The Commission finds it was not appropriate for respondent, as a teacher, to comment on the appearance of female students.

91. It was established, as alleged in Charge 55, that during the period November 7, 2017, to February 1, 2018, respondent, in the presence of students during the first period Spanish class, made comments or statements that were inappropriate, insulting, and/or offensive, or were deemed as such by the students, including, for example, referring to African-American students as “those people”; stating that girls should go to the gym and be skinny and pretty for their husbands, and women belong in the house cooking for their man; and telling a student “You must come from a low-income family.” Respondent, in his testimony, did not deny the allegations of Charge 55 (except that he denied making the statement described in Charge 55f) but, instead, explained the context for his comments, which was to motivate his students to speak and write in Spanish, and the students

misconstrued the comments. He explained there were class discussions about racial stereotypes where he mentioned some racial groups and then asked the students about their thoughts.

92. It was established, as alleged in Charge 58, that during the period November 7, 2017, to February 1, 2018, respondent, in the presence of students during the first period Spanish class, he threw a marker against the wall and told the students “I give up on teaching” or words to that effect (Charge 58c), and he told student K [REDACTED] W. “You are annoying” or words to that effect (Charge 58d). Charges 58c and 58d were established by respondent’s testimony and K [REDACTED]’s testimony, as supplemented by her written statement (Exhibit 41.) The Commission finds respondent’s conduct was unprofessional and contrary to his duty, as a teacher, to create a safe and positive learning environment for his students. The District’s hearsay evidence was insufficient to establish the allegations of Charges 58a and 58b.

#### *Respondent’s Character Witnesses*

93. James Beus testified as a character witness for respondent. Mr. Beus has been employed by Chipotle Grill as a real estate manager for the past four years. Mr. Beus first met respondent 20 years ago when they were neighbors living in the same apartment building. Mr. Beus met respondent when he was starting his career as teacher. Mr. Beus testified that respondent tried out lessons on him to make sure they would be exciting enough for his students. For example, respondent assigned his students to write an essay about their best friend. Respondent told his class about his friendship with Mr. Beus. At the time, Mr. Beus was in a rock band, so respondent took pictures of Mr. Beus performing with the band. Mr. Beus was impressed with how much work respondent put into that assignment.

94. Mr. Beus volunteers at a homeless shelter called Casa Libre that serves children from Central America. Respondent volunteered with Mr. Beus at Casa Libre. Respondent worked with the children and explained to them about life in America, including that children went to school and did not just work. Respondent has shared with Mr. Beus about the struggles in his own life. Mr. Beus feels that respondent is a powerful advocate for Latino children and is passionate about helping children. Mr. Beus feels that respondent is the kind of person needed as role models in school.

95. Vladimir Hernandez testified as a character witness for respondent. Mr. Hernandez became a registered nurse in November 2016, and has worked for the County of Los Angeles in that capacity since October 2018. Mr. Hernandez was a twelfth grader in respondent’s Spanish class at Hollywood High School in the 2005-2006 school year. Mr. Hernandez considers respondent to be a good person, someone he personally looks up to, and a mentor. Mr. Hernandez testified that, after he graduated from high school, he did not care about school or his future. Respondent encouraged Mr. Hernandez to do something with his life. With respondent’s advice, Mr. Hernandez started thinking maturely about his future. Mr. Hernandez decided to pursue a career in nursing. Mr. Hernandez testified that, having known respondent as a student, and then meeting him again as an adult, he has never seen

any indication that respondent mistreated students. Mr. Hernandez found respondent to be a creative teacher who thought of fun and interactive ways for his students to learn.

96. Mr. Beus and Mr. Hernandez appeared sincere in expressing their favorable opinions of respondent's character, his passion for teaching, and his creativity and desire to motivate his students to learn Spanish. However, their opinions of respondent's character are not sufficient to refute the student allegations at issue in this case. Mr. Beus has never seen respondent teaching in a classroom at Burroughs Middle School or Hollywood High School. Mr. Beus has never worked in a public school. Similarly, Mr. Hernandez has not held a position in a public school. He did not observe respondent's classes in the 2015-2016 or 2017-2018 school years. Nor did he speak with any students in respondent's classes during those school years. Mr. Hernandez's last contact with respondent in a classroom was as a student 14 years ago during the 2005-2006 school year.

#### LEGAL CONCLUSIONS

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944<sup>1</sup> and Factual Findings 1-5.

2. The District has the burden of proof in this matter and the standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

3. Under Education Code section 44932, the grounds for dismissal alleged by the District against respondent are unprofessional conduct [subdivision (a)(2)], immoral conduct [subdivision (a)(1)], evident unfitness for service [subdivision (a)(6)], and persistent violation of or refusal to obey school laws or reasonable regulations [subdivision (a)(8)].

4. In the Accusation, the District also alleged grounds for immediate suspension under Education Code section 44939 for immoral conduct and willful refusal to perform regular assignments without reasonable cause. However, the grounds for immediate suspension under section 44939 were not issue at the hearing in this matter and, thus, will not be addressed in this Decision. (See Ed. Code, § 44939, subd. (c)(2).)

5. It is settled that the trier of fact—in this case the three members of the Commission—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,

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

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.” (*Kearl v. Board of Medical Quality Assurance*, 189 Cal.App.3d 1040, 1052.)

#### *Unprofessional Conduct*

6. Cause exists for respondent’s dismissal, pursuant to section 44932, subdivision (a)(2), for unprofessional conduct. (Factual Findings 10-15, 16-48, and 49-92.)

7. “Unprofessional conduct” as used in section 44932, subdivision (a)(2), 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.)

8. (A) The preponderance of the evidence established that respondent engaged in unprofessional conduct towards his students. By regularly arguing with students, respondent failed to model appropriate behavior of how to disagree with others in a respectful manner. Respondent yelled and screamed at his students during class, called his students names such as savages, dumb, and stupid, and demeaned their Spanish-speaking abilities. His comments were contrary to creating a safe and nurturing learning environment. He also made comments that were racist, sexist, insulting, and offensive, and reasonably perceived as such by his students. Under the District’s Code of Conduct with Students, even if his intent was “purely professional,” respondent’s comments subjected him to “all possible perceptions of impropriety.” Respondent’s conduct did not demonstrate good judgment and was unbecoming of a member of the teaching profession in good standing.

(B) Additionally, the preponderance of the evidence established respondent engaged in unprofessional conduct towards his principals, assistant principals, and administrative staff. Respondent was disrespectful to Principal Sanchez during their first meeting in the 2017 fall semester. He was uncooperative and defiant with Principal Martinez, the assistant principals, and staff at Burroughs Middle School. Respondent ignored Principal Sanchez’s directives to complete classroom management training. The Commission finds that latter point concerning. Training provides teachers with opportunities for self-improvement and personal growth. Respondent’s resistance to training is inconsistent with the life-long learning required to be a good teacher and positive role model for students.

(C) The Commission concludes that cause for respondent’s dismissal on the basis of unprofessional conduct is supported by the overwhelming weight of the evidence.

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### *Immoral Conduct*

9. Cause exists for respondent's dismissal, pursuant to section 44932, subdivision (a)(1), for immoral conduct. (Factual Findings 10-15, 16-48 and 49-92.)

10. The term "immoral conduct" has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

11. The Commission finds that respondent engaged in immoral conduct by making comments that were racist or sexist, and/or perceived as such by the students. Respondent's comments were immoral to the extent they connected a negative attribute to a particular racial or gender group. For example, his comment insinuating that student J█████ K. was becoming a bad student and misbehaving because she was hanging out with the black students; his use of the racial slur "those people" when referring to black students; and his comments that the role of women was to get married, have children, and maintain the household. These comments demonstrate a moral indifference to the opinions of respectable members of the community. The Commission recognizes that the phrase "these people" in Spanish could have an innocent meaning. But student K█████ W.'s testimony made clear that she took respondent's comment as a racial slur against African-American students. It was respondent's responsibility, as the teacher, to protect against using language that reasonably could be taken as being offensive by his students. Additionally, the Commission finds respondent's shooting range comment, in which respondent told students he thought of his annoying kids when he went to the gun range, was immoral as it demonstrated an inconsiderate attitude toward good order and the public welfare.

### *Evident Unfitness for Service*

12. Cause exists for respondent's dismissal, pursuant to section 44932, subdivision (a)(6), for evident unfitness for service. (Factual Findings 10-15, 16-48, and 49-92.)

13. Evident unfitness for service means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified School Dist. v. Commission Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) Evident unfitness for service "connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.*)

14. In this case, the Commission is persuaded that respondent's misconduct is caused by a defect in temperament and non-remediable. Respondent engaged in conduct that violated the directives and counseling he had been given. He continued to make inappropriate comments, during his classes, in the presence of students. Respondent has

been given multiple opportunities to address his misconduct and correct his behaviors. His continued and repeated failure to comply with his supervisors' directives leads to no other conclusion that his misconduct will not be corrected if given additional notice and opportunities to do so.

*Persistent Violation of School Laws and Regulations*

15. Cause exists for respondent's dismissal, pursuant to section 44932, subdivision (a)(8), for persistent violation of school laws and regulations. (Factual Findings 10-15, 16-48, and 49-92.)

16. (A) In *Governing Board of Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82, the court stated: "The word 'persistent' is defined by lexicographers as 'refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated.' (Webster's New World Dict. (College ed.); see Webster's Third New Internat. Dict.) And in the judicial decisions of this, as well as other states, the word has been interpreted to mean 'continuing or constant.' [citations omitted]."

(B) The court in *Seaman* further explained that 'a single violation of a school board's rules is not of itself cause for the dismissal of a permanent teacher under subdivision (g) of section 13403 [now section 44932, subdivision (a)(8)]. The subdivision pertains to unintentional as well as intentional transgressions, and hence the Legislature, apparently to allow opportunity for a correction, has decreed that a single violation is not sufficient to warrant dismissal; 'it is the persistent disregard' of school rules that the subdivision is designed to regulate." (28 Cal.App.3d at 84 [citation omitted].)

17. The preponderance of the evidence established that respondent engaged in a persistent violation of the District's policies and school rules, as documented in the conference memoranda he received during his assignments at Burroughs Middle School in the 2015-2016 school year and Hollywood High School in the 2017-2018 school year, and testified to by the principals who appeared as witnesses at this hearing. Respondent repeatedly demonstrated an unwillingness to comply with directives given by his superiors or to cooperate with the administrative teams at his assigned school sites.

*Morrison Factors*

18. Cause for discipline against a teacher must relate to his fitness to teach within the meaning of the factors enumerated in the case of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. Here, the Commission has found cause exists to dismiss respondent based on unprofessional conduct, immoral conduct, evident unfitness for service, and persistent violation of school rules. With regard to those causes for dismissal, the Commission considered all the factors suggested by *Morrison* and compared them to the facts established above. Not all *Morrison* factors need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.)

Moreover, the *Morrison* analysis need not be conducted on each individual fact established but, rather, can be applied to the accumulated facts established collectively. “When the camel's back is broken we need not weigh each straw in its load to see which could have done the deed.” (*Woodland Joint Unified School District v. Commission on Professional Competence, supra*, 2 Cal.App.4th at 1457.)

19. The *Morrison* case sets forth the following factors for determining a teacher's fitness 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 certificate held by the teacher; (5) extenuating or aggravating circumstances surrounding the conduct; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood that the conduct in question will recur; and (8) the extent that discipline will cause an adverse chilling impact on the constitutional rights of the teacher involved or other teachers. (*Morrison v. State Board of Education, supra*, 1 Cal.3d at 229.) The *Morrison* factors apply as follows:

(A) The likelihood the conduct may adversely affect students or fellow teachers. Respondent's conduct adversely affected the students in his classes. Students were offended and made to feel uncomfortable and disrespected in the classroom by respondent's comments and conduct.

(B) The degree of such adversity. Respondent's conduct caused great adversity to those students who were offended, made uncomfortable, or negatively impacted by his conduct.

(C) The proximity or remoteness in time of the conduct. Respondent's misconduct at issue was recent, having occurred during the 2015 fall semester and the 2017 fall semester.

(D) The type of teaching certificate held by the party involved. Respondent holds credentials authorizing him to teach Spanish in high school and middle school.

(E) The existence of extenuating or aggravating circumstances, if any, surrounding the conduct. The Commission finds no extenuating circumstances surrounding respondent's misconduct in this case. There are, however, aggravating circumstances surrounding respondent's misconduct, in that respondent received multiple conference memoranda which counseled and directed him regarding conduct he was to avoid, yet his misconduct persisted.

(F) The praiseworthiness or blameworthiness of the motives resulting in the conduct. The Commission finds there is evidence that respondent had praiseworthy motives behind his conduct. The Commission believes that respondent appears to have a sincere desire to motivate his students to learn how to speak and write in Spanish, which is commendable. Problems arose, however, when respondent provided further explanations for assignments. For example, when he provided journal writing topics involving, for instance,

gender roles or racial stereotypes, respondent made comments that students perceived as racist, sexist, and inappropriate for a classroom teacher. Respondent had arguments during class with the students who challenged his comments as being inappropriate and offensive, taking up valuable instruction time. As a teacher with 20 years' experience working in the District, respondent should have known how to handle himself better and ensure his comments and remarks to his students were appropriate and conducive to maintaining a positive learning environment. He failed in that respect. Although he may have started with positive intentions, respondent, by his conduct, undermined his own ability to create a positive learning environment for all the students in his classes, and undermined his position as the authority figure in the classroom.

(G) The likelihood of recurrence of the questioned conduct. Respondent's conduct at issue is likely to recur. Warnings and directives from school administrators have not helped in the past. Under the circumstances, the Commission believes there is more than a remote possibility that respondent would continue to engage in the same type of misconduct if he is allowed to return to a classroom.

(H) The extent discipline may cause adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. Not applicable.

20. Based on the above *Morrison* factors, the Commission finds that respondent's misconduct demonstrates he is unfit for service as teacher in the District.

#### *Disposition*

21. "The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction." (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327, 343-344.) Thus, even where cause for dismissal has been established, the Commission still has broad discretion to determine whether such discipline is actually warranted. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 222.)

22. In his closing argument, respondent expressed that, in his heart, he feels he did everything he could to do his job properly. He admitted he was not the best teacher or a perfect teacher. He raised his voice at times due to stress, but he never had bad intentions. He did his best to teach the students Spanish and culture, and never intended to be disrespectful.

23. The Commission finds that respondent has a sincere passion to be a teacher. Despite his good intentions, he has been unwilling to perform teaching duties in accordance with the District's rules, policies, and expectations. He has been a teacher in the District for 20 years. Yet, at this stage in his career, he engaged in conduct that adversely affected students and was not conducive to creating a positive learning environment for his students. Respondent's conduct raises concern about his character and whether he can be trusted to have a positive relationship with students as a teacher for the District. The Commission

concludes that respondent's misconduct in this case is inexcusable and warrants his dismissal.

24. Based on the foregoing, the decision of the Commission in this case is that respondent shall be dismissed from employment with the District. (Factual Findings 1-92; Legal Conclusions 1-23.)

## ORDER

Respondent Ignacio Gil shall be dismissed from employment with the Los Angeles Unified School District.

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EDWARD GIL DE MONTES  
Commissioner  
Commission on Professional Competence

DATED: May 8, 2019

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MONICA LUKESH  
Commissioner  
Commission on Professional Competence

DATED: May 9, 2019

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ERLINDA G. SHRENGER  
Administrative Law Judge, Commissioner  
Commission on Professional Competence

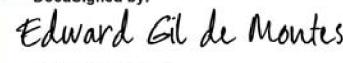
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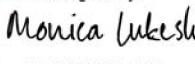
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EDWARD GIL DE MONTES  
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May 9, 2019

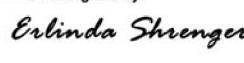
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MONICA LUKESH  
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ERLINDA G. SHRENGER  
Administrative Law Judge, Commissioner  
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