

**BEFORE THE
COMMISSION ON TEACHER CREDENTIALING
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation Against:

DARRYL GIDEON,

Respondent.

Clear Single Subject Teaching Credential,

Agency Case No. 2-214931755

OAH No. 2022090325

PROPOSED DECISION

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 1 through 3, 2023.

Deputy Attorney General Cristina A. Felix represented complainant Mary Vixie Sandy, Ed.D, Executive Director of the California Commission on Teacher Credentialing (Commission).

Respondent Darryl Gideon appeared and represented himself.

Testimony and documents were received in evidence. The record was closed and the matter was submitted for decision on May 3, 2023.

The ALJ granted complainant's unopposed motion for a protective order placing Exhibit Z2, the Confidential Names List, under seal to protect the privacy rights of the students named during the hearing.

SUMMARY

Complainant alleges that in May 2019, while working as a physical education (PE) teacher for the Compton Unified School District (District), respondent hit a seventh-grade student's leg with a computer wrist rest, leaving visible marks on the student's inner left knee and that such conduct constitutes unprofessional and immoral conduct and an act of moral turpitude, and demonstrates respondent's evident unfitness to teach. Complainant further alleges aggravating factors, including that respondent's conduct significantly harmed a child trusted to his care, and requests respondent's 1998 and 2008 criminal convictions be considered when assessing discipline. Based on the foregoing, complainant requests all credentials, certificates, and authorizations issued to respondent be revoked.

Respondent disputed some of the allegations and expressed remorse for his conduct. Respondent presented evidence in mitigation and of his rehabilitation in support of his continued credentialing, including his previous and subsequent work performance as a teacher.

Complainant established by clear and convincing evidence cause to discipline respondent's credential. However, protection of the public, schoolchildren, and the profession will be served if respondent's credential is suspended for 120 days during which time respondent must complete 40 hours of study of child development.

FACTUAL FINDINGS

Jurisdiction

RESPONDENT'S CREDENTIALS

1. On June 29, 2012, the Commission issued respondent a Clear Single Subject Teaching Credential (Teaching Credential) with an authorization in General Subjects. The Teaching Credential will expire on July 1, 2027, unless renewed.
2. On November 7, 2019, respondent's credential was suspended pursuant to Education Code section 44424, subdivision (b), but was reinstated on February 19, 2020. (Undesignated statutory references are to the Education Code.)
3. Respondent previously held the following credentials, collectively "respondent's credentials," which were in full force and effect at all times relevant to the charges brought in the First Amended Accusation:
 - a. Preliminary Full Time Designated Subjects Career Technical Education Teaching Credential issued August 31, 2010, which expired September 1, 2015.
 - b. Preliminary Full Time Designated Subjects Adult Education Teaching Credential issued August 31, 2010, which expired on September 1, 2015.
 - c. Preliminary Single Subject Teaching Credential issued February 14, 2011, which expired October 1, 2014.
 - d. Preliminary Single Subject Teaching Credential issued September 14, 2009, which expired October 1, 2014.

- e. Emergency Long Term Single Subject Teaching Permit issued October 4, 1999, which expired on August 1, 2000.
- f. Emergency Long Term Single Subject Teaching Permit issued July 27, 1999, which expired on August 1, 2000.
- g. Emergency Long Term Single Subject Teaching Permit issued August 1, 2000, which expired on August 1, 2001.
- h. Emergency Long Term Single Subject Teaching Permit issued August 1, 2001, which expired on August 1, 2002.
- i. Emergency Long Term Single Subject Teaching Permit issued August 1, 2002, which expired on August 1, 2003.
- j. Pre-Intern Certificate issued August 1, 2003, which expired September 1, 2004, reissued September 1, 2004, and expired September 1, 2005.
- k. Emergency 30-day Substitute Teaching Permit issued October 1, 2009, which expired October 1, 2010.
- l. Emergency 30-day Substitute Teaching Permit issued October 1, 2008, which expired October 1, 2009.
- m. Emergency 30-day Substitute Teaching Permit issued October 1, 2007, which expired October 1, 2008.
- n. Emergency Long Term Single Subject Teaching Permit issued August 1, 2000, which expired on August 1, 2001.

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- o. Emergency 30-day Substitute Teaching Permit issued September 15, 2005, which expired October 1, 2006.

PROCEDURAL HISTORY

4. On May 28, 2019, the District placed respondent on administrative leave based on a substantiated report from a seventh-grade student that respondent hit him on the leg with a computer wrist rest, causing a bruise to his inner left knee.
5. On September 9, 2019, the District sent respondent a Notice of Possible Dismissal/Immediate Suspension Without Pay and a Statement of Charges.
6. On September 18, 2019, the District sent respondent a Notice of Dismissal/Immediate Suspension Without Pay and a Statement of Charges.
7. On November 4, 2019, the District sent respondent an Amended Notice of Dismissal/Immediate Suspension Without Pay.
8. On November 7, 2019, the Commission sent respondent a Notice of Mandatory Suspension suspending all of respondent's credentials.
9. On February 19, 2020, the Commission sent respondent a Notice of Credential Reinstatement, reinstating all of respondent's credentials.
10. On December 6, 2020, respondent signed the "Separation Agreement Between [Respondent] and [District]" and resigned from the District, effective December 31, 2020; and the District withdrew its Notice Of Intent To Dismiss and its Statement of Charges. (Exh. 17.)
11. On January 13, 2021, the Commission received the District's Notification of Respondent's Change in Employment Status.

12. Between January and August 2021, the Commission investigated respondent's conduct. Between August 18 and 20, 2021, the Committee of Credentials (Committee) determined probable cause existed within the meaning of California Regulations, title 5 (Regulations), section 80300, subdivision (o), for an adverse action against respondent. On August 27, 2021, the Committee notified respondent of its recommendation to revoke respondent's credentials.

13. On September 25, 2021, respondent timely requested reconsideration of the Committee's recommendation and an administrative hearing.

14. On October 29, 2021, the Committee denied respondent's request for reconsideration based on its determination respondent failed to provide new and relevant information warranting reconsideration.

15. On June 16, 2022, complainant filed the Accusation. Respondent timely filed a Notice of Defense. On April 20, 2023, complainant filed the First Amended Accusation, the operative pleading in this matter.

Evidentiary Ruling

16. Complainant requested Exhibit 25, the Certified November 6, 2020 Transcript of respondent's deposition concerning the underlying District dismissal proceedings, be admitted into evidence. Respondent objected to the introduction of the transcript because he did not sign a verification as to the accuracy of the transcript. The objection was taken under submission. The ALJ overrules respondent's objection, and the transcript is admitted into evidence.

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Respondent's Unprofessional Conduct

17. In paragraph 15 of the Accusation, complainant alleged the following as the facts justifying cause for discipline:

In May 2019, Respondent was a teacher of Physical Education (PE) at Charles [sic] Dickison Elementary School, Compton Unified School District. On May 23, 2019, at the end of PE class, Respondent was walking around the room. KL, a seventh grader, put his right foot on the leg of the table to tie his shoe and Respondent hit him on his leg near his knee, saying "Get your leg off of there." Other students were present and witnessed the incident. A photo was taken of KL's inner left knee and there appeared to be visible marks.

(Exh. 1, p. A8.) (Though the Accusation names "Charles" Dickison Elementary school, the record established the name of the school is "Clarence A. Dickison Elementary School.")

DISTRICT INVESTIGATION

18. During the 2018-2019 school year, respondent was a PE teacher at Clarence A. Dickison Elementary School (Dickison), a kindergarten through eighth grade school. Respondent's District teaching assignment that school year also included teaching PE at Longfellow Elementary School (Longfellow). On any given week respondent alternated his instruction at the schools, teaching two days per week at one school and three days per week at the other school.

19. On May 23, 2019, respondent was assigned to teach at Dickison. On that day, rather than teaching a PE lesson, respondent taught his students a lesson on the stock market, a lesson he had taught and received praise for at Longfellow; respondent taught this lesson inside a classroom that use to be a computer room. At the beginning of class, respondent picked up a computer wrist rest, which had a hard, but rubber, backing, and was otherwise soft and filled with gel or some other comparable substance. During the lesson he walked around the room and used the wrist rest as a pointer, and sometimes tapped students on the shoulder, arm, or head with the wrist rest. Toward the end of the lesson, he walked by K.L. and saw K.L. had his left foot on the table portion of the desk he was sitting at and was tying his shoe. (Initials are used to protect the privacy of the students.) Respondent hit K.L. with the wrist rest on the inside of his left leg and directed him to put his foot down on the ground. Soon after, the class ended, and the students left the room.

20. K.L. and his mother credibly testified at hearing. K.L. and his mother explained that on the afternoon of May 23, 2019, when K.L. was home, he told his mother what had happened respondent's PE class and K.L. showed his mother his leg. A red and green bruise had developed on the inside of K.L.'s left knee. The bruise was approximately one and one-half inches long and one-half of an inch high, and the coloring had a light to medium darkness. The hitting caused K.L. some pain, and after the hit, the point of contact continued to feel sore for about one week. That evening, K.L. and his mother attended a robotics event at which students from multiple schools presented their robotics projects. K.L. and his mother saw respondent there; K.L. said "hi" to respondent but neither K.L. nor his mother discussed the hitting of K.L.'s leg or the resulting bruise with respondent.

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21. The following morning, K.L. and his mother met with Rebecca Harris, then principal of Dickison, and reported the incident. Principal Harris credibly testified at hearing. She took notes of her discussion with K.L. and took a photograph of K.L.'s leg (Exh. 23), which continued to show the bruising described above. Principal Harris reported the matter to the Department of Children and Family Services, the District's school police, the Compton Sheriff, and to Kanika White, Ed.D, then Chief Human Resources Officer for the District. In addition, Principal Harris interviewed four students in respondent's PE class who witnessed the incident, J.N., A.R., C.G., and E.M, as well as Rene Fisk, a teacher at Dickison.

22. The four students Principal Harris interviewed reported the following: respondent walked up to K.L. and hit him on the leg with a rubbery object; respondent also hit C.G. on the arm, after which C.G. said, "ow," and hit E.M. on the shoulder; E.M. and C.G. stated the hitting was not hard and E.M. commented that the hitting was "soft;" A.R., who observed the hitting, believed the hitting was not hard; C.G. commented that he believed respondent was just playing around with the students. (Exh. 22, A170.) Though Principal Harris's notes indicate these students stated respondent "hit" C.G. and E.M. with the wrist rest, based on the evidence presented it was only established by clear and convincing evidence respondent tapped C.G. and E.M. with wrist rest. (See Factual Findings 29 and 30.)

23. The investigation by the authorities took two days and included interviews with students and staff at Dickinson, as well as interviews of K.L. and his mother at their home. Based on the open layout of the Dickinson administrative office and the number of interviews conducted by the authorities over two days, the Dickinson staff were negatively affected by respondent's conduct due to the interruption of daily business and events.

24. Rene Fisk was one of K.L.'s teachers. Both Ms. Fisk and K.L. reported to Principal Harris, and K.L. testified at hearing, that within a few days of the incident and while in Ms. Fisk's class, some students criticized or taunted K.L. for reporting respondent to Principal Harris and accused K.L. of getting respondent fired. Ms. Fisk apologized to K.L. for the students' behavior and told the students their comments were inappropriate. K.L. found the students' behavior distressing.

25. At hearing, K.L. and his mother described how respondent's conduct affected K.L. In addition to the taunting by some students, K.L. transferred to a different school to avoid seeing respondent, which meant needing to make new friends and meet new teachers. K.L.'s grades dropped and K.L. and his mother speculated it was because of the stress of the incident and because his new school did not have quality teachers.

26. The District did not interview respondent during its investigation. Based on its investigation, on May 28, 2019, the District placed respondent on administrative leave and directed respondent to not contact K.L. or his family or other Dickison students.

27. Dr. White, the Chief Human Resources Officer for the District at the time of the investigation, credibly testified at hearing. After placing respondent on administrative leave, and between June 5 and September 11, 2019, the District attempted to meet with respondent approximately five times to discuss the incident. However, these meetings were rescheduled or canceled at the behest of respondent's counsel who had scheduling conflicts.

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RESPONDENT'S ADMISSION

28. At hearing, respondent explained he was walking around the classroom, using a computer wrist rest to tap students he had called on to answer questions. Respondent saw K.L. had his left foot on the leg of a table and was tying his shoe. Respondent believed this behavior to be unsafe and inappropriate. When he walked past K.L. he touched or tapped the inside of K.L.'s leg with the wrist rest and directed him to put his feet on the ground.

29. Respondent disputes he "hit" K.L.'s leg, as alleged. Rather, he admitted to touching K.L.'s leg with the wrist rest and did not dispute that the wrist rest touching K.L. resulted in bruising to K.L.'s leg. Different words were used during complainant's examination of respondent, including "whack" and "strike" but respondent did not agree he hit, struck, or whacked K.L.'s leg. Respondent disagreed with complainant's characterization of the contact because he asserted he did not use force, or intentionally use force, to cause physical harm to K.L., and had no intention of causing harm to K.L. Nonetheless, respondent did not defend his behavior and does not know why he chose to touch K.L. with the wrist rest, or touch the other students with the wrist rest, and believes he used extremely poor judgment that day in the class.

30. The Merriam-Webster Online Dictionary provides the following relevant definitions of the verb "to hit": "to come in quick forceful contact with [¶] . . . [¶] to strike (something, such as a ball) with an object (such as a bat, club, or racket) so as to impart or redirect motion [¶] . . . [¶] to cause to come into contact [¶] . . . [¶] to deliver (something, such as a blow) by action [¶] . . . [¶] to apply forcefully or suddenly [¶] . . . [¶]." (<https://www.merriam-webster.com/dictionary/hit>.)

31. The Merriam-Webster Online Dictionary provides the following relevant definitions of the verb "to tap": "to strike lightly especially with a slight sound . . . to give a light blow with." (<https://www.merriam-webster.com/dictionary/tap>.)

32. In consideration of the evidence presented, complainant established by clear and convincing evidence respondent hit K.L.'s leg with the wrist rest. Respondent used the wrist rest to come into quick contact with K.L.'s leg to redirect K.L.'s leg onto the floor and respondent used enough force to cause a bruise. While it was not established respondent intended to use any amount of force against K.L., he used enough force against K.L. to cause a bruise and, thereby, hit K.L. with the wrist rest. As provided in Factual Finding 22, complainant established by clear and convincing evidence respondent tapped C.G. and E.M. with the wrist rest but did not establish he hit C.G. and E.M. with the wrist rest.

IMPEACHMENT OF RESPONDENT

33. Complainant attempted to impeach respondent's credibility with the testimony he provided at his November 6, 2020, deposition. At hearing, respondent denied touching K.L. more than once with the wrist rest; however, during his deposition, respondent initially testified he had touched K.L. only once, to direct him to get his foot off the table, but then added to his answer that he had also touched K.L. a second time to have K.L. give respondent an answer to a question. (Exh. 25, p. A309.) After reviewing the transcript at hearing, respondent acknowledged he may have touched K.L. a second time with the wrist rest.

34. Respondent's testimony at the deposition does not rise to the level of impeaching respondent's credibility. Rather, the prior inconsistent statement demonstrated respondent did not explicitly recall, without his memory being

refreshed, all of the events of May 23, 2019. However, throughout his testimony at hearing respondent provided candid and detailed answers, admitting many of the assertions made against him, and corrected his testimony when clarification was provided. Accordingly, respondent's credibility was not impeached, and his testimony is credited.

Aggravating Factors

35. Complainant alleged three aggravating factors: (a) respondent's misconduct significantly harmed a child trusted to his care, significantly harmed the public or educational system; (b) respondent's misconduct was surrounded by, or followed by bad faith, dishonesty or other violation of the laws governing educators, including section 49001; and (c) respondent's misconduct evidences multiple acts of wrongdoing or demonstrate a pattern of misconduct.

36. Complainant established by clear and convincing evidence aggravating factors (a) and (b): respondent's conduct significantly harmed K.L., a child entrusted into respondent's care, and respondent's conduct constituted corporal punishment as defined in section 49001. However, complainant failed to establish by clear and convincing evidence aggravating factor (c), regarding multiple acts of wrongdoing and a pattern of misconduct. A significant portion of the evidence complainant presented at hearing went towards establishing this aggravating factor. However, the evidence as to aggravating factor (c) was either irrelevant or not credible. Nonetheless, as the evidence was presented at hearing, factual findings will be made regarding the evidence of alleged prior misconduct and multiple acts of wrongdoing.

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ADDITIONAL ALLEGED INAPPROPRIATE CONDUCT AND RELATED WARNINGS

Additional Alleged Inappropriate Conduct

37. Other than the hitting of K.L.'s leg, complainant did not allege as cause for discipline additional conduct by respondent. However, complainant introduced a District Formal Observation of respondent, the testimony of Principal Harris and Dr. White, and the declarations of additional District students to establish respondent engaged in additional inappropriate conduct including the following (collectively, "the additional allegations"): yelling at and using profanity towards students; requiring students to repeat PE exercises that were too hard to perform; and carrying a plastic bat during class, and sometimes touching students with the bat and throwing the bat at students. Because these additional allegations were not contained in the Accusation or First Amended Accusation, complainant failed to provide respondent proper notice of the additional allegations of conduct that was presented at hearing as a basis for credential discipline, thereby denying respondent the ability to prepare his defense against the additional allegations (Gov. Code, § 11503, subd. (a).) Accordingly, the evidence presented to establish the additional allegations is surplusage and is given little weight, and to the extent proven by clear and convincing evidence it will not be considered as cause for discipline, but it will be considered when assessing the degree of discipline.

38. Complainant introduced a declaration of C.G., and declarations of five other students, B.D., V.G., M.G., A.P., and C.Z., to establish the additional allegations. (Exh. 24.) The declarations were written in November 2020, at least 18 months after the incident and after the students were taught by respondent. Other than C.G.'s declaration, the other five student declarations were not written by students who observed the incident. Rather, they were written by students who were in respondent's

PE class during either the 2017-2018 or the 2018-2019 school years at either Longfellow or Dickison.

39. Pursuant to Government Code section 11514, subdivision (a), the declarations submitted at hearing to establish the additional allegations of inappropriate conduct are given the same weight as if the declarants testified orally. However, the content of the student declarations failed to provide an adequate foundation for the facts alleged: the student declarants do not specify time or place of the events; the declarations were written more than 18 months after the incident and after the time the students were in class with respondent, raising questions as to the reliability of the student declarants' memories; and the student declarants did not provide a factual basis for the conclusions included in their declarations, such as their conclusions the PE exercises respondent gave them were too hard. Accordingly, the contents of the student declarations are given little evidentiary weight.

40. C.G.'s November 2020 declaration was inconsistent with the information he provided to Principal Harris in May 2019. In 2019, C.G. described respondent's behavior as "playing" and that respondent did not hit hard with the wrist rest; in his November 2020 declaration C.G. stated when respondent hit him on the shoulder it stung and that he hit K.L. "pretty hard." (Exh. 22, p. A170; Exh. 24, p. A184.) No explanation was provided to explain C.G.'s inconsistent accounts of respondent's conduct. Based on C.G.'s inconsistent statements, and for the reasons cited in Factual Finding 38, C.G.'s statements in his declaration are given little evidentiary weight and fail to establish respondent hit K.L. hard with the wrist rest.

41. C.G. also declared respondent used profanity in class; similarly, some of the other five students declared respondent yelled and used profanity during class, such as "shit" and "damn." (*Id.* at pp. A175, A179.) K.L. also testified that respondent

yelled at times during P.E. class when students were not performing the PE exercises correctly and K.L. found the yelling intimidating. In addition, some of the student declarants stated respondent would require students to perform exercises that were "too hard" or to repeat exercises, or run extra laps or do pushups, if the students did not complete the original exercise correctly. (*Id.* at p. A175.) As provided below, respondent admitted that at times he used profanity when speaking to his students. Complainant established by clear and convincing evidence respondent at times used profanity with his students and yelled at the students in such a way as to cause them to be intimidated. Complainant did not establish by clear and convincing evidence respondent's PE instruction was too hard or inappropriate.

42. M.G. declared that one day he was making inappropriate comments and respondent told him to stop and then poked M.G. in the eye with a plastic bat respondent often carried with him during class. (*Id.* at p. A181); A.P. alleged that once respondent threw the bat at him, but it did not hit him (*Id.* at p. A186). Respondent denied this behavior. Based on the unreliability of the student declarations complainant failed to establish the conduct alleged by M.G. or A.P. behavior by clear and convincing evidence.

43. K.L.'s testimony and the review of the students' declarations during hearing was the first-time respondent had heard that his students were intimidated by him yelling. Respondent was distressed to learn this, as one of his primary teaching goals is to establish mentor-like teacher-student relationships with his students. Respondent acknowledged he often spoke loudly to students and explained he often taught outside on the school yard to over 30 students and yelling was often necessary to be heard. Respondent did not recall yelling at students but did not dispute the students' accounts of him yelling or of them feeling intimidated.

44. Respondent admitted at times using profanity during class, though he agreed this was not the best decision. Respondent stands by his decisions to have his students repeat exercises that were performed incorrectly because in doing so he was trying to teach the common core PE standards. Respondent disagrees his PE lessons were too hard as he followed the common core curriculum when developing his lessons. Respondent acknowledged carrying around a small plastic bat at times during his classes; he used the bat as a pointer to provide directions or at other times as a means to physically demonstrate what he was saying to students, for example to show them where their deltoid or metatarsals were located because he found the elementary and middle school students often did not understand his verbal directions without providing a physical example.

Related Warnings

45. Principal Harris testified regarding a 2018 Formal Observation (Exh. 18) respondent received on March 9, 2018, by evaluator Mario Marcos. During the 2017-2018 school year, respondent was assigned to teach PE at Longfellow and at Kelly Elementary School. Mr. Marcos conducted the observation at Longfellow between 10:00 a.m. and 11:10 a.m. Mr. Marcos primarily rated respondent as "Meets Standards with Growth Recommended." He noted concerns with respondent's organization of the subject matter; his failure to prepare lesson plans and establish learning targets; his use of time; and his assessment of student learning. Based on the Formal Observation, respondent was placed on a Teacher Improvement Plan.

46. In reviewing the 2018 Formal Observation's Recommendation and Expectations section during her testimony, Principal Harris pointed out a directive provided to respondent by the principal of Longfellow, Joanne Davidson, and Mr. Marcos's follow-up directive.

On Monday, November 4, Ms. Davidson met with you and she directed you not to touch the students. A female student had indicated that you put your hand on her shoulder and you pulled her bra strap. At the end of the lesson yesterday, I observed that you high-fived several female students. Although this may not seem inappropriate, in the future avoid any physical contact with students, particularly after you become aware of the concern that was raised by a student earlier in the year, and the directive that you received from your Principal.

(Exh. 18, p. A153.) Neither Mr. Marcos nor Ms. Davidson testified at hearing and to the extent any written warning or notes of Ms. Davidson's November 4, 2017, meeting were made, they were not submitted at hearing. Respondent denied pulling a student's bra strap, but acknowledged, upon review of the document during hearing, the directive was provided to him in the 2018 Formal Observation. Respondent did not recall the November 4, 2017, meeting with Ms. Davidson or the bra-strap allegation. Respondent acknowledged that during his PE classes, even after this directive, he would high-five students. Complainant established by clear and convincing evidence respondent was provided the November 4, 2017, and March 9, 2018, directives by Ms. Davidson but failed to establish by clear and convincing evidence respondent pulled a student's bra strap or touched the student's shoulder.

47. Principal Harris also pointed out a directive in the 2018 Formal Observation noting that Ms. Davidson had informed respondent about parents' complaints throughout the school year, including parent concerns respondent made students do push-ups under very hot weather conditions or on an inappropriate

surface, to the point, one student ended up with a rock indentation on his hand. (Exh. 18, p. A153.) Respondent acknowledged he had his students do push-ups outside on a hot day, however he explained he delivered the lesson in accordance with the common core curriculum and the school did not have any other location or facility in which to conduct his class. Complainant failed to establish by clear and convincing evidence respondent's PE directions or requirements of his students were punitive, violated school policy, or were inappropriate.

48. Finally, during her testimony Principal Harris recalled one occasion when she observed respondent conducting his PE class and he was carrying the plastic bat. She gave respondent a look to communicate he should put away the bat and respondent put the bat in the classroom. Principal Harris did not discuss the bat with respondent or provide him any spoken or written direction or warning regarding the bat.

49. Dr. White testified regarding a previous District warning provided to respondent. On September 13, 2014, while teaching at Dominguez High School, respondent received a written warning based on his conduct on August 27, 2014, when he used profanity in the classroom, stating words to the effect of, "A piece of paper don't mean s*** to me." (Exh. 20, p. A168.) Respondent was directed to not use profanity with students or in the classroom.

DISTRICT'S EMPLOYEE HANDBOOK

50. Dr. White affirmed the District's Employee Handbook (District handbook) admitted as Exhibit 19 was an accurate copy of the District handbook applicable at the time of respondent's misconduct. The District handbook provides that "Inappropriate Conduct" includes conduct that endangers students, but is not limited to physical

violence. (Exh. 19, p. A157.) Principal 1 of the District handbook, Ethical Conduct Toward Students (Exh. 19, p. A161), provides the following:

The professional educator, in accepting his or her position of public trust, measures success not only by the progress of each student toward realization of his or her personal potential, but also as a citizen of the greater community of the republic.

1. The professional educator deals considerately and justly with each student, and seeks to resolve problems, including discipline, according to law and school policy.

2. The professional educator does not intentionally expose the student to disparagement. [¶] . . . [¶]

4. The professional educator makes a constructive effort to protect the student from conditions detrimental to learning, health, or safety. [¶] . . . [¶]

51. Consistent with the District handbook, Principal Harris and Dr. White explained that hitting a student is not allowed under any circumstances and respondent's act of hitting K.L.'s leg violated his duties and responsibilities as a teacher, and violated the trust placed in him to care for and educate his students. Dr. White further affirmed that the District communicated to respondent in its September 9, 2019, Notice of Possible Dismissal/Immediate Suspension Without Pay, respondent's conduct amounted to corporal punishment as prohibited by section 49001 which defines corporal punishment as any "willful infliction of, or willfully causing the infliction of, physical pain on a pupil."

Disciplinary Considerations

52. On June 16, 2008, in the criminal proceeding entitled *The People of the State of California v. Darryl Gideon* (Super. Ct. L.A County, Case No. 8MP00755), respondent pled nolo contendere to, and was convicted of, violating Vehicle Code sections 23152, subdivision (b) (driving while having 0.08% and more, by weight, of alcohol in his blood), and section 20002, subdivision (a) (hit and run), misdemeanors. The Court suspended imposition of sentence, placed respondent on three-years' summary probation, and ordered respondent to comply with terms and conditions of probation including: serve 13 days in jail, with credit for two days served or, in the alternative, complete 11 days of Cal Trans service; complete a three-month First Offender Alcohol Program; complete an AB-541 Program and pay fines and fees.

53. The underlying criminal conduct occurred on October 18, 2007. Respondent's blood alcohol content (BAC) was determined to be .12 percent. Respondent admitted the criminal convictions and his criminal behavior and explained that October 18, 2007, marked his own birthday and the anniversary of his close friend's death. Respondent had not accepted the loss of his close friend and was depressed; he consumed an excessive amount of alcohol and used poor judgment and drove while intoxicated. This behavior occurred over 15 years ago, and respondent has not repeated this behavior.

54. On May 28, 1998, in the case entitled *The People of the State of California v. Darryl Gideon* (Orange County Sup. Ct., Case No. AN98NM04034), respondent pled guilty to, and was convicted of, violating Penal Code sections 484f, subdivision (a) (forgery of an access card), and 148.9 (false identification to a police officer), misdemeanors. Respondent was sentenced to 90 days in jail, placed on court probation for three years and ordered to pay fines and fees. The underlying criminal

conduct occurred on April 23, 1998, when respondent used a fraudulent Visa card to purchase a computer at a Comp USA Store in Anaheim, California.

55. Respondent admitted the criminal convictions and his criminal behavior. Respondent explained that at the time of his offense he was young and involved with the wrong crowd. Respondent's criminal behavior occurred over 25 years ago, and he has not repeated this behavior.

Respondent's Evidence

TEACHING CAREER

56. Respondent began his teaching career in 1998 working for Inglewood Unified School District, and began working for the District on October 4, 1999. Respondent has had multiple assignments within the District, including Dominguez High School, Dominguez Continuation School, Thorogood Marshall High School, Compton High School; Centennial High School, and Centennial Continuation School; Willowbrook Middle School; Walley Middle School; Davis Middle School, and Enterprise Middle School; and Dickison Elementary; Kelly Elementary, and Longfellow Elementary. Throughout his teaching career, respondent held multiple credentials, allowing him to teach multiple subjects, including social studies, alternate education, credit recovery, and PE, and multiple grades, from elementary school through high school.

57. Respondent's multiple credentials provided the District flexibility, allowing the District to reassign respondent to a new assignment as needed. After teaching at Dominguez High School for multiple years, the District reassigned respondent for the 2017-2018 school year to teach PE at Longfellow and Kelly Elementary School. Though respondent had previously taught PE, he had strengthened

his teaching as a high school teacher at Dominguez High School, becoming active in extracurricular activities and mentoring opportunities, and he did not want to be reassigned as an elementary school PE teacher. At the conclusion of the 2017-2018 school, after he received the 2018 Formal Observation and Teacher Improvement Plan, respondent requested to be reassigned. The District reassigned respondent to teach PE at Dickison and Longfellow Elementary.

58. Since his credentials were reinstated in February 2020, respondent has been working regularly, generally five days per week, as a substitute high school teacher teaching all subjects for four school districts: Centinela Valley Union School District; Brea Olinda High School District; Newport Mesa Unified School District; and Capistrano Unified School District. Respondent has chosen to limit his substitute teaching work to teaching in high schools as he believes he is better suited to teach the age range of high school students. Respondent has reflected on the errors he made while teaching at Dickison and has worked hard to steadily improve his teaching practice. Respondent appreciates the variety of teaching experiences he has had these past few years as a substitute teacher teaching in schools which range from highly funded and resourced to schools that are underfunded and under resourced.

59. When respondent is not teaching, he is active in his community. He regularly coaches and referees community sports teams, tutors students, and volunteers with mentoring organizations.

ADDITIONAL PERFORMANCE EVALUATIONS

60. Respondent requested his confidential personnel file from the District and submitted into evidence seven additional performance evaluations contained in his file for the 2001-2005 school years and the , 2010-2013 school years. In these

evaluations, respondent was overwhelmingly assessed as meeting standards and exceeding expectations in school involvement. Relevant excerpts from these evaluations include the following positive observations about respondent's teaching skills:

- Respondent's 2001-2004 evaluations generally assessed respondent as meeting the standards on all areas of evaluation and assessed respondent as a very effective teacher.
- During the 2004-2005 school year, respondent was very organized as an instructor and had an excellent rapport with his students. Respondent set high expectations for his students and demanded they conduct themselves in an appropriate manner. On many occasions he went over and above the expectations and job description of his regular "independent studies" teaching assignment by taking students to the computer lab and helping them prepare for the SAT exam, and filling out Financial Aid packets. (Exh. C, p. B35.)
- During the 2010-2011 school year, respondent was instrumental in helping to keep the hallways and campus free of interruption during passing periods and before classes and after dismissal. (Exh. B, p. B33.) "He must be commended for stepping up to help out during unexpected incidents and during special events. He is infrequently absent and is usually standing at his door to greet and receive and to dismiss students. He is also very receptive to suggestions for improvement." (*Id.*) Respondent needed to work on his patience and to understand he is teaching students what he needs them to learn, and that they do not come to him already knowing the content. He

must seek help to develop cooperative learning strategies to help develop teamwork for students.

- During the 2011-2012 school year, respondent continued to grow and understand his students' cognition and recognize individual differences. Respondent was energetic and usually went above and beyond the call of duty to support and promote the school's objectives. Respondent was a team player and consistently helped clear campus, assist with crowd control during activities, and assisted administrators and other colleagues during unexpected incidents and events. (Exh. B, p. B24.)
- During the 2012-2013 school year, respondent's students were engaged, worked independently and together in groups; clearly understood the rules of the class, and met expectations. (Exh. B, p. B20.) Respondent held his students accountable and engaged with them the entire class period. The evaluator recommended respondent push students in all classes to do more critical thinking and was encouraged to become more involved in school activities outside of class, because his leadership skills would benefit the students at Dominguez High School.

RESPONDENT'S REMORSE

61. Respondent expressed his sincere and apologetic remorse at hearing. He expressed it directly to K.L. and K.L.'s mother before asking them questions. During his own testimony, respondent described his regret for causing this tragedy to K.L. and his family and how devastated he was to hear of the physical and emotional pain his actions had caused. The hearing was the first opportunity respondent had to hear directly of the injury he caused and its effects on K.L. He has learned through the

hearing process that he did not do his job, but rather greatly missed the mark by negatively impacting students.

62. Since his resignation from the District respondent completed an anger management course ordered by the criminal court in regards to criminal charges brought against respondent surrounding respondent's misconduct, which have since been dismissed. Respondent also voluntarily completed approximately 10 sessions of individual therapy. He reflects on his teaching practice daily when working as a substitute teacher; respondent is keenly aware that his voice and actions can negatively impact students, and every day he teaches he is committed to uphold the responsibilities of a teacher.

CHARACTER REFERENCES

63. Respondent submitted seven character reference letters written in July 2021 by Monica Gonzalez, Stephanie Westbrook, Joyce Copeland, Shaheen Johnson, Omar Montgomery, Shonnda Smith, and Robert Mosley. Mr. Mosely also testified on behalf of respondent at hearing. The seven authors have known respondent between five and 36 years, and they spoke to respondent's commitment to his student's education, safety, welfare, and futures, as well as his commitment to his community. The authors' statements and Mr. Mosley's testimony corroborated respondent's testimony regarding his career, work performance, and commitment to his community, students and schools.

64. Ms. Gonzalez is a science teacher for the Los Angeles Unified School District and has known respondent for 10 years. Ms. Gonzalez and respondent worked together at Dominguez High School; they worked cooperatively together on lesson plans, discipline plans, and school improvement plans focused on the social-emotional

well-being of their students. In her letter, Ms. Gonzalez shared a story of their work together wherein she had a student whose brother was killed in gang violence. The student became angry and disengaged from school and was determined to join a gang. Ms. Gonzalez and respondent worked with the school to temporarily transfer the student to respondent's class where, over a few weeks, respondent developed a firm mentoring relationship with the student, shared his own personal experience, and assisted the student with bringing back positivity into his life while addressing his desire to have a sense of belonging.

65. Ms. Westbrook is a College and Career Specialist at Dominguez High School. She met respondent when they worked together at the Vanguard Learning Center in 2000. Ms. Westbrook observed respondent to be a dynamic and conscientious individual with a strong work ethic, a problem solver, and a dedicated and highly involved teacher, tutoring low achievers and mentoring high achievers. Respondent worked closely with the Ladies and Gents club to mentor students, mentoring over 25 students on principals of scholarship and community service, while ensuring they maintained high academic standards and exposing them to several social environments and community service projects.

66. Ms. Copeland has worked as a Textbook Inventory Assistant at Dominguez High School for 36 years. She met respondent in 2013 when he worked at Dominguez High School as a social study teacher. During that time she observed his class and found the students engaged in his lessons. Ms. Copeland found respondent to be passionate about student learning and to model nonviolence, patience, and diligence.

67. Ms. Johnson is an Assistant Professor at Long Beach City College and has 20 years of experience working the field of education. Ms. Johnson has known

respondent for 15 years; she met him while working as a long-term substitute for the District and always found respondent carried himself in a respectful and professional manner. Respondent was one of the first teachers to extend support to Ms. Johnson and provided her detailed lesson plans and shared his own lesson plans if other teachers did not provide any to her.

68. Mr. Montgomery is the President of the Aurora, Colorado Branch of the National Association for the Advancement of Colored People and has known respondent for 20 years. Mr. Montgomery has found respondent to be very influential in the lives of students and a dependable role model for youth. He has observed respondent support students who have been left behind by the system and helped them overcome adversity to graduate high school and pursue their lives.

69. Ms. Smith is the Deputy Executive Director of Public Works in Mobil, Alabama, and has known respondent for over 10 years. She and respondent worked together in the District PE department when respondent coached the football team. Ms. Smith observed respondent hold students to a high expectation of behavior on the field and develop mentor relationships with his students. Respondent also helped Ms. Smith personally with her nephew who was heading down the wrong path. Respondent took time to talk with her nephew and searched for opportunities for her nephew to get involved in extracurricular activities.

70. Mr. Mosley wrote a character reference letter and testified at hearing. He met respondent during the 2014-2015 school year when he was in 11th grade at Dominguez High School where respondent was his history teacher. Since then, respondent has been a life and career mentor to Mr. Mosley and influenced Mr. Mosley to become a teacher. Mr. Mosley recalled that when he was respondent's student, at the end of each class respondent would say to his students, "be safe," and

he would regularly talk with students about their education and obstacles in their lives. During Mr. Mosley's junior year, he was involved in a drive-by incident that placed him in the hospital; respondent was one of only two teachers who visited him in the hospital and assisted Mr. Mosley with staying current with his schoolwork to ensure he could timely graduate with this class.

71. Since Mr. Mosley's graduation from high school, respondent has advised Mr. Mosely on volunteer work and career paths. During the 2018-2019 school year, on approximately five occasions Mr. Mosely observed respondent teaching PE at Dickison to learn about teaching as a career. Mr. Mosely has now completed California State University of Dominguez Hills College where he obtained his bachelor's degree in liberal studies. Mr. Mosley is currently a tutor and program leader with Think Together, a non-profit afterschool program which provides services to the District. Mr. Mosley's plan is to become a teacher for the District.

LEGAL CONCLUSIONS

Commission's Authority

1. Established by the Bergeson Act (§ 44200, et seq.), the Commission's primary function relates to the licensing and development of professional standards for public school teachers in California. (§ 44225.)

2. The Commission must privately admonish, publicly reprove, revoke or suspend a credential for the following reasons: immoral or unprofessional conduct; the persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system; any cause that would have warranted the denial of an application for a credential or permit; or for evident unfitness for service. (§ 44421.)

3. The Commission may deny any application for the issuance of a credential if the applicant has committed any act involving moral turpitude. A denial of a credential for acts involving moral turpitude must be based on reasons related to the applicant's fitness to teach or fitness to perform other duties for which that applicant is certificated, or competence to perform the duties which the permit would authorize the applicant to perform. (§ 44345, subd. (e).)

Burden and Standard of Proof

4. Complainant bears the burden of proving the existence of grounds for disciplining respondent's credentials and must do so by clear and convincing evidence to a reasonable certainty. (*Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 532, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation"]; *Gardener v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1036, 1039-1040 [recognizing that the clear and convincing evidence standard applies to proceedings to discipline a teacher's credential, whereas the lesser preponderance of the evidence standard applies to proceedings to dismiss a teacher from particular employment].)

5. "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

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Cause to Discipline Respondent's Credential

UNPROFESSIONAL CONDUCT

6. Unprofessional conduct is "that which violates the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing." (*Board of Educ. of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553 [overruled by *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575 on other grounds].)

7. "... [T]he calling [of a teacher] is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous that they are incapable of enumeration in any legislative enactment ... the teacher is entrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matters of major concern in a teacher's selection and retention." (*Goldsmith v. Board of Education* (1924) 66 Cal.App. 157, 169.)

8. Complainant established by clear and convincing evidence respondent's conduct of hitting K.L. with a wrist rest and causing a bruise was unprofessional conduct. Respondent's conduct violated the trust placed in him to educate K.L. in safe environment without imparting corporal punishment onto K.L. Respondent's conduct violated the rules and ethical code of teaching, including section 49001, prohibiting corporal punishment, and the District handbook which prohibits teachers from engaging in violence and requires them to protect student from conditions detrimental to learning, health, or safety. (Factual Findings 17-33, 35-36, 50-51.)

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ACTS OF MORAL TURPITUDE

9. Moral turpitude has been defined as acts which are contrary to “honesty and good morals” (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1217-1218), and as acts of “baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man” (*Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67, 73 [citing *In re Boyd* (1957) 48 Cal.2d 69, 70].)

10. Complainant established by clear and convincing evidence respondent’s act of hitting K.L. with a wrist rest and causing a bruise constituted an act of moral turpitude. Respondent’s conduct was contrary to good morals and was base, violating the duties respondent owed K.L. (Factual Findings 17-33, 35-36, 50-51.)

IMMORAL CONDUCT

11. The court in *Board of Education of the San Francisco Unified School District v. Weiland*, (1960) 179 Cal.App.2d 808, found a teacher had committed immoral conduct when she falsified attendance records to maintain her course during the next semester of instruction. (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811.) In so finding, the court relied on the definition of immoral conduct as provided in *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, where the Supreme Court quoted with approval the following statement from Words and Phrases, permanent edition, volume 20, pages 159-160:

The term “immoral” has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with

rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as wilful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740.)

12. Complainant established by clear and convincing evidence respondent's act of hitting K.L. with a wrist rest and causing a bruise constituted immoral conduct. Respondent's conduct was hostile to the welfare of K.L., willful, and demonstrated a moral indifference to his requirement to not cause physical harm or pain to a student. (Factual Findings 17-33, 35-36, 50-51.)

EVIDENT UNFITNESS TO TEACH

13. Unfitness for service has been defined as 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," which demonstrates the teacher is "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 on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.)

14. Immoral conduct, unprofessional conduct, and moral turpitude cannot be the basis for removal of a teacher unless that conduct indicates the teacher is unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229, hereafter *Morrison*.)

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MORRISON CRITERIA

15. *Morrison* sets forth criteria that assist the Commission in determining whether the teacher's fitness and overall impact on the students are likely to meet the Commission's standards. (Collectively referred to as "*Morrison* criteria" though established in additional regulatory and case law). The *Morrison* criteria must be analyzed to determine whether the cited conduct indicates unfitness for service. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th at p. 1445, citing *Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 696.) "If the *Morrison* criteria are satisfied, the next step is to determine whether the 'unfitness' is 'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Id.*)

16. The *Morrison* criteria include the following: the likelihood the conduct may have adversely affected students or fellow teachers; the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of teaching certificate held by the party involved; the extenuating or aggravating circumstances, if any, surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of the recurrence of the questioned conduct; the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers; and the notoriety and publicity accorded to the conduct (Cal. Code Regs., tit. 5, § 80302, subd. (a); *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-30; *Board of Education v. Jack M.* (1977) 19 Cal.3d 691, fn. 5.)

17. Aggravating factors are an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, school children or the profession.

Complainant established by clear and convincing evidence two of the alleged aggravating factors: respondent's misconduct violated the laws governing educators, including section 49001; and the misconduct significantly harmed a child entrusted to the care of respondent. (Cal. Code Regs., tit. 5, § 80300, subd. (b)(3) & (4).) (Factual Finding.)

18. A mitigating factor is an event or circumstance which demonstrates the public, schoolchildren and the profession would be adequately protected by a more lenient discipline or no discipline against respondent's credential. Mitigating factors may include the following: the absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious; a lack of harm to the person who is the object of the misconduct; emotional or physical difficulties suffered by respondent which substantially contributed to the misconduct if respondent has established through clear and convincing evidence that he no longer has such difficulties; a demonstration of good character of respondent attested to by references; detached action taken by respondent, which spontaneously demonstrate remorse at the time of the misconduct and recognition of the wrongdoing, which is designed to timely make amends for the consequences of the misconduct; the proximity or remoteness in time relative to the seriousness of the misconduct; or the nature and extent of subsequent rehabilitation. (Cal. Code Regs., tit. 5, § 80300, subd. (m).)

19. A court may determine unfitness after considering the most pertinent *Morrison* factors and is not required to make findings on all the *Morrison* factors. (*West Valley-Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1777.)

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20. Only the likelihood that the teacher's conduct may have adversely affected students and other teachers, and not actual adverse impact, needs to be found. (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 477.)

ANALYSIS OF *MORRISON* CRITERIA

21. Respondent's conduct had an adverse effect on K.L. and on additional students and staff at Dickison. The degree of impact on K.L. was moderate, as he suffered a point in time injury and taunting by fellow students, and he voluntarily changed schools; complainant did not establish any drop in K.L.'s grades was due to respondent's conduct. The degree of impact on the other students and staff at Dickison was at most minimal.

22. Respondent's conduct occurred four years ago and has not reoccurred during the past three years he has been substitute teaching. Respondent holds a clear single subject teaching credential with an authorization in general subjects, which authorizes him to teach student in elementary school through twelfth grade.

23. Respondent's conduct was not praiseworthy. Rather, respondent is to blame for his considerable poor judgement on May 23, 2019, and his unjustified motives to use a wrist rest to physically direct K.L. to place his foot on the floor.

24. Disciplinary action will not inflict an adverse impact or chilling effect upon the constitutional rights of respondent or other teachers. The evidence did not establish any notoriety or publicity accorded to respondent's conduct.

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Aggravating Factors

25. Complainant established two aggravating factors by clear and convincing evidence: respondent's misconduct violated section 49001 in that respondent, though without specific intention but by his act of willfully hitting K.L. with the wrist rest and causing K.L. a bruise and pain, willfully inflicted physical pain on K.L.; similarly, complainant established respondent's misconduct significantly harmed K.L.

26. Respondent's criminal convictions for driving while under the influence of alcohol and committing a hit and run, and for forgery and providing a false identification card to the police, are given little weight. They occurred between 15 and 25 years ago and the evidence did not establish any likelihood respondent would repeat his criminal behavior or that respondent's criminal behavior was connected to his misconduct.

Mitigating Factors

27. Respondent established mitigating factors which demonstrates the public, schoolchildren and the profession would be adequately protected by a more lenient discipline than credential revocation.

28. Respondent has been teaching for 25 years without incidents of related misconduct prior to the 2019 inadvertently significant touching of K.L., which Respondent acknowledges and regrets.

29. Most significantly, respondent demonstrated his good character through his own testimony and references who attested to respondent's performance history as a teacher and community member who is committed to the wellbeing and advancement of his students, who volunteers with his students to provide them access

to educational and community opportunities, and who is active in community youth sports as a coach and referee. In addition, respondent acted soon after his misconduct to voluntarily attend therapy; though court ordered and not voluntary, respondent also completed an anger management course. Finally, respondent expressed his sincere recognition of his wrongdoing and remorse at hearing for his poor judgment and misconduct.

30. Respondent's misconduct occurred four years ago, and since that time respondent has consistently worked as a substitute teacher in high schools in four different school districts without incident and with daily attention to improving his performance as a teacher. Based on the rehabilitation established by respondent, his sincere remorse for his conduct, and his commitment to his teaching, students, and the community, the evidence did not establish a likelihood of recurrence of the respondent's misconduct.

31. In consideration of the *Morrison* criteria, complainant did not establish by clear and convincing evidence respondent is unfit to teach. Respondent's extended career without similar conduct and his continued teaching without incident and with the continued pursuit of improving his teach practice demonstrate respondent does not have a fixed character trait that is not remediable. (Factual Findings 17-33, 35-36, 50-51, 56-71).

32. Revocation of respondent's credentials is not warranted or necessary to protect the public. Rather, the public, schoolchildren, and the profession will be adequately protected by the more appropriate discipline of license suspension for 120 days during which time respondent must complete, and must submit proof of completion to the Commission of, 40 hours of child development study as set forth in the Order below.

ORDER

1. The Clear Single Subject Teaching Credential held by Respondent Darryl Gideon, and all other credentials, certificates, and authorizations issued to respondent, are suspended for 120 days from the effective date of this Order, during which time respondent must comply with the following 40 hours of child development study requirement.

40 Hours of Child Development Study Requirement

2. During the 120-day suspension, respondent must complete 40 hours of professional development or educational course work regarding, or must otherwise study, such as by reading books or online articles, child development.


3. Respondent must submit proof of completion of the 40 hours of child development study requirement to the Commission not later than the final date of his suspension.

4. Respondent must provide proof of completion of the 40 hours of child development study requirement to the Commission by: (a) submitting to the Commission documentation of 40 hours of professional development or course completion certificates of child development study; (b) by submitting a declaration signed under penalty of perjury by respondent attesting to how he satisfied the 40 hours of child development study requirement, specifying the information he studied and time spent per task; or (c) a combination of (a) and (b) amounting to 40 hours of child development study.

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5. Respondent's failure to timely complete and submit proof of the 40 hours of professional development requirement to the Commission will be cause for further disciplinary action by the Commission against respondent's credentials.

DATE: 06/02/2023


Chantal Sampogna (Jun 2, 2023 13:09 PDT)

CHANTAL M. SAMPOGNA

Administrative Law Judge

Office of Administrative Hearings