

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE  
JURUPA UNIFIED SCHOOL DISTRICT  
COUNTY OF RIVERSIDE

In the Matter of the Dismissal of:

JEFFEREY NORMAN,

Respondent.

OAH NO. 2012051192

**DECISION**

This matter came on regularly for hearing before the Commission on Professional Competence in Riverside, California on December 10, 17, 18, 19, and 20, 2012. The Commission consisted of the following members: Administrative Law Judge Roy W. Hewitt; Ms. Eva Salazar; and Mr. David Mc Phee.

Kerrie Taylor, Esq. represented the Jurupa Unified School District (the district).

Jefferey Norman (respondent) personally appeared and was represented by Richard Ackerman, Esq.

Oral and documentary evidence was received and the record remained open until January 8, 2013, so that the parties could submit written briefs.

No briefs were received and the matter was deemed submitted on January 8, 2013.

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. The Dismissal Accusation was filed by Elliott Duchon, while acting in his official capacity as Superintendent of the district.

2. Respondent is a permanent certificated employee of the district and, at all relevant times was teaching seventh grade mathematics to intervention students<sup>1</sup> at Mission Middle School (the school).

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<sup>1</sup> Intervention students are students who tested below average or well below average on

3. On April 2, 2012, the Governing Board of the district (the board) approved service of a Notice of Intent to Immediately Suspend and Dismiss and a Statement of Charges (charges) against respondent, notifying respondent of his proposed dismissal as a certificated employee of the district. The board directed the superintendent to serve the charges on respondent pursuant to Education Code section 44936.

4. On April 6, 2012, a copy of the charges was served on respondent.

5. On April 6, 2012, a copy of the charges was served on the president of the National Educators Association—Jurupa.

6. Respondent timely appealed the dismissal action by filing a Notice of Defense/Request for Hearing and the instant hearing ensued.

*Factual Findings<sup>2</sup> Based on the Testimony and Documents Presented During the Hearing*

2008—2009 School Year

7. The Commission members found that respondent occasionally put Chapstick on his lips and smacked his lips. Insufficient evidence was presented that respondent did this to “mock students in a sexual manner,” or that students were “offended by his behavior.” Respondent was joking around and by unanimous vote the Commission members found that respondent’s actions were not inappropriate.

8. By a vote of 2:1, the Commission members found that respondent repeatedly leered at female students’ buttocks and breasts and that, as a result, female students were uncomfortable attending his class and requesting assistance from respondent on their math work.

9. By unanimous vote, the Commission members found that on January 21, 2009, respondent failed to take his students to a school-wide assembly. Instead, respondent spoke to his *math* class about President Obama, allowed the class to watch *Kung Fu Panda* for 30 minutes and to talk amongst themselves. Respondent knew about the assembly and knew that student attendance was required by the administration; however, respondent elected to keep his students from attending the assembly because he believed the assembly placed African-Americans in a negative light. The Commission members agreed that respondent’s personal beliefs did not excuse his non-compliance with the requirement that he have his students attend the *school-wide assembly*.

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standardized State tests. Respondent’s students ranged in age from 13 to 15 years old.

<sup>2</sup> The findings were made based on a preponderance of the evidence standard.

10. By unanimous vote, the Commission members found that respondent frequently yelled at students in his class. Respondent yelled at the class as a whole, and individual students when he was frustrated with a student's understanding of math concepts and/or when a student misbehaved. The majority of respondent's students were frightened and intimidated by respondent's behavior.

11. By unanimous vote, the Commission members found that respondent became upset with a male student (C.G.) and yelled at C.G. to get out of the classroom. By 2:1 vote, the Commission members found that respondent grabbed C.G.'s folder and papers and threw them through the doorway and out of the room, and that C.G. was required to retrieve them. By unanimous vote, the Commission members found that when C.G. left the classroom he remained outside the classroom, unsupervised, for approximately 20 minutes.

12. By unanimous vote, the Commission members found that respondent accessed the cumulative student files of W.D. and A.V. for the purpose of responding to the Summary of Allegations, a non-educational purpose, and that pursuant to federal and state laws, teachers are only permitted to access and disclose student records for "legitimate educational" purposes.

13. By unanimous vote, the Commission members found that on May 13, 2009, respondent was issued a Notice of Unprofessional Conduct (Notice) which advised him that it was unprofessional for him to do any of the following: have angry outbursts with staff and students; yell at students; be dishonest with his supervisors; call students names other than their given names; fail to comply with general and specific directives of his supervisors; make seductive statements to his classes; and, access student files for non-legitimate educational purposes. Respondent was directed in the Notice to immediately modify his behaviors and to act in a professional manner.

14. By unanimous vote, the Commission members found that on June 9, 2009, respondent received an Evaluation for the 2008—2009 school year in which he received an "N" (needs improvement) mark in both Creating and Maintaining Effective Environments for Student Learning and Developing as a Professional Educator/Adjunct Duties. Respondent's overall evaluation was rated as "N" (needs improvement).

#### 2009—2010 School Year

15. By unanimous vote, the Commission members found that even though respondent had been warned about his behaviors during the 2008—2009 school year, he continued to repeatedly yell at students in his class. Respondent yelled at the class as a whole, and individual students, when he was frustrated with the students and when they misbehaved. Students were frightened and intimidated by respondent's behavior. Examples of respondent's unacceptable and unprofessional conduct were as follows: on September 22, 2009, respondent yelled at a female student (S.L.) because she asked another student for a piece of paper; and, on October 7, 2009, respondent again yelled at S.L. because she was late

for class and when S.L. presented respondent with a late slip, respondent threw it on the floor and yelled at her.

16. By unanimous vote, the Commission members found that in September and October 2009, respondent required students to stand in the corner of the classroom as a form of discipline. Such conduct is unprofessional because it is a demeaning and inappropriate method of correcting students' behaviors.

17. By unanimous vote, the Commission members found that between November 13 and 18, 2009, respondent acted in an unprofessional manner by unplugging his classroom telephone, thereby preventing the school office from being able to conveniently and quickly contact him. During an investigation of the incidents respondent told an administrator that the telephone was broken; however, on November 18, 2009, respondent admitted to a school custodian that he [respondent] had unplugged the telephone because he did not want his class disrupted by telephone calls.

18. By a vote of 2:1, the Commission members found that in December 2009, respondent called a male student (A.G.) a "stupid ass" in front of other students because the student did not know where another teacher's classroom was located.

19. By unanimous vote, the Commission members found that respondent called certain students in his class "lazy" and that such references were inappropriate, demeaning, and insulting and led the students to give up and not want to attend respondent's class or to succeed in math. The Commission members; however, found insufficient evidence in support of the allegation that respondent called some of his students "crazy" or "stupid."

20. By unanimous vote, the Commission members found that respondent told a female student (K.N.) to "shut up . . . Get out of class . . . who do you think you are running your big mouth to?," and that the comment was unprofessional. The Commission members further found that when a male student was helping another student with her classwork respondent told the male student to stop helping the female student because she was "sassy;" however, the Commission members did not find that particular statement to be inappropriate.

21. By unanimous vote, the Commission members found that respondent repeatedly leered at female students' buttocks and breasts.<sup>3</sup> As a result, female students in

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<sup>3</sup> While only two of the Commission members found that this same conduct occurred during the 2008—2009 school year; however, this time the vote was unanimous because the third member of the Commission believed that although respondent's actions may have been misinterpreted during the 2008—2009 school year, respondent was placed on notice when he received the May 13, 2009, Notice of Unprofessional conduct not to act in a seductive manner toward his female students. Consequently, the third member voted "yes" this time because any reasonable teacher in the same or similar circumstances would have been sensitive to the issue and would not act in any way that could again be misconstrued.

respondent's classes were uncomfortable attending his class and requesting assistance for respondent on their math work. Additionally, other students, both male and female, who witnessed respondent's behavior(s) were uncomfortable.

#### 2010—2011 School Year

22. By unanimous vote, the Commission members found that on July 27, 2010, at approximately 12:57 p.m., respondent downloaded ten images of a topless female and two images of a naked female leaning over a bed from respondent's cellular telephone to his district computer. The images, which were stored on respondent's district computer, were discovered on November 25, 2011. This was a violation of district computer use policy and represented unprofessional conduct; however, the Commission members also found that this appears to have been an isolated incident and did not represent a pattern of misconduct.

23. By a vote of 2:1, the Commission members found that on March 24, 2011, a female student (Z.M.) asked to use the restroom. In front of the class, respondent told Z.M. that she could not use the restroom and that she could "pee herself" or "pee in her panties," or words to that effect. The class laughed, but Z.M. was upset and embarrassed.

24. By unanimous vote, the Commission members found that respondent repeatedly yelled at students in his math classes. Respondent yelled at the class as a whole and at individual students when he was frustrated with them and when they misbehaved. Some of respondent's students were frightened and intimidated by respondent's behavior(s).

25. By unanimous vote, the Commission members found that respondent frequently told students that he did not want them in his class. Respondent told students things like, "if you don't want to be in my class, you can go somewhere else." Respondent told students that if they did not want to come to his class they could hang out in the restroom. Respondent's behavior resulted in a loss of instructional minutes and adversely impacted his students' desires to learn.

26. By unanimous vote, the Commission members found that on April 1, 2011, respondent failed to properly supervise his class. A school administrator observed respondent outside of his classroom during the instructional period. During this time respondent's students were not receiving instruction and they were not being supervised by an adult.

#### 2011—2012 School Year

27. By unanimous vote, the Commission members found insufficient evidence to support the allegation that respondent confronted Nancy Magana and student B.T. after an August 2011 meeting with the principal of Mission Middle School, during which respondent and the principal discussed respondent's conduct concerning having confronted B.T. about cheating on a test/an assignment.

28. By unanimous vote, the Commission members found insufficient evidence to support the allegation that respondent called female students in his class “hot” and “sexy.”

29. By unanimous vote, the Commission members found that although respondent referred to male student J.L. as a “sexy beast” in the presence of other students such a comment was made in jest and did not, in and of itself, constitute unprofessional conduct.

30. By unanimous vote, the Commission members found that during the fall semester of the 2011—2012 school year, respondent leered at female students’ breasts and buttocks. Respondent’s actions made the female students feel uncomfortable and nervous. Respondent’s actions caused female student (A.S.) to fear and dread having to approach respondent at his desk. The male students in respondent’s classes, who observed respondent’s behavior(s), were also uncomfortable with respondent’s actions.

31. By unanimous vote, the Commission members found that during the fall semester respondent required students to do push-ups if they failed to obtain the correct answer to math problems.

32. By unanimous vote, the Commission members found that during the fall semester respondent repeatedly told students that they were “lazy.”

33. By a vote of 2:1, the Commission members found that respondent berated a male student (R.C) and called him “retarded” when R.C. asked for assistance and/or when he incorrectly answered math questions. By unanimous vote, the Commission members also found that respondent asked R.C. and other students who requested assistance, “Why are you here? Why don’t you just stay home?”

34. By unanimous vote, the Commission members found that during the fall semester, respondent repeatedly became angry with students and sent them out of class. On one occasion, when a male student (E.G.) was retrieving his belongings, respondent became upset with how long it was taking the student to get his belongings and leave the classroom. By a vote of 2:1, the Commission members found that respondent approached E.G., picked up his backpack, and threw the backpack out of the classroom.

35. By unanimous vote, the Commission members found that during the fall semester, respondent repeatedly yelled at, and intimidated, students in his math class. Respondent yelled at his classes as a whole and at individual students. At times, respondent was less than one foot in front of a student’s face when he yelled. At other times, respondent stood at the front of a student’s desk and leaned over the desk to intimidate the student. Respondent’s behavior(s) frightened students and adversely impacted the learning environment. Some of respondent’s students were afraid to come to class and afraid to ask for help when they did attend class.

#### *Respondent’s Reputation in the School District*

36. Over the years, since 2007, respondent's reputation with the students at the school was that he was a "perv" [pervert] and a bully, and that students should avoid getting placed in his class, if possible.<sup>4</sup> With the school administrators respondent had the reputation of being difficult to deal with, not following the rules, and wanting to do things "his way."

#### *Respondent's Testimony*

37. Respondent denied the allegations against him and/or had excuses for his actions; however, for the most part he testified as to his "custom and habit" and avoided addressing specific incidents of alleged misconduct. In sum, respondent's testimony was not credible.

#### *Assessment of the Evidence*

38. Based on all the evidence, considered as a whole, the Commission members unanimously agreed that respondent "just does not seem to have gotten it, he does not seem to love his students, and he is not passionate about teaching." By respondent's own admission, he received written notice(s) and was counseled about his repetitive misconduct/unprofessional behavior(s) on several separate occasions; yet, he continued to engage in inappropriate conduct, unprofessional conduct, and/or conduct that could reasonably be interpreted as sexually harassing and demeaning to female students. Respondent made unwelcome and inappropriate comments to female students, his inappropriate conduct caused both female and male students to feel uncomfortable, and he yelled at students and made inappropriate comments to his class and to individual students thereby creating an intimidating and offensive environment for students. Additionally, respondent's conduct is widely known throughout the district and negatively impacts his ability to function in the district as a teacher. Respondent's ability to act as a role model for students, to properly teach and hold students accountable for their actions, to effectively work with students, to maintain credibility with parents and faculty, and to teach effectively has been irreparably compromised in the district. Moreover, respondent has repeatedly disregarded the district's efforts to change his behavior thereby indicating he is either unable or unwilling to comport himself to the behavior reasonably expected of a teacher.

### LEGAL CONCLUSIONS

By unanimous vote, the Commission members make the following Legal Conclusions:

1. Cause exists for dismissal pursuant to Education Code section 44932, subdivision (a), subsection (1) because respondent's conduct, as set forth in Findings 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 30, 31, 32, 33, 34, and 35, constituted

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<sup>4</sup> Because it is a middle school, the student population at the school changed every two years, however, respondent's reputation was consistent for several years.

unprofessional conduct and his conduct, as set forth in Findings 8, 21, 22, and 30 constituted immoral conduct.

2. Cause exists for dismissal pursuant to Education Code section 44932, subdivision (a), subsection (7) because respondent's conduct, as set forth in Findings 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 30, 31, 32, 33, 34, and 35, reveal persistent violations of laws, rules, regulations and policies related to education; including, but not limited to, California Education Code sections 201, 212.5, 230, and 231.5, California Code of Regulations, title 5, sections 4914 and 4916, and District Board Policies.

3. Cause exists for dismissal pursuant to Education Code section 44932, subdivision (a), subsection (5) because respondent's conduct, as set forth in Findings 8, 10, 11, 15, 16, 18, 19, 20, 21, 23, 24, 25, 26, 30, 31, 32, 33, 34, and 35, has negatively impacted his ability to function as teacher in the district; thus, making him unfit for service in the district, as defined by the California Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 ("*Morrison*").

In *Morrison*, the California Supreme Court set forth the factors that must be considered in assessing a teacher's fitness to continue teaching. The factors are: (1) The likelihood of recurrence of the questioned conduct; (2) the presence of extenuating or aggravating circumstances; (3) the likelihood that the conduct may have adversely affected students or fellow teachers and the degree of adversity anticipated; (4) the proximity or remoteness in time of the conduct; (5) the type of teaching certificate held by the respondent; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; and, (7) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons. (*Morrison v. State Board of Education* (*Supra* at 229.)

Application of the *Morrison* factors to the facts of the instant case lead to the conclusion that the district was, and is, justified in dismissing respondent from employment as a teacher in the district. Respondent's conduct had a significant adverse impact upon district students by creating and encouraging an uncomfortable class room environment for students; particularly female students. Respondent's inappropriate conduct is recent: it occurred as recently as the 2011—2012 school year. In aggravation, respondent was repeatedly warned about the ultimate consequences of his inappropriate comments and conduct and he continued to disregard the warnings. Respondent's continued unprofessional and immoral conduct in the face of repeated warnings reveal that respondent just does not seem to comprehend the magnitude of his transgressions; accordingly, there is a very real likelihood such conduct will recur.



ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's dismissal from employment with the Jurupa Unified School District is upheld.

Dated: January 17, 2013

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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

Dated: January , 2013

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Ms. Eva Salazar  
Commission Member

Dated: January , 2013

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Mr. David McPhee  
Commission Member