

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
GROSSMONT UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Dismissal of

RICHARD HOGUE,

A Permanent Certificated Employee,

Respondent.

OAH No. 2011120587

**DECISION OF THE
COMMISSION ON PROFESSIONAL COMPETENCE**

On March 12-15, 2012, a Commission on Professional Competence heard this matter in San Diego, California. The Commission included James Ahler, Scott Chodorow and Richard Radcliffe.

Daniel R. Shinoff, Gil Abed, and Michelle K. Meek, Attorneys at Law, represented complainant Ralf Swenson, Superintendent, Grossmont Union High School District.

John Y. Vanderpool and Jon Cadieux, Attorneys at Law, represented respondent Richard Hogue, a permanent certificated employee of the Grossmont Union High School District, who was present throughout the administrative hearing.

On March 15, 2012, the matter was submitted.

SUMMARY

Richard Hogue is a permanent certificated employee of the Grossmont Union High School District. The District seeks to terminate Mr. Hogue's employment based upon allegations of immoral conduct, evident unfitness for service, and persistent violations of school laws and governing board regulations.

A preponderance of the evidence established, among other matters, that during the 2010-2011 school year, Mr. Hogue reported late to work more than 60 times, represented that he was involved in grand jury duty when that was not the case, refused to cooperate in a Joint Powers Administration safety inspection, initiated a confrontation with another teacher

when class was in session, behaved inappropriately in the presence of students, and refused to cooperate in the investigation of a fire that occurred at the auto shop.

After applying the relevant *Morrison*¹ criteria, the Commission on Professional Competence concludes that Mr. Hogue engaged in immoral conduct, that he is not fit to teach in the District, and that his employment with the District should be terminated.

FACTUAL FINDINGS

Background Information

1. Richard Hogue (Mr. Hogue or respondent) graduated from Santana High School in 2001. He received an associate's degree in Automotive Technology from Cuyamaca College in 2003, a preliminary teaching credential in Automotive Technology in 2005, a bachelor's degree in Vocational Education from San Diego State University in 2008, and a CLAD certification in 2008. The State of California cleared Mr. Hogue's full-time career technical education credential in Transportation in 2009.

Mr. Hogue's experience outside the classroom and auto shops includes metal fabrication, working as an automotive technician at Bob Baker Chevrolet, and working as an assistant manager at Pep Boys Automotive.

2. Mr. Hogue began working for the Grossmont Union High School District in 2005 as the lead automotive technology teacher at Granite Hills High School, where he reorganized and maintained the auto shop. During Mr. Hogue's employment at Granite Hills, NASCAR driver Jimmie Johnson, who previously attended Granite Hills, donated automotive tools and equipment to his alma mater.

3. Georgette Torres, the Granite Hills principal, testified that Mr. Hogue showed up to classes on time when he taught at Granite Hills High School and that he maintained the auto shop in good condition. A formal evaluation conducted when Mr. Hogue worked at Granite Hills reflected that Mr. Hogue met all professional expectations.

4. In May 2010, Principal Torres notified Mr. Hogue that the automotive technology program at Granite Hills was closing and that he should organize tools, parts, equipment, and other materials and items in the auto shop to permit them to be transferred to other facilities where automotive technology classes would be conducted.

Mr. Hogue spent the next 45 days or so inventorying and separating tools, parts and other auto shop equipment and materials as directed. The tools and equipment were sorted based upon the source of funding. The District Director of the Regional Occupational

¹ These factors are set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214.

Program assisted Mr. Hogue in this process. While inventorying and sorting tools and equipment in the auto shop, Mr. Hogue removed his personal tools and equipment that he had maintained in the Granite Hills auto shop and returned them to his home.

Mr. Hogue turned over his keys to the auto shop and classroom to Ms. Torres at the end of the 2009-2010 school year.

5. Mr. Hogue's assignment for the 2010-2011 school year was somewhat uncertain. In July 2010, Mr. Hogue met with Principal Mary Beth Kastan; Assistant Principal Lance Yocom; and Larry Martinsen and Gary Mowrey, highly experienced industrial technology instructors, at Valhalla High School.

Principal Kastan, Assistant Principal Yocom, Mr. Martinsen and Mr. Mowrey described the meeting as being very friendly, and intended to welcome Mr. Hogue to the Valhalla High campus. Mr. Hogue believed the meeting was more in the nature of a job interview. No one attending the July 2010 meeting described it as anything other than cordial. Following the meeting, Mr. Martinsen and Mr. Mowrey took Mr. Hogue on a tour of the auto shop. The meeting and tour lasted about an hour.

6. Mr. Hogue wanted to spend the entire school day at the same high school campus during the 2010-2011 school year. He did not want to work a split schedule that required him to teach some classes at one campus and other classes at another campus.

In mid-August 2010, Steve Sonnich, Associate Administrator, Human Resources, met with Grossmont Education Association President Fran Zumwalt to discuss Mr. Hogue's employment situation to determine if they could accommodate Mr. Hogue's desire to spend the entire working day at one campus. An agreement was reached between the District and the Association that enabled Mr. Hogue to spend the entire working day at Valhalla High School for the 2010-2011 school year.

A week before the start of the 2010-2011 school year, the District formally notified Mr. Hogue of his assignment to Valhalla High School. Staff development for Valhalla High employees was held from August 31 through September 2, 2010. Mr. Hogue attended the staff development meetings.

About a week thereafter, Mr. Hogue requested that Principal Torres deliver the automotive equipment that was being stored at Granite Hills High School to Valhalla High School, along with a couple of filing cabinets that contained Mr. Hogue's "lesson plans and other intellectual property."

There Was No Theft of Property from Granite Hills High School

7. The Notice of Charges alleges that Mr. Hogue misappropriated District property from Granite Hills High School towards the end of the 2009-2010 school year by "taking packing boxes full of materials from the Auto Shop Program to his residence."

It was not established that Mr. Hogue misappropriated any District property, that he stole the Jimmie Johnson tools, or that he took school property from Granite Hills High School to his home.

Mr. Hogue's Teaching Assignment at Valhalla High School

8. Mr. Hogue was employed to teach five periods per day at Valhalla High School and to be on campus for a third period prep period. Mr. Hogue was assigned to co-teach Introduction to Engineering Design, a computer aided drafting class, with Kathy Worley, a highly experienced industrial arts teacher, the first period. Mr. Hogue was assigned to co-teach Construction Technology, a woodworking class, with Mr. Mowrey, another highly experienced industrial arts teacher, the second period. Mr. Hogue was scheduled to have third period as his prep period. Mr. Hogue was scheduled to teach auto shop for the fourth, fifth, and sixth periods. This assignment was formally confirmed in an email that Vice Principal Yocom sent to Mr. Hogue that was dated September 20, 2010.

The plan was for Mr. Hogue to support Ms. Worley and Mr. Mowrey in teaching drafting and woodworking classes, subjects outside of Mr. Hogue's area of formal expertise, with the hope that Mr. Hogue could expand his teaching credential and teach those classes by himself in the future. This plan provided Mr. Hogue with an excellent opportunity to make himself more useful to the District, particularly since it appeared that Valhalla High lacked student enrollment necessary to support a full day of automotive technology instruction.

9. School started each day around 7:30 a.m. at Valhalla High School. On Monday mornings, the industrial arts teachers held collaboration meetings during the first period in which they discussed matters of importance within the Industrial Arts Department and at Valhalla High. Mr. Hogue was expected to attend the collaboration meetings, but he was not required to do so. Ms. Worley, Mr. Martinsen, and Mr. Mowrey believed the collaboration meetings were very helpful in meeting their professional responsibilities and ensuring the smooth operation of the Industrial Arts programs.

Mr. Hogue attended the first collaboration meeting and perhaps one or two collaboration meetings thereafter. He claimed he did not find the meetings helpful at all, and he testified that he stopped attending them when he was told by Fran Zumwalt, the teacher association's president, that he was not required to attend the Monday morning collaboration meetings.

Although Mr. Hogue may not have been required to attend the collaboration meetings, he was required to report to school on time on the Monday mornings on which collaboration meetings were held.

The First Day of School

10. On the first day of school in the 2010-2011 school year, Mr. Hogue delivered opening remarks to his Valhalla High students that were consistent with comments he previously made on the first day of school at Granite Hills High. Mr. Hogue testified that he

wanted to establish a rapport with students and that he intended his remarks to be humorous. He told students the following: He did not tolerate violence. He very much enjoyed teaching, even though the pay was “crappy.” He had been hired as a teacher when he sitting in a bar at San Diego State University, and “if I can do this job, then you can do it too.” If any student did not want to participate actively in the class, he or she should leave. He “got a natural high from making kids cry” and did not need to try crack or cocaine. Mr. Hogue’s comments were misunderstood by some students, and some of the comments were inappropriate. But, Mr. Hogue’s comments on the first day of school were not immoral; the comments did not evince his alleged unfitness to teach; and the comments did not violate any school laws or District regulations.

Principal Kastan received complaints about Mr. Hogue’s opening day remarks. She met with Mr. Hogue to discuss those complaints. Association President Zumwalt attended the meeting and represented Mr. Hogue. Principal Kastan outlined the complaints, and Mr. Hogue explained what he had attempted to communicate. Mr. Hogue told Principal Kastan that certain materials and equipment had not been delivered to Valhalla High from Granite Hills as he had hoped. Mr. Hogue was respectful and polite. After their discussion concluded, Principal Kastan did not believe it necessary to discipline Mr. Hogue for his opening day comments.

Mr. Hogue’s Failure to Attend First and Second Period

11. The District has employed Kathryn Worley to teach industrial arts for many years. In the 2010-2011 school year, Ms. Worley was assigned to teach first period drafting at Valhalla High. Mr. Hogue was assigned to co-teach the first period drafting class.

The District had employed Gary Mowrey for 34 years before his retirement. Among other matters, he taught automotive technology and maintained the auto shop. He taught automotive technology at Valhalla High School in the 2009-2010 school year. Mr. Mowrey thoroughly cleaned the auto shop at the end of the 2009-2010 school year, and he believed he left the auto shop in excellent condition for Mr. Hogue’s use in the 2010-2011 school year.

In the 2010-2011 school year, Mr. Mowrey returned to work on a part-time basis at Valhalla High where he was appointed the Chairperson of the Department of Industrial Technology. For the 2010-2011 school year, Mr. Mowrey taught Construction Technology, which essentially involved teaching students how to build guitars.² Mr. Hogue was a co-teacher for Mr. Mowrey’s second period woodworking assignment.

Larry Martinsen was employed by the District for 43 years. He was initially employed as a teacher, but he ultimately became the principal of Valhalla High. He retired as principal in 2008, but he returned to work at Valhalla High on a part-time basis as a guitar

² Notice is taken that Taylor Guitars was established in 1974 and is one of the world’s leading manufacturers of acoustic, acoustic/electric, and electric guitars. Taylor Guitars is headquartered in El Cajon, California, in close proximity to the District’s operations. Taylor Guitars employs nearly 700 people and produces hundreds of guitars per day.

construction teacher. Mr. Martinsen described Mr. Mowrey as a professional acquaintance, but said they did not have a close personal relationship.

Ms. Worley and Mr. Mowrey credibly testified that Mr. Hogue showed up to co-teach the first and second period classes once or twice during the first month of the 2010-2011 school year; he did not assist either of them in teaching those classes.

According to Ms. Worley, “He was hardly there.” Ms. Worley did not give Mr. Hogue permission to miss the first period co-teaching assignment. On the few occasions when Mr. Hogue attended the first period class, Mr. Hogue sat in the back of the classroom and worked on a computer. Ms. Worley taught the CAD class by herself, without Mr. Hogue’s assistance. After the first period class ended, Ms. Worley closed the classroom, left the Valhalla campus, and drove directly to the West Hills High School campus during her second period prep period. She arrived at West Hills in time to begin teaching a third period class. Ms. Worley did not report Mr. Hogue’s absences to Valhalla High’s administration.

In early January 2011, Mr. Hogue sent an email to Ms. Worley in which he claimed that he hoped she “had an enjoyable winter break” and asked if there was “any special assistance needed this week” or if there “are any projects or special activities that I can be working on for the upcoming semester” Ms. Worley replied, “It is very difficult to give you something to do since you have not been to class except three times (including today) in the last 2-3 months. I do not have time to stop class to give you something to do. I begin class at 7:25 when the bell rings.” Mr. Hogue responded in writing to this email by asserting that he was having a difficult time meeting his responsibilities, “balancing teaching courses I had no time to prepare for, Federal Grand Jury Duty Service, attempting to recover lost/stolen items from the district, adjusting to the transition to a new school facility, and a mountain of paperwork Also, I assure you that I will be present everyday in your classroom unless I am given authorization to leave for some reason”

Mr. Mowrey had a very similar experience. According to Mr. Mowrey, Mr. Hogue was not present in his classroom – Room 242 – from October 2010 through December 2010. Mr. Mowrey prepared a memo setting forth the days Mr. Hogue was actually present. The memo stated that Mr. Hogue was present on January 10 but left early and that Mr. Hogue arrived late and left early on January 13, January 14, and January 19, 2011. Mr. Hogue was not present any other day school was in session. Mr. Mowrey testified that he never told Mr. Hogue that Mr. Hogue could spend first and second periods in the auto shop rather than in the classroom. Mr. Mowrey conceded that he may have told Mr. Hogue that Mr. Hogue’s time might be better spent in the auto shop than in the woodworking shop when, after the first week of school, it became apparent that Mr. Hogue was not interested in what was going on. Mr. Mowrey said that he, however, did not authorize Mr. Mowrey to spend his time in the auto shop. Mr. Mowrey did not report Mr. Hogue’s absences to Valhalla High’s administration.

Mr. Martinsen, who was present on the Valhalla High School campus in the 2010-2011 school year, recalled that Mr. Hogue was present in the morning for the first week of

that school year, but then “did not show up anymore.” Mr. Martinsen did not report Mr. Hogue’s absences to Valhalla High’s administration.

Ms. Worley, Mr. Mowrey, and Mr. Martinsen established that Mr. Hogue did not attend Monday morning collaborative meetings after the first meeting.

Assistant Principal Yocom could not recall when or how he first learned that Mr. Hogue was not showing up for the first and second periods to teach the classes to which he had been assigned. He was certain that he did not tell Mr. Hogue that Mr. Hogue did not need to attend those classes, and he was certain that did not tell Mr. Hogue that he could fulfill his teaching responsibilities by working in the auto shop first and second periods.

Around February 18, 2011, Principal Kastan met with Mr. Hogue and others concerning Mr. Hogue’s failure to attend the first and second period classes. The meeting also focused on Mr. Hogue’s troubling attitude towards staff.

Principal Kastan, Mr. Hogue, Association President Zumwalt, three assistant principals, and others attended the mid-February 2011 disciplinary meeting. Principal Kastan directed Mr. Hogue to notify the attendance secretary if he was going to be late to work. Principal Kastan also directed Mr. Hogue, in essence, to be nice to others. Mr. Hogue did not respond directly to the charges during the meeting. Association representatives assured Principal Kastan that Mr. Hogue would follow her directives. Formal discipline was not imposed.

12. To explain his failure to appear in Ms. Worley and Mr. Mowrey’s classes, Mr. Hogue testified that he did not receive a formal written assignment until September 20, 2010, and that before then his assignment to teach first and second periods was merely verbal.

Mr. Hogue recalled Mr. Mowrey saying very early on that Mr. Hogue’s time might be better spent working in the auto shop. Mr. Hogue said that he believed at that time that Mr. Mowrey, the Industrial Technology Department Chairperson, possessed sufficient authority to reassign Mr. Hogue and that he simply elected to work in the auto shop as Mr. Mowrey had suggested. Mr. Hogue possessed no writing that corroborated his testimony, which was interesting since Mr. Hogue rarely failed to send confirming emails to document his understanding of certain matters or to communicate complaints about other matters. Mr. Hogue did not claim that Assistant Principal Yocom authorized him to work in the auto shop first and second periods.

Mr. Hogue testified that he “attended a few collaborative meetings” and found them unproductive. He testified that he spoke with Association President Zumwalt, was told that he was not required by contract to attend the collaborative meetings, and stopped attending so he could work more productively elsewhere.

Mr. Hogue disputed Ms. Worley and Mr. Mowrey’s testimony concerning his absences from campus in September and October 2010. Mr. Hogue claimed that when he was not in their classrooms, he was busy in the auto shop preparing an inventory of lost or

stolen items; was notifying OSHA, Hazmat, the Fire Marshall, news outlets, and others of the hazardous conditions; or was taking photographs and gathering evidence of the unsafe condition of the auto shop. Mr. Hogue also claimed that he spent a great deal of time preparing a hazardous materials inventory for Terri Nowlen, Valhalla High's manager of school facilities (MSF).

Mr. Hogue testified that it felt like he was being singled out and attacked as a result of some events not turning out as well as he had hoped. (Examples included the following: There was an unannounced safety inspection. He was the subject of the mid-February 2011 reprimand. He was unable to recover lost and stolen auto shop equipment and tools. There was a perceived lack of support for his program. His vehicle was locked in the auto shop parking lot. He was not given access to a paint booth. He engaged in a confrontation with Mr. Mowrey and Mr. Martinsen.) Because of stress he said he was experiencing, Mr. Hogue did not report to work for first and second periods, and he was late to his fourth period class 10 to 15 times in March and April 2011. He said he was taking Xanax to manage his anxiety. No medical evidence was offered to support this testimony. Mr. Hogue claimed that he sought a medical leave from the District, but he said his request was refused. Mr. Hogue said he was remorseful concerning his absences in March and April 2011 and that, at that time, he knew that what he was doing was inappropriate.

13. Ms. Worley, Mr. Mowrey, and Mr. Martinsen did not see Mr. Hogue working in the auto shop when he claimed he was there. Josephine Willson, the principal's secretary, recalled that she received notifications from teachers who observed Mr. Hogue's fourth period students standing outside the classroom and that she arranged for someone to open the door to the automotive technology classroom on many occasions when Mr. Hogue did not appear for fourth period on time.

Ruben Menjares, a Valhalla High School Campus Supervisor, recalled unlocking Mr. Hogue's classroom door 10 to 20 times in the 2010-2011 school year when Mr. Hogue did not arrive on time for his fourth period. Mr. Menjares testified that students were walking around outside the classroom when Mr. Hogue was not there.

14. Complainant established by a preponderance of the evidence that during the 2010-2011 school year, Mr. Hogue did not attend first, second, or third period assignments for more than 60 days that class was in session from October 1, 2010, through May 3, 2011. On the few occasions when he attended his first period assignment, Mr. Hogue provided virtually no instruction. On the few occasions when he attended his second period assignment, Mr. Hogue arrived late, left early, and provided no instruction.

15. The District paid Mr. Hogue to put in a full working day. While Mr. Hogue may have believed that his time was better spent in auto shop than elsewhere, he was not authorized to make that decision. His assertion that he reasonably believed that Mr. Mowrey had authorized him to do so was not believable. The evidence that Mr. Hogue did not appear at all on the Valhalla High campus for first or second period for most school days is more believable than respondent's evidence to the contrary. Mr. Hogue admitted that he did not

arrive at school for the first and second periods in March and April 2011, which was just two weeks after he was specifically directed to do so.

Within the teaching profession, not showing up for work but receiving full pay involves immoral conduct. With regard to the misconduct in this matter, Mr. Hogue asserted that there were extenuating circumstances: Ms. Worley and Mr. Mowrey were able to conduct the classes without Mr. Hogue's assistance – there was no impact on the students; and, greater supervision could have been exercised over Mr. Hogue's attendance by Valhalla High staff and administrators. Mr. Hogue's justification for not attending first and second period classes he was required to co-teach demonstrated his unwillingness or inability to cooperate with other staff. His claim that he was working in the auto shop during first and second period was not believable. Mr. Hogue's absences imposed a heavy personal burden on Ms. Worley, who was required to finish the first period class and tidy up the classroom by herself before she left Valhalla High to travel to another campus to teach a third period class.

The Grand Jury Duty

16. Mr. Hogue was appointed to serve for two years on a Federal Grand Jury. He was required to attend weekly sessions on Tuesdays of every week from February 2009 through February 2011.

On August 31, 2010, January 18, 2011, and February 2, 2011, Mr. Hogue reported to his employer that he was absent from his employment as a result of attending a grand jury duty session that day. In fact, the grand jury on which Mr. Hogue served did not convene on those three days.

Mr. Hogue testified that on each occasion, he did not find out until approximately 7:00 a.m. of the morning he was scheduled to attend that the grand jury would not meet that day. He implied that he had, by then, already made arrangements for a substitute teacher. When he learned that his services were not going to be required, he simply "took the rest of the day off." He admitted that his representations that he was serving on a grand jury on August 31, January 18, and February 2 were inappropriate.

Mr. Hogue's fourth period class started at 10:35 a.m. on each of those days. He could have contacted administration and advised that he was able to appear and teach his class on each of those three days. The substitute who was hired to provide services for Mr. Hogue could have worked elsewhere on campus; there is always need for additional help.³

³ A job detail report for January 18, 2011, is particularly troubling. That document, a computer generated document initiated by a call into the system by a teacher requesting a substitute, reflected that Mr. Hogue called in to the system to obtain a substitute at 10:48 a.m. on January 18, 2011, about 13 minutes after his class was scheduled to begin and more than three and a half hours after he said he was told that he did not have grand jury duty that day.

Within the teaching profession, misrepresenting the reason for not showing up to work may involve dishonesty and immoral conduct. That was certainly the case here. With regard to the misconduct in this matter, there were no extenuating circumstances. Mr. Hogue knew he could have cancelled the substitute and reported to work to provide the instruction for which he was being paid.

Misuse of Instructional Time/Failure to Prepare Lesson Plans

17. The Statement of Charges alleged that Mr. Hogue's frequent absences prevented him from providing required instruction and supervision, that he frequently misused instructional time for personal gain or provided no worthwhile instruction, and that he failed to prepare adequate lesson plans for a substitute teacher other than to advise the substitute that he or she could show a movie related to cars. It was alleged that Mr. Hogue's class was shown *Fast and Furious*⁴ on at least three occasions.

Mr. Hogue's absences from his first and second period assignments prevented him from providing instruction and supervision to students in classes being held those periods. These absences were discussed in detail in Factual Findings 11 through 16, and they involved immoral conduct.

It was not established that Mr. Hogue misused instruction time for personal gain or that he provided no worthwhile instruction when he was engaged in classroom teaching. Mr. Hogue's lesson plans were deficient on occasion, but the deficiencies established did not involve immoral conduct or establish an unfitness to teach.

The Joint Powers Authority Inspection

18. Mr. Hogue was very unhappy with the condition of the auto shop when he began working at Valhalla High in September 2010. Old tires, a trailer, a tow truck, abandoned equipment, and other materials were scattered about the auto shop. From September through December 2010, hazardous materials were sometimes left at the auto shop - presumably by custodians or others who believed the auto shop was the appropriate venue for these unwanted materials.

Ms. Nowlen, Valhalla High's MSF, asked Mr. Hogue to make the auto shop safe. In response, Mr. Hogue said the unsafe condition of the auto shop was not the result of anything he had or had not done, and he demanded that Valhalla High remove the dangerous materials for which he was not responsible. Before the Thanksgiving 2010 break, Mr. Hogue and students took photographs of "dangerous conditions" at the auto shop to establish the safety issues about which Mr. Hogue had complained.⁵

⁴ *Fast and Furious* is a street action racing film.

⁵ It is significant that Mr. Hogue took the time to document these allegedly dangerous conditions, such as a liquid leaking from a compressor, but he made no effort to clean up the leak after taking the photograph. Most of the photographs showed of the interior of a paint

When Ms. Nowlen failed to move quickly enough to satisfy Mr. Houge, Mr. Hogue directed students to file safety complaints with the district, and he contacted or caused to be contacted local news agencies, Hazmat, the County Fire Marshal, and other authorities.

In early February 2011, Ms. Nowlen advised Principal Kastan that she had requested a Joint Powers Authority inspection of the auto shop area. The inspection was scheduled for mid-February 2011. She did not advise Mr. Hogue of that inspection.

During a February 14, 2011, inspection, the inspector found engines, parts, tires and miscellaneous items strewn about the exterior of the shop; small engines containing oil and gasoline were improperly stored; and an extension cord constituted a trip hazard. Mr. Hogue's camper was found on the premises, along with fencing that was seemingly unrelated to any auto shop project. Mr. Hogue was not present at the auto shop when the inspection began, but he showed up while it was in progress. Ms. Nowlen and Principal Kastan were there.

Mr. Hogue was surprised by the inspection. He did not object to the inspection when he showed up, but after he was asked about his camper and the fencing, Mr. Hogue demanded that the inspector and administrators leave "my auto shop" and stop the inspection.

After the inspection, Mr. Hogue sent an email to Principal Kastan and Ms. Nowlen in which he asked that he "be notified in advance of all inspections or meetings in the future so that I may have representation available." His email also stated:

I am the foremost authority in this district on automotive related safety procedures, practices, and environmental requirements. I feel you and the administration are challenging my authority in my classroom/facility. Moreover, I believe you are operating outside your scope of practice with any/all attempts to interfere in my course of daily activities.

Mr. Hogue forwarded a copy of this email to Association President Zumwalt.

Interfering with the Joint Powers Authority inspection and demanding inspectors to leave involved immoral conduct. Mr. Hogue did not own the auto shop and he had not right to terminate a duly ordered safety inspection.

Mr. Hogue admitted that, in retrospect, he was not happy with the manner in which he responded to the Joint Powers Authority inspection. Mr. Hogue's surprise was, to some extent, a mitigating factor, but it did not justify his misconduct.

booth in the auto shop which was locked almost all of the time and to which Mr. Hogue did not have a key.

The March 2, 2011, Confrontation

19. Since the day he arrived at Valhalla High School, Mr. Hogue was very interested in gaining access to the spray paint booth in the auto shop where a project car from previous years was being stored, along with other equipment and materials. The project car, a 1923 Willys, was going to be auctioned to an interested buyer. The materials in the spray booth did not belong to Valhalla High School and were not necessary to teach auto shop. Mr. Mowrey had a key to the spray booth. Mr. Martinsen and Mr. Hogue did not have a key.

By March 2, 2011, Mr. Hogue was still upset about the Joint Powers Administration inspection and his oral reprimand that followed in mid-February 2011. Sometime thereafter, Mr. Hogue met with Association President Zumwalt to discuss his dissatisfaction with his lack of access to the paint booth, the presence of the car in the spray booth, and Mr. Mowrey's potentially hazardous storage materials in the spray booth. According to Mr. Hogue, he and Association President Zumwalt decided that he should approach Mr. Mowrey and politely ask him to clear out the spray booth and that he should give Mr. Mowrey five working days to do so.⁶

On March 2, 2011, around 10:45 a.m., Mr. Mowrey and Mr. Martinsen were in Room 242, the wood shop, preparing a display for "Parents Freshman Orientation Night." Mr. Hogue, whose auto shop class was in session, left the classroom, crossed the hallway, and knocked on the door of Room 242. Mr. Mowrey opened the door. Mr. Hogue said, "I am giving you one week to clear out the spray booth. I have talked to my lawyer and the union representative and they advised me to give you one week as a professional courtesy. I would have told you to clear it out tonight." In Mr. Hogue's testimony, he described himself as having been "assertive."

Mr. Martinsen approached Mr. Hogue and Mr. Mowrey and said, "Richard, you are off base. Mr. Mowrey is the department chairman, and he has the right to use the spray booth." Mr. Hogue responded, "Mr. Mowrey is retired. He can't be the department chairman." Mr. Hogue then announced that he would call the principal. Mr. Martinsen invited him to make the call from the wood shop. Mr. Hogue declined, saying he would make the call from the auto shop classroom.

Mr. Hogue turned around and walked back towards the auto shop class where he had been teaching. Mr. Martinsen and Mr. Mowrey followed. They believed Mr. Hogue would call the principal and air his dispute in front of students, which would be inappropriate.

Mr. Hogue entered the auto shop classroom and sat down at his desk. He then turned on the speakerphone and called the principal's office. When Principal Kastan answered, students in the auto shop classroom could hear the conversation. Mr. Hogue told Principal Kastan that Mr. Mowrey and Mr. Martinsen were in his classroom and that she needed to tell them to clear their property out of the spray booth. Around that time, Mr. Martinsen leaned

⁶ No corroboration of this advice decision was provided in Association President Zumwalt's testimony.

forward and pointed a finger at Mr. Hogue's chest, told him that it was inappropriate to speak in front of students, and stated in a low voice, "You're barking up the wrong tree." There was no physical contact between Mr. Martinsen and Mr. Hogue as Mr. Hogue later asserted. Principal Kastan said she would meet with Mr. Hogue later that day. Students cheered when Mr. Mowrey and Mr. Martinsen left the classroom.

Mr. Hogue's conduct in initiating the confrontation with his colleagues during classroom hours and insisting that a telephone call be placed to Principal Kastan under circumstances which ensured student involvement constituted immoral conduct. Mr. Hogue did not adhere to ethical principles that require that students not be unnecessarily exposed to disputes between colleagues and that students not be used to further a teacher's agenda with another colleague. Mr. Hogue acknowledged that he could have used his prep period to speak with Mr. Mowrey about the spray booth or that he could have met with Mr. Mowrey before or after school.

The Events Occurring May 4, 2011

20. Mr. Hogue liked to park his truck in the auto shop area rather than the faculty parking lot. On February 14, 2011, Mr. Hogue's truck accidentally was locked in the parking lot. Mr. Hogue became extremely upset, after which he yelled at the principal's secretary and sent emails to Ms. Nolen and Principal Kastan.

On May 4, 2001, Principal Kastan left a printed email in Mr. Hogue's box that directed him not to park his personal vehicle in the auto shop area. Mr. Hogue believed the directive was unfair. He felt he needed to park his truck at the auto shop that day so he could transport a tile saw that had been left for him there by a student's parent to his home, where he was engaged in a remodeling project. Mr. Hogue wrote on the email, "I respectfully decline to follow your directive." He sealed the email and his response in an envelope and had a student deliver the envelope to Principal Kastan's office.

At the beginning of sixth period, Mr. Hogue moved his truck from the auto shop parking area into the auto shop. He directed two students, Patrick and Sage, to load materials that were on the floor of the auto shop into the bed of the truck. According to Patrick, these materials included chemicals. Mr. Hogue was in his office when they loaded the materials.

During sixth period, when Patrick and the other student were loading materials, someone in the auto shop area yelled, "Fire!" The fire started behind an old trailer. Patrick and another pushed a blue Toyota vehicle out of the area where the fire was going. Mr. Hogue ran out to where the fire was going and told students to get away and to go inside the auto shop. Patrick did not do as he was told and inhaled smoke from the fire or chemicals from the fire extinguisher that was used to put out the fire. Patrick did not report any physical problems at the time, but the next period, after he was told he had to run laps, Patrick complained of smoke inhalation. He was taken to the hospital following that complaint. He underwent a medical examination and received treatment.

Mr. Mowrey testified that a fire occurred in the auto shop during sixth period. He observed smoke, after which he went to his office to alert administration. When he returned to the auto shop area, he saw Mr. Hogue carrying a fire extinguisher. He also observed students loading one gallon and five gallon cans, marked with Valhalla High identifications, into the rear of Mr. Hogue's truck.

Before Mr. Martinsen became aware of the fire, he observed that Mr. Hogue's truck was backed into the auto shop and that at least three students were loading one gallon and five gallon cans into the back of the truck. Around 1:30 p.m., Mr. Martinsen saw flames emerging from a 50 gallon barrel in the auto shop lot. Mr. Martinsen advised Campus Supervisor Norma Loffte of the fire. Mr. Martinsen observed a few students taking fire extinguishers toward the fire. Mr. Martinsen did not see Mr. Hogue directing his students away from the fire. The fire was controlled fairly quickly. There were no students in the area when the fire was put out. The school resource officer and the fire department arrived thereafter and handled the situation.

Ruben Menjares, a campus supervisor, recalled a campus fire and recalled that two or three students with fire extinguishers were trying to put out the fire. He saw cans of paint thinner in the back of Mr. Hogue's truck, which was parked in the auto shop. There were three or four containers of tools in the front seat of the truck.

Michael Pata, the school resource officer (SRO), became aware of a small fire in the auto shop parking lot during sixth period. When he arrived, the fire was almost out. SRO Pata kept students away from the fire. A fire captain who responded to Valhalla High conducted an investigation.

According to SRO Pata, when the fire captain asked Mr. Hogue to provide a statement, Mr. Hogue became argumentative and was less than forthcoming. When he was asked why there were Valhalla High School materials in the rear of his truck, Mr. Hogue said he had students put the flammable materials there after the fire started because he did not want them to ignite during the fire. During a meeting at Principal Kastan's office, when Mr. Hogue had an association representative present but not legal counsel, Mr. Hogue was asked questions about the fire. SRO Pata and another law enforcement officer were present at that meeting. SRO Pata mentioned that he was conducting an arson investigation. Principal Kastan told Mr. Hogue that he was being relieved of his duties and asked for his keys. Mr. Hogue gave her his keys, then put his hands above his head and asked if he was going to be handcuffed when he was led off campus. Principal Kastan told him that he was not the target of any investigation and was not being arrested.

21. Mr. Hogue admitted that May 4, 2011, was a "bad day." He conceded that he wrote, "I respectfully decline to follow your directive" on Principal Kastan's email and had a student deliver the response to her at her office in an envelope. Mr. Hogue claimed that he did not direct students to place Valhalla High school materials into the back of his truck until after he became aware that a fire had started and that he directed them to do so at the time because he did not want those flammable materials to ignite. Mr. Hogue claimed to be an

expert in fires and fire safety and claimed that his expertise enabled him to make sound judgments to fight the fire that started during sixth period.

According to Mr. Hogue, he learned that two of his students who had been smoking in the parking lot without his knowledge or permission had started the fire. When he saw the smoke, he asked two students to bring him to fire extinguishers so he could put out the fire. He said the flames were no more than two feet high and that the fire was contained in five to ten minutes. He testified that there was no fire alarm nearby and there was no need to dispatch a student to sound the fire alarm and disrupt the school. Mr. Hogue originally believed the fire was a wood fire, and asked a student to bring him a bucket filled with water. He then determined that it was a chemical fire and that he needed to use a fire extinguisher. Students provided him with fire extinguishers, but they did not use the extinguishers themselves. Mr. Hogue said the fire was extinguished and that he was back in his office when administrators responded to the scene of the fire.

Mr. Hogue said he was asked to go to the Principal's Office. When he arrived there, the principal, law enforcement officers, and others were present. A union representative was present. Mr. Hogue said he was not told the purpose of the meeting. Officer Pata said it was an "arson investigation." Mr. Hogue said he asked if he was going to be handcuffed. He put his hands above his head to assist in that process if it were necessary.

22. Mr. Hogue's disobedience to Principal Kastan was immoral – she, not Mr. Hogue, was in charge of the site.

Mr. Hogue's testimony about when he told students to put Valhalla High materials in his truck was inconsistent with the testimony of students and others, and it was not credible. However, it was not established that Mr. Hogue was going to steal the materials, and simply putting the materials in his truck did not involve immoral conduct.

Mr. Hogue's response to the fire was not immoral, did not involve immoral conduct, and did not constitute a persistent violation of educational law or school board regulations.

Mr. Hogue's refusal to answer questions and his supercilious attitude in responding to reasonable questions concerning the fire involved immoral conduct. A fire had just occurred. Two students were taken to a nearby hospital for treatment. The administration and district had a compelling right to know how the fire started, what steps were taken to put it out, and how the students were injured. Mr. Hogue was not the target of any investigation, and he could not reasonably believe that was the case since he did not start the fire but was the person who put it out. Mr. Hogue's only concern was for himself, not for the students, not for his colleagues, and not for the district.

23. Associate Administrator Sonnich, Human Resources, testified that he knew of the meeting between Principal Kastan, Mr. Hogue and others after the fire. Mr. Sonnich testified that Mr. Hogue's disobedient response to Principal Kastan's directive that he not park in the auto shop area and Mr. Hogue's refusal to cooperate in the investigation of the

sixth period fire constituted significant events that made the imposition of progressive discipline unnecessary.

Mr. Hogue's Evidence

24. Through cross-examination Mr. Hogue established that he was something of an outsider at Valhalla High School and that his frequent, difficult interpersonal interactions with others resulted in his being under Principal Kastan's scrutiny.

Georgette Torres, Principal, Granite Hills High School, testified that Mr. Hogue performed in a satisfactory manner when he was employed at Granite Hills, that the auto shop was always in good condition, and that Mr. Hogue provided mock interviews for his automotive technology students.

Ralph (Andy) Nelson, a manager of ROP facilities, testified that Mr. Hogue was organized, conscientious, and responsive before the summer 2010 move from Granite Hills and that the auto shop at Granite Hills was a mess after Mr. Hogue moved out of it.

Annie Buchwald, a Granite Hills High Biology teacher, had known Mr. Hogue for many years. Mr. Hogue's class was responsible for servicing her car, and Ms. Buchwald was aware that Mr. Hogue involved his auto shop classes in customer service, invoicing, interviewing techniques, and writing resumes. Mr. Hogue was always very professional and courteous in his interactions with her.

Frederick M. Lowe, a retired teacher and administrator with the District, taught two periods a day with Mr. Hogue at Granite Hills High School, and they always got along well. Mr. Hogue was a competent teacher who maintained the auto shop.

Patrick and other students established that Mr. Hogue did not tolerate violence in the classroom and that he was safety conscious.

25. Mr. Hogue testified to several matters not previously mentioned. He said he decided to become a teacher because he was a student at Santana High School in March 2001 when a student shot and killed two others and wounded 13. Mr. Hogue was profoundly impressed by the support he and other students were given by teachers, and he determined that teaching would become his calling so he could be of service to others.

Mr. Hogue had absolutely no idea what happened to the Jimmie Johnson tools or the Kobalt tools that were donated to Granite Hills High School. He testified he spent a lot of time trying to locate those tools.

Mr. Hogue testified that the first time he met Jill Willson, the principal's secretary, he was "stressed out" and was not tactful. He suggested they got off on the wrong foot and this may have been the reason she paid inordinate attention to his activities. Mr. Hogue admitted that when his vehicle was locked in the auto shop parking lot, he called Ms. Willson, told her he was being held hostage, demand that she open the locked gate, and was less than tactful.

Mr. Hogue testified that he provided Ms. Nowlen with a hazardous materials inventory sheet on many occasions and that she must have lost or misplaced that inventory sheet. He said he contacted Hazmat, the San Diego County Fire Marshal, and had his students file complaints because of his concern for their safety and his belief that Ms. Nowlen did not take his complaints seriously.

Mr. Hogue claimed Mr. Martinsen poked his chest with his index finger and left a bruise. He did not photograph the bruise, and he did not seek medical attention. He filed a workers' compensation action as a result of the incident, and he made one visit to County Mental Health where he saw a psychiatrist and complained about stress. Mr. Hogue said he was being treated by his personal physician for stress and that he was taking Xanax. He has not sought formal counseling or anger management.

Mr. Hogue testified that he was not happy with the manner in which he handled his situation at Valhalla High School. He felt like he was being attacked and he became very uncomfortable. He said he should have handled many situations differently. Mr. Hogue said he was remorseful.

The Contentions

26. Complainant's counsel argued that Mr. Hogue engaged in an escalating pattern of misconduct in which he demonstrated no regard for anyone other than himself. Complainant observed that Mr. Hogue took every opportunity to blame others for his personal situation, including Ms. Willson, Mr. Mowrey, Mr. Martinsen, Vice Principal Yocom, Principal Kastan, Ms. Nowlen, RSO Pata, students, and unknown thieves. Complainant's counsel argued that Mr. Hogue believed he had unique rights – not to come to the classes he was assigned to teach, to park in the auto shop area, to possess keys to a locked spray booth, to be advised of safety inspections before they occurred, and not to speak when questioned about a fire that occurred in the auto shop class area during school hours. Complainant's counsel argued that application of relevant *Morrison* factors compelled the conclusion that Mr. Hogue was not fit to retain his employment because the misconduct had an adverse effect on students and teachers, was substantial, was close in time to the disciplinary proceeding, impacted Mr. Hogue's ability to teach under his credential, involved aggravating circumstances, involved blameworthiness, and was likely to reoccur. Mr. Hogue expressed no remorse until the accusation was filed and his job was at issue. Termination of his employment was the only reasonable result under the circumstances.

27. Respondent's counsel argued that there were two sides to every story, that Complainant's counsel ignored extenuating and mitigating evidence, and that while Mr. Hogue may have lacked tact and diplomacy, grounds for his termination from employment were not established. Respondent's counsel argued that complainant failed to establish that Mr. Hogue was evidently unfit to teach. Mr. Hogue had been a successful teacher for many years; the presence of an irremediable fixed character was inconsistent with this history. Respondent's counsel argued that complainant failed to establish that Mr. Hogue persistently violated the provisions of the education law or the governing board's regulations. On the issue of immoral conduct, Respondent's counsel argued that ten instances of misconduct

were alleged, but none of the incidents demonstrated more than Mr. Hogue's unsatisfactory reaction to a highly dysfunctional environment. While his conduct may have been unprofessional, dismissal was not based on the grounds of unprofessional conduct, which requires notice and an opportunity to remediate, but, instead, on immoral conduct, "which is a hard fit." Respondent's counsel argued that Mr. Hogue had expressed remorse, that his misconduct did not require his dismissal from employment, and that a career should not be measured by a brief period of employment lasting no more than four or five months.

Factual Conclusions

28. Reports about Mr. Hogue's history before the 2010-2011 school year established that he was a competent teacher who got along well with his colleagues at Granite Hills High School and that he maintained the auto shop in an appropriate fashion. Mr. Hogue was understandably upset by the closure of Granite Hills' automotive technology program and his need to provide teaching services elsewhere. The District and Valhalla High School attempted to accommodate Mr. Hogue's concerns and made an effort to welcome him at Valhalla High School for the 2009-2010 school year. For whatever reason, perhaps the stress of having to work in a new environment with colleagues who had known one other for many years, Mr. Hogue's first weeks at Valhalla High School were eventful and unsatisfying.

Mr. Hogue got in an argument with the principal's secretary before the school year started. After attending one or two collaborative meetings on Monday mornings, Mr. Hogue decided that the meetings were not worthwhile. Rather than discussing his feelings with his colleagues, he communicated his concerns to an association representative and decided that he no longer needed to attend the Monday morning meetings. Mr. Hogue, who was not skilled in teaching computer-assisted drafting or in teaching woodworking, decided not to take the opportunity to improve his vocational skill set with the highly experienced teachers with whom he had been assigned to co-teach, and he unilaterally concluded that he could better spend his time elsewhere. Mr. Hogue's failure to attend the collaborative meetings and his failure to join his colleagues in teaching classes to which he had been assigned (and for which he was being paid) certainly did not set an appropriate and mutually respectful tone.

As Mr. Hogue lost the respect of others who were teaching industrial arts, he became involved in several arguments with support and administrative staff over missing tools and equipment, safety issues, the removal of hazardous materials, the parking lot, and other matters. These disputes were documented in emails to and from Mr. Hogue, each of which was superficially polite but nevertheless contained a disturbing undercurrent of blame and threats. Mr. Hogue rallied his students in an effort to have the auto shop area maintained in the manner he wished.

Mr. Hogue told the District that he was serving on federal grand jury on three occasions when that was not the case. In doing so, Mr. Hogue engaged in dishonesty that demonstrated disrespect for his employer.

Matters came to a head shortly after February 14, 2011, when Mr. Hogue demanded that a Joint Powers Administration inspection be terminated because he felt threatened. Mr. Hogue had no right to make that demand. On February 18, 2011, Principal Kastan met with Mr. Hogue and others concerning Mr. Hogue's failure to attend his first and second period classes, his late arrival to campus, his conduct at the recent Joint Powers Administration inspection, and his troubling attitude towards staff. Principal Kastan directed Mr. Hogue to notify the attendance secretary if he were going to be late to work and directed him to be nice to others. Formal discipline was not imposed.

Despite this meeting, and no more than two weeks later, Mr. Hogue instigated a confrontation with two colleagues during classroom hours and initiated a telephone call to Principal Kastan's office on speakerphone, thereby ensuring that students in the classroom could hear what was said. It is irrelevant that Mr. Mowrey or Mr. Martinsen may have overreacted to Mr. Hogue's aggressive and inappropriate misconduct. If Mr. Hogue actually received the "be nice" message delivered two weeks earlier, it was forgotten.

On May 4, 2011, Mr. Hogue directly and intentionally disobeyed Principal Kastan's directive that he not park in the auto shop, and later that afternoon he refused to answer reasonable questions concerning a fire in the auto shop compound that occurred during class hours that resulted in two students going to the hospital.

Mr. Hogue's evident unfitness for service was not established because it was not proven that Mr. Hogue has a fixed character trait. Mr. Hogue's persistent refusal to obey education law and governing board regulations was not established because the laws and regulations he was alleged to have violated were not proven, and it was not established that his failure to follow the fire drill involved a violation of board policy. Mr. Hogue's immoral conduct was established, however.

As pointed out in the notice of defense:

[T]he amorphous nature of the term 'immoral' . . . is innately a relative concept dependent on contemporary moral values, the motivation of the actor, and the degree of its inimical quality. Indeed, allegations of 'immoral' conduct are unconstitutionally vague in the context of teacher-dismissal cases unless the alleged 'immoral' conduct is evaluated by reference to a fitness-to-teach standard . . . Thus, '[i]mmoral . . . conduct' within the meaning of [the] Education Code . . . 'indicates an unfitness to teach.' (Notice of Defense, p.2., lines 3-11.)

The Commission agrees with the parties that the *Morrison* factors must be evaluated in this matter to determine whether Mr. Hogue's conduct was "immoral" and whether Mr. Hogue is "fit to teach" in the District.

Mr. Hogue's conduct in reporting late to work more than 60 times, his false claim on three different occasions that he was involved in grand jury duty when that was not the case, his refusal to cooperate in a Joint Powers Administration safety inspection, his instigation of an unnecessary confrontation with other teachers when class was in session, his preventable and inappropriate disclosure of his dispute with colleagues in the presence of students, and his refusal to cooperate in the investigation of a fire that occurred at the auto shop, individually and collectively, involved immoral conduct.

Mr. Hogue's misconduct in not showing up to work on time and in lying about his grand jury duty adversely affected both students and his fellow teachers. Mr. Hogue was paid for teaching services he did not actually provide. A substitute teacher was paid when that was unnecessary. In confronting his colleagues, Mr. Hogue brought an essentially private dispute into the classroom, which demeaned Mr. Hogue, his colleagues, and the teaching profession. It created dissention and disrespect. Mr. Hogue's refusal to cooperate in a reasonable safety inspection resulted in less than adequate evidence being obtained related to the safety of the auto shop area and the inspector's inability to advise Mr. Hogue of the nature and extent of his findings. It also resulted in the inability of the SRO and others to determine the cause of a fire, what caused student injuries, and whether steps could be taken in the future to prevent similar occurrences. The adversity was significant. The final instance of misconduct occurred less than two years before the date of the disciplinary hearing. Mr. Hogue held a secondary teaching credential, and he was expected to set an example for his students. He failed to do so. Given Mr. Hogue's views about the District and their lack of compassion, it is unlikely that he will ever feel he is being treated properly by the District, and it is unlikely that his conduct will change in a significant fashion. Finally, disciplinary action will not have a chilling effect upon the constitutional rights of other teachers, who understand their obligation to work a full day to earn a full day's pay, to cooperate in safety inspections and investigations, to cooperate in a reasonable and responsible manner with others despite honest disagreements, and to report honestly those matters that require their absence from employment.

The Commission concludes that Mr. Hogue's dismissal from employment is appropriate and that his dismissal will not violate his constitutional rights or have a chilling effect on the constitutional rights of other teachers. The Commission is mindful that this decision is based upon a preponderance of the evidence and that its decision does not require an evaluation of Mr. Hogue's fitness to hold a teaching credential or his ability to serve in a credentialed capacity elsewhere.

Jurisdictional Matters

29. On January 20, 2012, the District served the Accusation and other required jurisdictional documents on Mr. Hogue.

On February 3, 2012, Mr. Hogue, through counsel, timely served a Notice of Defense and Affirmative Defenses on the District.

On March 2, 2012, Mr. Hogue nominated Richard Radcliffe to serve as a panel member. On March 5, 2012, the District nominated Scott Chodorow to serve as a panel member. Neither nominee was related to Mr. Hogue; neither was employed by the District; each held a valid technology teaching credential; and each had served at least five of the past ten years as a technology teacher. Each nominee was qualified to serve on the Commission on Professional Competence under Education Code section 44944, subdivision (b).

On March 12, 2012, the record in the administrative proceeding was opened; rulings were issued on respondent's motions in limine outside the presence of the panel members; and opening statements were given. Sworn testimony and documentary evidence were received on March 12, 13, 14, and 15, 2012. On March 15, 2012, closing arguments were given; the record was closed; the matter was submitted; and the Commission on Professional Competence met in closed session to determine the matter.

Authority to Sign the Decision

30. The Commission's decision in this matter is unanimous. Following each Commission Member's review of the written decision and his approval thereof, the Commission authorizes Administrative Law Judge James Ahler to sign the decision on behalf of the Commission.

LEGAL CONCLUSIONS

Burden and Standard of Proof

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

A preponderance of the evidence means that the evidence on one side of an issue outweighs, preponderates over, and is more than the evidence on the other side of the issue, not necessarily in number of witnesses or quantity, but in its convincing effect on those to whom it is addressed. In other words, the term refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Due Process under the Education Code

2. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.) Hearings to determine if permanent public school teachers should be dismissed are held before a Commission on Professional Competence – a three-member administrative tribunal consisting of one credentialed teacher chosen by the school board, a second credentialed teacher chosen by the teacher facing dismissal, and an administrative law judge of the Office of Administrative Hearings who serves as chairperson and a voting member of the commission and who is responsible for

assuring that the legal rights of the parties are protected at the hearing under Education Code section 44944, subdivision (b). The Commission's decision is deemed to be the final decision of the district's governing board under Education Code section 44944, subdivision (c). (*California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327, 331.) The Commission has broad discretion to determine the issues before it and to determine whether dismissal is the appropriate sanction. (*Ibid.*, at p. 343.)

When a school board recommends dismissal for cause, the Commission may only vote for or against it. The Commission may not dispose of a charge seeking dismissal by imposing probation or an alternative sanction. (Ed. Code, § 44944, subs. (c)(1)-(3).)

Statutory Grounds for Dismissal

3. Education Code section 44932 provides in part:

(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral . . . conduct.

[¶] . . . [¶]

(5) Evident unfitness for service.

[¶] . . . [¶]

(7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her. . . .

Relevant Legal Authority

4. Fitness to Teach – Immoral Conduct - The Nexus Requirement: The terms “immoral” or “unprofessional conduct” are so broad and vague that, standing alone, they could be constitutionally infirm; hence the proper criteria is fitness to teach. A board cannot abstractly characterize conduct as “immoral,” “unprofessional,” or “involving moral turpitude” unless that conduct indicates that petitioner is unfit to teach. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 696.) “Fitness to teach” is probably a question of ultimate fact. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 560-561.)

Conduct can be “immoral” for purposes of dismissal under the Education Code even though the conduct at issue has no relationship to a sexual offense. (*Board of Education of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808.)

In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court established seven factors that should be utilized to determine whether unprofessional conduct demonstrated unfitness to teach.

In determining whether the teacher's conduct thus indicates unfitness to teach the board may consider such matters as [1] the likelihood that the conduct may have adversely affected students or fellow teachers, [and] the degree of such adversity anticipated, [2] the proximity or remoteness in time of the conduct, [3] the type of teaching certificate held by the party involved, [4] the extenuating or aggravating circumstances, if any, surrounding the conduct, [5] the praiseworthiness or blameworthiness of the motives resulting in the conduct, [6] the likelihood of the recurrence of the questioned conduct, and [7] 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. These factors are relevant to the extent that they assist the board in determining whether the teacher's fitness to teach, i.e., in determining whether the teacher's future classroom performance and overall impact on his students are likely to meet the board's standards.

The Commission may also take into account the notoriety and publicity accorded a teacher's conduct. Moreover, if the teacher's conduct is sufficiently notorious that the students know or are likely to learn of it, and if the teacher continues to model his past conduct, the Commission may infer that the teacher's conduct may result in student emulation, but such an inference is disputable. (*Broney v. California Com. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 474.) Only the pertinent *Morrison* factors need to be analyzed. (*Ibid.*, at p. 476.)

The *Morrison* factors can be applied to all the charges in the aggregate. When a camel's back is broken, we need not weigh each straw in its load to see which one could have done the deed. A trier of fact is entitled to consider the totality of the offensive conduct. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.)

5. Evident Unfitness for Service: *Woodland Joint Unified School District v. Commission on Professional Competence*, *supra.*, at p. 1444, held that "evident unfitness for service" as a ground for dismissal of a teacher means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. The phrase connotes a fixed character trait that is presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district. The definition of "evident unfitness for service" does not include the terms "incompetent" and "physically or mentally unsound" since those characteristics are specified as separate causes for dismissal in the statute.

Unlike unprofessional conduct, “evident unfitness for service connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district.” (*San Diego Unified School District v. Commission on Professional Competence (Lampedusa)* (2011) 194 Cal.App.4th 1454, 1462.)

6. Persistent Violation: A school district has the right to adopt rules governing the conduct of its employees and to require employees to observe the rules. A single violation of a school board’s rules is not, of itself, cause for the dismissal of a permanent teacher under the Education Code. While this ground for dismissal pertains to unintentional as well as intentional transgressions, and hence apparently allows the opportunity for a correction, the Legislature has decreed that a single violation is not sufficient to warrant dismissal; it is the persistent disregard of school rules that the subsection is designed to regulate. (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 84.)

Progressive Discipline Was Not Required to Terminate Respondent’s Employment

7. Respondent’s counsel suggested that Mr. Hogue’s termination from employment was too severe and implied that Mr. Hogue was entitled to notice of his offensive conduct and that the District should have engaged in progressive discipline before serving Mr. Hogue with a notice of intent to terminate his employment.

Ignoring for the moment that there was an oral counseling session that Mr. Hogue, his Association President, and an association representative, attended on February 18, 2011 - complainant did not allege “unprofessional conduct” or “unsatisfactory performance” as grounds for termination. A written notice and an opportunity to correct must be given only when “unprofessional conduct” or “unsatisfactory performance” is alleged as a ground for termination. (Ed. Code, § 44938, subds. (a) and (b).)

As noted in *Woodland Joint Unified School District v. Commission on Professional Competence*, *supra*, at 1453, neither warnings nor progressive discipline are required by due process where the statute at issue does not require notice or an opportunity to correct.

As was the case in *Woodland Joint Unified School District*, Mr. Hogue reasonably knew that his cited conduct was wrongful. Teachers, particularly in the light of their professional expertise, will normally be able to determine what kind of conduct indicates unfitness to teach. They know, or should know, that they must show up for work, must cooperate in reasonable inspections and investigations, must not engage in disputes with colleagues in the presence of students, and must not misrepresent the reasons they do not come to work.

Cause Exists to Dismiss Mr. Hogue

8. A preponderance of the evidence established cause under Education Code section 44932, subdivision (a)(1), to dismiss Richard Hogue from his employment with the Grossmont Union High School District on the grounds of immoral conduct. Mr. Hogue reported late to work more than 60 times; he made false claim on three different occasions by saying that he was involved in grand jury duty when that was not the case; he refused to cooperate in a Joint Powers Administration safety inspection; he instigated an unnecessary confrontation with other teachers when class was in session; he brought private disputes with other teachers to the attention of students; and he refused to cooperate in the investigation of a fire that occurred at the auto shop. Under the *Morrison* criteria, these acts, individually and collectively, involved immoral conduct.

DISPOSITION

The Accusation and Statement of Charges are sustained as is reflected in the Commission's factual findings and legal conclusions set forth herein. Richard Hogue is dismissed from his employment with the Grossmont Union High School District.

DATED: April 12, 2012

JAMES AHLER

Administrative Law Judge

Office of Administrative Hearings