

**BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
YUBA CITY UNIFIED SCHOOL DISTRICT**

In the Matter of

Brian Coleman, Respondent.

OAH No. 2019060747

DECISION

This matter was heard before a Commission on Professional Competence (Commission) of the Yuba City Unified School District (District) on November 4, 5, and 6, 2019, in Yuba City, California. The Commission included Sandra Fink, Sonja Renhult, and Timothy Aspinwall, Administrative Law Judge, Office of Administrative Hearings, presiding.

Lindsay Moore and Ethan Retan, Attorneys at Law, represented the District.

Lesley Beth Curtis and Matthew Chevedden, Attorneys at Law, represented Brian Coleman (respondent), who was present throughout the hearing.

This matter was submitted for decision when the Commission concluded its deliberations on November 6, 2019.

FACTUAL FINDINGS

Background and Procedural History

1. Respondent is a permanent certificated employee. He holds a Single Subject Teaching Credential and is authorized to teach Introductory Health Science and Physical Education (P.E.). Since 2013, respondent has been assigned to teach P.E. at Central Gaither Elementary School (Gaither Elementary). Respondent was most recently assigned to teach P.E. to students in grades kindergarten through eighth grade. Respondent's direct supervisor is Principal Mary Reinhardt (Principal Reinhardt or Ms. Reinhardt).

2. On March 27, 2019, Michael Reed, Assistant Superintendent of Human Resources (Assistant Superintendent Reed or Mr. Reed), sent written notice to respondent that he was placed on paid administrative leave from his employment with the District pending completion of an investigation into an incident that occurred on March 26, 2019. The District's allegations regarding the incident are set forth in Factual Finding 5, below.

3. On May 20, 2019, Mr. Reed signed the Statement of Charges recommending termination of respondent's employment with the District on the basis of (1) immoral conduct; (2) dishonesty; and/or (3) evident unfitness for service. On May 28, 2019, the District Board of Education adopted a confidential resolution authorizing that the Statement of Charges be served on respondent, that respondent be immediately suspended without pay from his duties with the District, and that respondent be dismissed from his employment unless he demands a hearing.

4. On May 31, 2019, Mr. Reed sent respondent a Notice of Immediate Suspension and Intention to Dismiss, enclosing the Statement of Charges and the Board of Education's confidential resolution. Respondent timely filed a request for hearing on June 13, 2019.

District's Allegations and Respondent's Written Statement

5. The District's factual allegations in support of the charges of immoral conduct, dishonesty, and evident unfitness for service, are set forth in the Statement of Charges, as follows:

During P.E. class on March 26, 2019, District student A.D. began roughly pulling [another] student AD's arm during a minor altercation. A.D. is in second grade.

[Respondent] approached A.D. to get her to stop. When A.D. did not immediately do so, [respondent] directed A.D. to go to the office. A.D. refused, and wrapped her hands around a nearby basketball pole in protest.

[Respondent] tried briefly to convince A.D. to let go of the pole. When A.D. did not comply, [respondent] became angry. [Respondent] then violently ripped A.D.'s hands apart and began forcibly dragging her towards the office. In doing so, [respondent] used grossly excessive force, often lifting A.D. off the ground by her arm. As [respondent] approached the office, employees inside could hear A.D. screaming.

Upon entering the office, [respondent] violently lifted A.D. off the ground by her arm and tossed her into a chair. A.D. was crying. [Respondent] then said "just sit there . . . yeah," and left the office without notifying Principal Reinhardt or checking on A.D.'s well-being.

During the District's investigation, [respondent] submitted a written statement on March 26, 2019. [Respondent's] written statement dishonestly minimized his conduct, claiming that he "carefully separated" A.D.'s hands from the basketball pole, and "escorted" her to the office. However, when [respondent] met with Principal Reinhardt later that day, he acknowledged that he should not have touched A.D., and that his actions were taken out of frustration with A.D.'s defiance.

6. On March 26, 2019, respondent prepared a written summary of the incident at the request of Principal Reinhardt, which states as follows:

During 1st/2nd grade PE class the students were running back and forth from baseline to midcourt line with 2nd grade on 1 court and 1st grade on the other court. While [A.D.] was running back and forth she was pulling another student by the arm. As I tried to redirect her she yelled loudly and walked to the basketball pole wrapping her arms around the pole (back to the pole). After many attempts trying to get her back on the court I instructed her to go to the office. She replied "NO!" and I asked her a second time

which got the same reply. I asked her a third time and got the same reply as she held onto the post. I then carefully separated her hands then took her by the hand and escorted her to the office. She continued to be defiant as I walked her to the office. I asked her to sit in the office until Ms. Reinhardt could talk to her. She never came back to class.

District's Evidence

VIDEOS OF INCIDENT

7. The District introduced three videos of the March 26, 2019 incident, taken from three security cameras showing the school playground, the corridor leading to the school office, and the interior of the school office. Complainants also provided selected still photos from the hallway and school office videos.

8. The video of the school playground shows approximately 50 children running back and forth on an asphalt basketball court, and A.D. at center court pulling on another student's arm. There were three adults on the basketball court: respondent; A.D.'s second grade teacher, Araceli Ibarra (Ms. Ibarra); and a sign language interpreter, Jeri Jackson (Ms. Jackson). Ms. Jackson walked over to the two girls, at which time A.D. left center court and walked to the basketball pole at one end of the court. A.D. then walked a few steps back toward center court. At the same time, respondent is seen walking toward A.D. from the far side of the court. A.D. then returned to the basketball pole, and stood with her back against the pole and her hands around it behind her. Respondent then approached A.D., and leaned down with his head next to or in front of A.D.'s. He remained in that position for approximately 30

seconds, during which time he pointed with his hand in a direction off the court. Ms. Ibarra walked over and stood near respondent for a few moments. Respondent then stood up, pulled A.D. away from the pole with his right hand on her shoulder and his left hand on her upper arm. The last portion of this video shows respondent holding A.D. by the hand or arm and pulling her out of the camera's view in the direction he had been pointing.

9. The video of the corridor shows respondent walking quickly and pulling A.D. by her left hand and wrist with his right hand. A.D. is seen alongside and behind respondent, sometimes running, sometimes crouching, sometimes losing her footing. Respondent is seen lifting A.D. off the ground as he pulled her by her hand and wrist along the hallway toward the office. A.D. was trying to resist as respondent pulled and lifted her by her hand and wrist.

10. The office video shows the office door swing open. Respondent entered pulling A.D. behind him, still holding her by the left hand and wrist with his right hand. As respondent entered the office, he pulled A.D. with sufficient force that her ponytail flew out behind her. He then swung A.D. toward a set of chairs with such force that her feet flew out behind her above the ground. Respondent then put A.D. on one of the chairs and walked briefly beyond the camera's view, then came into view again and exited the office. A.D. remained sitting in the chair with her head down and arms folded across her chest.

PRINCIPAL REINHARDT'S TESTIMONY

11. Ms. Reinhardt has worked for the District for approximately 31 years in various capacities, including but not limited to classroom teacher, literacy coach,

assistant principal, and principal. She served as the Principal of Gaither Elementary for approximately three years, including March 2019.

12. On March 26, 2019, Ms. Reinhardt was in her school office when she heard a child screaming. The child sounded scared or frightened. It was not a "play" scream. Ms. Reinhardt stood up at her desk and looked out the window from her office toward the playground. She saw respondent pulling A.D. across the grassy area adjacent to the basketball court. Ms. Reinhardt considered walking out of her office, but instead watched respondent on the video monitors in the school office.

13. When respondent brought A.D. into the school office, he said something to the effect of "here she is" then left the office without stopping to talk with Ms. Reinhardt. Respondent appeared to be frustrated or angry when he came into the school office.

14. Ms. Reinhardt went directly to A.D., who was crying and upset. Ms. Reinhardt thought A.D. might be physically injured as a result of respondent's actions. Ms. Reinhardt asked the school nurse to examine A.D. The school nurse checked A.D. and confirmed that she was not physically injured.

15. The incident occurred at approximately 12:30 p.m. At approximately 2:45 p.m., immediately after classes had concluded for the day, Ms. Reinhardt went to speak with respondent in his classroom. Respondent said he brought A.D. to the office because she had refused to comply when he directed her three times on the basketball court to go to the school office. To Ms. Reinhardt's observation, respondent appeared to be frustrated during the incident with A.D., and also during his conversation with Ms. Reinhardt in his classroom after the incident.

16. At Ms. Reinhardt's request, respondent prepared a written statement regarding the incident with A.D., and gave it to Ms. Reinhardt the next morning, on March 27, 2019. In Ms. Reinhardt's opinion, respondent's written statement (Factual Finding 6) does not accurately portray the incident she observed on the video monitors.

17. Based on Ms. Reinhardt's view of the incident on the videos, there was no safety risk to either A.D. or the other students that would justify respondent's use of force on A.D. Specifically, there was no risk of harm to A.D. or other students as she stood with her arms around the basketball pole.

18. On March 26, 2019, after viewing the videos, Ms. Reinhardt spoke with Assistant Superintendent Reed. Mr. Reed asked Ms. Reinhardt to draft a letter outlining the incident and send it to him. Ms. Reinhardt prepared a letter using a pre-set format. The letter is in memorandum form, addressed to respondent, dated March 27, 2019, and includes "Letter of Reprimand" in the subject line. Ms. Reinhardt sent this document to Mr. Reed pursuant to his request. At no time did Ms. Reinhardt intend to send the letter to respondent, and at no time did she believe reprimand was the appropriate level of discipline. Ms. Reinhardt believes termination is the appropriate level of discipline.

19. Ms. Reinhardt's March 27, 2019 letter that she sent to Mr. Reed includes her summary of the conversation she had with respondent on the afternoon of March 26, 2019, following the incident with A.D. In that conversation, Ms. Reinhardt informed respondent that he should not have put his hands on the student, and that there were other options such as asking the other two supervising adults for assistance or leaving A.D. alone for a while. Respondent agreed with Ms. Reinhardt and stated "I should have not touched the student."

20. Up until March 26, 2019, Ms. Reinhardt has had generally positive experiences with respondent as a teacher, and her observation is that he usually has a positive impact on students. Respondent received generally favorable evaluations. He was rated as "meets or exceeds" District standards in a 2017-2018 Alternative Evaluation by a peer coach. In a 2014-2015 Personnel Evaluation conducted by Interim Principal Valerie Bradley, respondent was rated as "meets or exceeds" District standards, and it was noted that respondent "establishes a climate of fairness and respect in his P.E. classes." In a 2014 evaluation conducted by former Principal Everett, respondent was also rated as "meets or exceeds" District standards.

21. Respondent's conduct with A.D. is inconsistent with maintaining a safe environment for students. Respondent's prior positive evaluations do not change Ms. Reinhardt's view that respondent's conduct with A.D. is unacceptable, and that termination of his employment is the appropriate discipline.

TONYA TREAT'S TESTIMONY

22. Tonya Treat is employed as an administrative secretary at Gaither Elementary. She has worked in that position for approximately three and a half years, and was on duty on March 26, 2019.

23. Ms. Treat observed respondent through the video monitors in the school office as he pulled A.D. toward the office. Her attention was drawn to the video monitors when she heard a child screaming outside. When respondent entered the office pulling A.D., she heard respondent say "you just stay there, yeah."

ASSISTANT SUPERINTENDENT REED'S TESTIMONY

24. Mr. Reed is employed as the Assistant Superintendent of Human Resources for Yuba City Unified. He has worked in that position for approximately 15 months. He has worked in the field of education for approximately 26 years.

25. The District's most important responsibilities are to protect the safety of students and to provide an environment that advances their education. Teachers share these responsibilities to protect and educate students.

26. Mr. Reed is familiar with the District's policies regarding teacher conduct. District Policy 4119.21 sets forth expectations for employee conduct and examples of inappropriate conduct. Expectations include that employees should "exercise good judgment when interacting with students and other members of the school community." Inappropriate conduct includes "physically abusing, sexually abusing, neglecting, or otherwise willfully harming or injuring a child."

27. District Policy 5144 states that the Governing Board "desires to provide a safe, supportive, and positive school environment conducive to student learning . . ." The policy further states as follows:

At all times, the safety of students and staff and the maintenance of an orderly school environment shall be priorities in determining appropriate discipline. When misconduct occurs, staff may attempt to identify the cause of the student's behavior and implement appropriate discipline. When choosing between different disciplinary strategies, staff shall consider the effect of each option on the student's health and opportunities to learn.

[¶] . . . [¶]

Corporal punishment shall not be used as a disciplinary measure against any student. Corporal punishment includes the willful infliction of, or willfully causing the infliction of, physical pain on a student. (Education Code [section] 49001.)

[A]n employee's use of force that is reasonable and necessary to protect himself/herself, students, staff, or other persons, to prevent damage to property, or to obtain possession of weapons or other dangerous objects within the control of the student is not corporal punishment. (Education Code [section] 49001.)

28. Mr. Reed also pointed to specific provisions of the District's enumeration of "Essential Functions [of a] Certificated Teacher." The functions include the following:

Provide an environment conducive to good instruction and motivation in which there is an atmosphere of self-acceptance and self-discipline in the areas of personal development, character, and integrity.

[¶] . . . [¶]

Establish and maintain standards of student behavior which are consistent, considerate, fair, and in keeping with the district policy.

29. In addition, Mr. Reed pointed to specific provisions of the District's Code of Ethics of the Education Profession. Specifically, requirements and prohibitions include that a teacher:

Shall not unreasonably restrain the student from independent action in the pursuit of learning.

[¶] . . . [¶]

Shall make reasonable effort to protect the students from conditions harmful to learning or to health and safety.

Shall not intentionally expose the student to embarrassment or disparagement.

30. Mr. Reed's opinion is that a teacher should respond to student behavioral problems in a manner that is thoughtful, reasonable, least restrictive, and safe to all concerned. If the student is defiant, the teacher should first initiate a verbal interaction to help the child understand the teacher's expectations. If this is unsuccessful after multiple attempts, the teacher can bring in a second person to assist. If the student's behavior is not disruptive, the verbal intervention can go on for quite some time. If there is no danger to the student or others, then there is no need to use force against the student.

31. Mr. Reed viewed the videos of incident between respondent and A.D. To Mr. Reed's observation, A.D. did not present an immediate danger to herself or other children as she stood near the basketball pole. He found respondent's written statement of the March 26, 2019 incident (Factual Finding 6) to be unrealistic and self-justifying. Specifically, it does not appear to Mr. Reed that respondent "carefully

"separated" A.D.'s hands from the basketball pole. Additionally, respondent in no way "escorted" A.D. to the office. Respondent's statement that A.D. "continued to be defiant" sounds to Mr. Reed like an excuse for respondent's conduct. Also, respondent's written statement that he "asked her to sit in the office until [Ms.] Reinhardt could talk to her" is not how it appeared on the video.

32. Mr. Reed recommended that respondent be dismissed. The two essential concerns for Mr. Reed in deciding what level of discipline to recommend are: (1) the level of aggression demonstrated by respondent in the videos; and (2) respondent's self-justifying responses in describing the incident. Mr. Reed does not take lightly the termination of a teacher who made a decision to join the profession. Mr. Reed, nonetheless, has no doubt that termination is appropriate because of the priority that must be given to protecting student safety. Mr. Reed noted that respondent does not have any prior incidents in his personnel file. This, however, is not a significant factor in Mr. Reed's assessment, given respondent's aggressiveness toward A.D.

SUPERINTENDENT DOREEN OSUMI'S TESTIMONY

33. Ms. Osumi is employed as the Superintendent of Yuba City Unified School District, and has held that position for approximately three years. As Superintendent, Ms. Osumi oversees day-to-day operations, implements the School Board's goals and policies, and makes recommendations to the Board regarding teacher discipline. The Board prioritizes student education and welfare. These priorities are set forth in the District's policies. (Factual Findings 26 through 29.)

34. Ms. Osumi talked with Mr. Reed about the March 26, 2019 incident between respondent and A.D a day or two after it occurred. Ms. Osumi also reviewed the videos of the incident. She was shocked by what she saw. The primary points of

concern in the video are: (1) respondent's initial removal of A.D. from the basketball pole when A.D. did not present an immediate danger to herself or anyone else; (2) the manner in which respondent pulled A.D through the corridor, lifting her feet off the ground; and (3) the manner in which respondent pulled A.D into the office and placed her in the chair.

35. Ms. Osumi read respondent's written statement (Factual Finding 6), and considered it in determining what discipline to recommend. It is concerning to her that respondent's written statement seems to blame A.D. for being "defiant" and minimizes his own conduct with A.D. Ms. Osumi was very concerned about respondent's aggressive behavior toward A.D.

36. In deciding what level of discipline to recommend, Ms. Osumi considered respondent's conduct during the incident with A.D., and the fact that his conduct violated District policies. She was also concerned that respondent's conduct could adversely impact students and staff by setting the wrong example of acceptable discipline of students. Because of respondent's aggressive behavior with A.D., the fact that respondent does not have a record of discipline and that he has positive evaluations does not change Ms. Osumi's opinion that termination is the appropriate level of discipline.

Respondent's Evidence

RESPONDENT'S TESTIMONY

37. Respondent has taught P.E. for 15 years. During 2005 through 2010, he taught in the Plumas Lake Elementary School District. During 2011 through 2013, he taught in the Marysville Joint Unified School District. Since 2013, respondent has taught at Gaither Elementary. Respondent introduced into evidence a 2012 Classroom

Observation Form, and a 2013 Evaluation Report from Marysville Joint Unified School District. Both documents indicate that respondent "meets or exceeds standards" in all categories. The 2012 observation form indicates that respondent "elicits and gives respect to all students . . ."

38. Respondent believes he has a good rapport with students. He introduced into evidence four undated letters, and one letter dated December 5, 2003, all addressed to respondent from former students. The letters express gratitude and appreciation to respondent for his contributions to their education.

39. Respondent described the March 26, 2019 incident with A.D. The students were engaging in warm-up exercises. Because of recent rain and muddy areas on the grass, the students were doing their warm-ups on the asphalt basketball court. During the warm-ups, A.D. ran into the middle of the basketball court and began pulling on another student's arm. After A.D. had walked to the basketball pole, respondent tried to talk her into taking a short break and sitting on a bench near the basketball court. A.D. yelled in his face, saying "No!" He asked her again, and again she yelled in his face "No!" Respondent then told her that he would have to send her to the school office. A.D. responded by yelling "No, I'm not going to the office!" Respondent asked her again, and she again yelled "No!" Respondent then separated A.D.'s hands from around the basketball pole, using just enough force to separate her hands. He then led her to the school office.

40. A.D. resisted during their walk to the office. She lifted her feet off the ground to such an extent that her knees would have touched the ground if respondent did not lift her. As they continued toward the office, A.D. resisted more by lifting her feet and becoming "dead weight." When he walked into the office with A.D., she continued lifting her feet, which caused A.D. to swing as he entered the office with her

and placed her in a chair. Respondent then let Ms. Reinhardt know that A.D. was there. He does not recall what he said to Ms. Reinhardt.

41. Respondent believes A.D. would have presented a safety risk if she had been allowed to stand at the basketball pole. There were approximately 50 students running back and forth on the basketball court, and one of them could have run into her. Respondent was also concerned that the ground around the basketball court was muddy. If the grass had been dry, respondent would have asked A.D. to walk back and forth on the grass until she felt calmer. At no time during the incident did respondent feel angry.

42. Respondent now understands and believes that he "should not have touched the student." Respondent said this to Ms. Reinhardt when she spoke with him in the afternoon of March 26, 2019, after the incident. Respondent would have called a supervisor before he put his hands on A.D., but he did not have a radio.

43. Since the April 26, 2019 incident, respondent has reflected on the matter and undertaken things to improve himself as a teacher. Specifically, he is enrolled in an online course titled Curbing Disruptive Behavior. He is approximately halfway through the course. He is not sure how many hours there are in the course. So far, he has learned techniques to manage and redirect disruptive students. If he is faced with a similar situation in the future, he would call his supervisor to intervene or ask other nearby responsible adults to assist. Also, he would consider whether it was safe to "just walk away and let the situation de-fuse."

ARACELI IBARRA'S TESTIMONY AND SIGNED STATEMENT

44. Ms. Ibarra is employed by the District as a second grade teacher at Gaither Elementary. Ms. Ibarra has been employed by the District since 2003. She has

worked for 10 years at Gaither Elementary teaching second and fourth grade. A.D. is one of her students. A.D. requires more attention than other students.

45. Ms. Ibarra has known respondent since 2013. She and respondent live together and are engaged to be married. Ms. Ibarra conceded that her relationship with respondent could influence her testimony, but emphasized she is an honest person. She and respondent have talked about A.D. on previous occasions at home.

46. Ms. Ibarra has had opportunities to observe respondent teaching P.E. His teaching style is firm and structured. He is always watchful for student safety.

47. On March 26, 2019, Ms. Ibarra was on the basketball court and saw A.D. pulling on another girl's arm. Jeri Jackson, a sign language interpreter, was also on the basketball court and intervened. Ms. Jackson told A.D. to go to a bench next to the basketball court. A.D. answered Ms. Jackson by screaming that she did not want to go, and then walked over to the basketball pole.

48. Ms. Ibarra saw respondent talking to A.D. at the basketball pole. A.D. refused to go to the office, and screamed in defiance. She saw respondent remove A.D. from the basketball pole, and does not believe he used excessive force to do so. She did not see respondent separate A.D.'s hands.

49. She did not see any interaction between respondent and A.D. after he removed her from the pole, other than that he "grabbed her hand and escorted her to the office." Respondent did not appear to be angry during his interaction with A.D.

JERI JACKSON'S TESTIMONY

50. Ms. Jackson is a sign language interpreter. She was employed at Gaither Elementary at the time of the March 26, 2019 incident between respondent and A.D. She is now employed by the District at another school.

51. Ms. Jackson has seen respondent teaching classes, as she worked with him for three years. To her observation, he is a good P.E. teacher. She has never seen him act in anger.

52. On March 26, 2019, Ms. Jackson was on the basketball court helping supervise the students. She saw A.D. pulling on another student, and told her to keep her hands to herself. A.D. responded by becoming upset and screaming back at Ms. Jackson. A.D. also screamed back at respondent and grabbed the basketball pole when he told her to go to the office.

53. Respondent removed A.D.'s hands from the basketball pole. He did not use excessive force when doing so. He then "helped" A.D. toward the office past a big wet muddy area. A.D. was attempting to drop herself into the mud as respondent walked her to the office.

54. A.D. possibly presented a risk to herself or others when she stood by the basketball pole. Another student could have run into her.

CINDIE BOCK'S TESTIMONY

55. Ms. Bock is employed by the District as a school nurse. During the 2018-2019 school year her responsibilities included providing school nurse duties at Gaither Elementary, in addition to other schools.

56. Ms. Bock knew respondent in his role as a teacher at Gaither Elementary. To her observation, respondent always acted appropriately and had a great rapport with students.

57. Ms. Bock reviewed the videos of the March 26, 2019 incident. Respondent's conduct did not impress her as inappropriate, opining "He was just leading her." Ms. Bock has "seen much worse." She might handle the situation similarly, but does not know whether she would lift A.D. off the ground.

CARA DURAN'S TESTIMONY

58. Ms. Duran is employed by the District as a teacher at Gaither Elementary, where she has worked for the past 13 years. She knows respondent from his teaching at Gaither Elementary. She has often seen him teach, and has collaborated with him in teaching. In her experience, respondent is an excellent teacher, well respected by the students, and great with behavior management. Ms. Duran did not observe the March 26, 2019 incident between respondent and A.D.

SUSAN CATLEDGE'S TESTIMONY

59. Ms. Catledge has been employed as a teacher by the District for approximately 30 years. She teaches at Gaither Elementary, and was a first grade teacher in the 2018-2019 school year. She has known respondent for six years, since he began working at Gaither Elementary. She also knows A.D.

60. Ms. Catledge viewed the videos of the March 26, 2019 incident. She recognized herself in the video as she walked across the corridor area from the library. She stopped and turned to look at the students on the basketball court. She did not see respondent and A.D. in the corridor.

61. Ms. Catledge also recognized herself in the video of the school office, as she walked in. When Ms. Catledge entered the office she saw A.D. sitting on a chair pouting but not making any noises. Ms. Catledge also saw Ms. Treat and Ms. Reinhardt talking. One of them asked her "Did you see that?" Ms. Catledge had not seen anything, as she had been in the library.

62. Ms. Catledge's overall opinion of respondent is that he is an excellent teacher. He capably manages a lot of children, some of whom have behavioral problems. To her observation, he does "an awesome job."

MISTY NEVIS'S TESTIMONY

63. Ms. Nevis is a sign language interpreter. In that capacity, she has worked with respondent at Gaither Elementary. She also knows respondent, as he taught her children at Gaither Elementary. To her observation, respondent's teaching style is stern but fun. Respondent has high expectations for students. Her son has issues with authority and did not always like respondent, but respondent's class was good for him. Ms. Nevis did not see the March 26, 2019 incident between respondent and A.D.

TAMMY KIGER'S (FORMERLY YANEZ) TESTIMONY

64. Ms. Kiger has two sons. Respondent served as their P.E. teacher and coach in basketball, football, and track, as recently as 2018. She has observed respondent at events such as track meets. She thinks he is an "awesome" teacher. She did not see the March 26, 2019 incident between respondent and A.D.

Discussion

65. Respondent admitted to Ms. Reinhardt and in his testimony that he "should have not touched" A.D. (Factual Findings 19 and 42.) As Ms. Reinhardt told

respondent during their meeting following the March 26, 2019 incident, there were other options available to respondent. He could have requested assistance from one of the two other supervising adults. This option was particularly viable given that Araceli Ibarra, one of the supervising adults, was A.D.'s classroom teacher. Alternatively, he could have allowed A.D. to stand alone until she was calmer. Given these options, the fact that respondent did not have a radio (Factual Finding 42) is more of an excuse than a valid reason for his decision to forcibly remove A.D. from the basketball pole and pull her to the office by her hand and wrist.

66. Even if it were the case (which is not) that respondent had no other viable option but to take A.D. to the office, the evidence clearly shows that he exercised excessive and therefore impermissible force in doing so. The video and still photos show respondent pulling A.D. by her hand and wrist along the corridor and into the office show that he pulled her with such force and velocity that he lifted her feet from the ground with her legs (knees unbent) behind her. (Exhibit 18, pages 200 and 205 through 207.)

67. Respondent's treatment of A.D. violated the District's policies and Code of Ethics, which taken as a whole, emphasize that student safety must be given priority. Respondent's conduct was not safe, and could have injured A.D. Moreover, respondent's conduct set a poor example of student discipline for any students, teachers, or staff who observed the incident.

68. Respondent's written statement (Factual Finding 6) evidences an effort to minimize the force he used against A.D. Most prominently, he wrote that he "carefully separated" A.D.'s hands from the basketball pole then "escorted her to the office." This choice of verbs and adjectives does not accurately describe what is depicted in the videos. The videos show that respondent pulled A.D. from the basketball pole with his

right hand on her shoulder and his left hand on her upper arm. The video is not clear how much force he used, but it is clear that he did not carefully separate A.D.'s hands. The evidence is also clear that respondent did not "escort" A.D. in the ordinary sense of the word. Rather, as discussed above, he pulled A.D. by the hand and wrist with sufficient force and velocity that her feet were lifted from the ground.

69. Respondent's characterization of his conduct in his written statement is clearly an attempt to show that he did not use excessive force against A.D. This is also apparent in his testimony at hearing, during which he stated that A.D. lifted her own feet off the ground becoming "dead weight." While it may be true that A.D. lifted her feet at certain points, it is very clear that respondent pulled A.D. with sufficient force to lift her feet off the ground, both in the corridor and in the school office. Because the child was not a danger to herself or others, respondent's use of physical force was unnecessary and against District policy.

70. Respondent's characterization of his conduct with A.D. was not blatantly dishonest. He did not deny that the incident occurred, nor did he fabricate additional details. Instead, he described the incident, and his actions, in a manner that characterized his conduct in a favorable light. This being said, respondent's continuing effort to cast his conduct in the most favorable light is concerning because it indicates a failure to accept full responsibility, and a consequent lack of rehabilitation. As the California Supreme Court stated in *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940, "Fully acknowledging the wrongfulness of [one's] actions is an essential step towards rehabilitation."

71. Respondent presented evidence in support of his claim that he has learned from the March 26, 2019 incident, and that he is fit to serve as a teacher. First, respondent testified that he has reflected on the incident and undertaken steps to

improve himself as a teacher. Specifically, he is enrolled in an online course titled Curbing Disruptive Behavior, which he has partially completed. (Factual Finding 43.) Second, he has reflected on the incident with A.D., and if faced with a similar situation in the future he would call his supervisor or ask another nearby adult for assistance. (*Ibid.*) Third, respondent presented performance evaluations, letters of support, and witness testimony regarding his record of consistently good and even "awesome" performance as a teacher. This evidence regarding respondent's past performance, and his present efforts to improve himself as a teacher, is less significant in evaluating the appropriate level of discipline than his exercise of excessive force against A.D. as depicted on videos, and his subsequent efforts to minimize the wrongfulness of his conduct.

Fitness to Teach

72. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235 (*Morrison*), the California Supreme Court held that "an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher." The court listed the following factors as relevant when determining whether a teacher's conduct indicates that he or she is fit to teach: "[1] the likelihood that the conduct may have adversely affected students or fellow teachers, [2] the degree of such adversity anticipated, [3] the proximity or remoteness in time of the conduct, [4] the type of teaching certificate held by the party involved, [5] the extenuating or aggravating circumstances, if any, surrounding the conduct, [6] the praiseworthiness or blameworthiness of the motives resulting in the conduct, [7] the likelihood of the recurrence of the questioned conduct, and [8] the extent to which disciplinary action may inflict an adverse impact or chilling effect upon

the constitutional rights of the teacher involved or other teachers." (*Id.* at pp. 229-230.) As set forth below, when respondent's conduct is considered in light of the *Morrison* factors, the District established that respondent is unfit to teach.

73. Adverse Effect of Respondent's Conduct. Respondent used excessive force against A.D. by pulling her from the basketball pole, then pulling her to the office by her hand and wrist with such force that he lifted her feet off the ground while she was screaming and resisting. Respondent handled A.D. with such force that Ms. Reinhardt asked the school nurse to examine her for possible injuries. In addition, there is a substantial likelihood that other students, teachers, or staff who witnessed the incident were negatively influenced or upset by respondent's excessive use of force against A.D.

74. A teacher is often described as "'... an exemplar, whose words and actions are likely to be followed by the children coming under [his] care and protection.'" (*Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 970.) Respondent violated the trust the school and the District placed in him when he used excessive force against A.D. in the presence of students, teachers, and staff.

75. Degree of Adversity Anticipated. Respondent's use of excessive force against A.D. sent a signal to any students, teachers, or staff who observed his conduct that it is acceptable for a teacher to handle a student in this manner. It is not acceptable; it is very wrong. For these reasons, there is a substantial likelihood respondent's conduct had a significant adverse effect on students and teachers who observed his conduct.

76. Proximity or Remoteness in Time of Respondent's Conduct. Respondent engaged in misconduct on March 26, 2019. The District placed respondent on paid

administrative leave on March 27, 2019. The District served respondent with a Notice of Immediate Suspension and the Statement of Charges on May 31, 2019. The District moved quickly at each step. Respondent's misconduct is not remote in time.

77. Respondent's Teaching Certificate. Respondent teaches students in grades kindergarten through eighth grade. These are impressionable years. Respondent, as a teacher, is expected to display appropriate adult behavior. Instead, respondent used excessive force against A.D. in a situation in which she was not endangering herself or others.

78. Extenuating or Aggravating Circumstances. There is no justification or excuse for respondent's excessive use of force against A.D. There are no aggravating circumstances beyond the misconduct alleged in the Statement of Charges.

79. Praiseworthiness or Blameworthiness of Respondent's Motives. There is no credible evidence that respondent had praiseworthy motives when he used excessive force against A.D. Specifically, A.D. did not present an imminent risk of harm to herself or others when standing by the basketball pole. It was therefore unnecessary and therefore impermissible for respondent to use physical force to remove her, and to then forcefully pull her to the school office.

80. Likelihood of Recurrence. Respondent did not demonstrate substantial rehabilitation. Though he acknowledged he should not have touched A.D., he continued to minimize his misconduct even during his testimony. By failing to fully acknowledge his misconduct, respondent failed to demonstrate he has engaged in sufficient rehabilitation to establish he will not engage in similar misconduct in the future. (*Seide v. Committee of Bar Examiners, supra*, 49 Cal.3d 933, 940.)

81. Chilling Effect of Discipline. There is no evidence that dismissal of respondent will have an adverse or chilling effect upon respondent's constitutional rights or the constitutional rights of any other teachers.

82. When all the *Morrison* factors are considered, the District established that respondent is unfit to teach children.

LEGAL CONCLUSIONS

1. A school district seeking to dismiss a permanent certificated employee from its employment bears the burden of proof by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035; *Bevli v. Brisco* (1989) 211 Cal.App.3d 986.) The term preponderance of the evidence means "more likely than not." (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

2. Pursuant to Education Code section 44932, subdivision (a)(1), a school district may discipline a permanent certificated employee for "immoral" conduct. In *San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466, the court explained that:

A teacher may . . . be dismissed for "[i]mmoral or unprofessional conduct." (§ 44932, subd. (a)(1).) "'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 willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.” (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811, 4 Cal.Rptr. 286.)

Moreover, the definition of immoral or unprofessional conduct must be considered in conjunction with the unique position of public school teachers, upon whom are imposed “responsibilities and limitations on freedom of action which do not exist in regard to other callings.” (*Board of Trustees v. Stubblefield, supra*, 16 Cal.App.3d at p. 824, 94 Cal.Rptr. 318.)

3. As set forth in Factual Findings 7 through 36, and 65 through 67, respondent used excessive force against A.D. when he, then pulled her to the office by the hand and wrist with such force and velocity that he lifted her into the air, both in the corridor and in the office. In doing so, respondent showed a moral indifference and an inconsiderate attitude toward good order and the public welfare. His conduct was inconsistent with the reasonable expectations society places upon teachers to model appropriate adult conduct to the students they teach, and to protect the safety of students and advance their educational welfare. Respondent’s conduct therefore establishes cause to dismiss on the basis of immoral conduct pursuant to Education Code section 44932, subdivision (a)(1).

4. Pursuant to Education Code section 44932, subdivision (a)(4), a school district may discipline a permanent certificated employee for “dishonesty.” As set forth in Factual Findings 68 through 70, respondent did not engage in dishonesty in his

written statement (Factual Finding 6) describing the March 26, 2019 incident. Consequently, the District did not establish cause to dismiss respondent for dishonesty under Education Code section 44932, subdivision (a)(4).

5. Pursuant to Education Code section 44932, subdivision (a)(6), a school district may discipline a permanent certificated employee for "evident unfitness for service." In *Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*), the Third District Court of Appeal defined the term "evident unfitness for service," as used in Education Code section 44932, subdivision (a)(6), to mean "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." The court found that the term "connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Ibid.*) The court held that the *Morrison* factors "must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service." (*Id.* p. 1445.) As the court in *Woodland* explained, "[i]f 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." (*Ibid.*)

6. Respondent's conduct in using excessive force against A.D., his effort to minimize the seriousness of his conduct both in his written statement (Factual Finding 6), and in his testimony at hearing, demonstrate that he is unsuitable for teaching due to a fixed character trait, not remediable merely on notice that his conduct fails to meet the District's expectations. Consequently, respondent's conduct establishes cause to dismiss him for evident unfitness for service under Education Code section 44932, subdivision (a)(6).

7. As set forth in Factual Findings 72 through 82, when all the *Morrison* factors are considered, the District established that respondent is unfit to teach children. Consequently, the District's dismissal of respondent under Education Code section 44932, subdivisions (a)(1) and (a)(6), is upheld.

ORDER

Respondent Brian Coleman is DISMISSED as a permanent certificated employee of the Yuba City Unified School District based on the Factual Findings and Legal Conclusions 1 through 7, jointly and individually.

DATE: December 5, 2019

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Sandra M. Fink

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SANDRA FINK, Member

Commission on Professional
Competence

DATE: December 5, 2019

DocuSigned by:

Sonja Renhult

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SONJA RENHULT, Member

Commission on Professional
Competence

DATE: December 6, 2019

DocuSigned by:

Timothy J. Aspinwall

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TIMOTHY J. ASPINWALL, Chair

Commission on Professional
Competence